File No. 251017 **Committee Item No.** 3
Board Item No. 7

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee **Date** October 29, 2025
Board of Supervisors Meeting **Date** November 4, 2025

Cmte Board

Cmte	Board	
☐	☐	**Motion**
☒	☒	**Resolution**
☐	☐	**Ordinance**
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☒	☒	**Introduction Form**
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☐	☐	**Public Correspondence**

OTHER **(Use back side if additional space is needed)**

☒	☒	Executed Lease 5/1/2024
☒	☒	PLN Final EIR Addendum 2 10/30/2023
☒	☒	PLN Memo to File 6/11/2024
☒	☒	PRT Commission Resolution No. 24-15 2/27/2024
☒	☒	PRT Commission Resolution No. 25-49 8/12/2025
☒	☒	BOS Resolution No. 194-24 5/1/2024
☒	☒	PRT Presentation 10/29/2025
☐	☒	PAM Temporary Member 10/24/2025
☐	☐	
☐	☐	

Completed by: Brent Jalipa **Date** October 23, 2025
Completed by: Brent Jalipa **Date** October 30, 2025

[Lease Agreement Extension - SkyStar Wheel, LLC - Observation Wheel - $11,000 Monthly Base Rent with Annual Increases Plus a Percentage Rent of 8% - Estimated Revenue $1,800,000]

Resolution exempting from the competitive bidding policy set forth in Administrative Code, Sections 2.6-1 and 23.33, approving Port Lease 17322 for the continued operation of an observation wheel at SeaWall Lot (SWL) 301 between the Port of San Francisco and SkyStar Wheel, LLC for a period of 18 months with one 18-month extension option, to commence on November 1, 2025, through April 30, 2027, for a monthly base rent of $11,000 with annual increases plus a percentage rent of 8%, for an estimated revenue of $1,800,000; and adopting environmental findings under the California Environmental Quality Act.

WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter, Section B3.581, give the Port Commission 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, The Port Commission at its meeting on April 11, 2023, after a public planning process that maximized public participation in public discussions about existing waterfront activities, regulations, challenges, public desires, and needs to incorporate diverse viewpoints and perspectives to develop policy recommendations, adopted an updated Waterfront Plan (the "Waterfront Plan"); and

WHEREAS, The Waterfront Plan included a stakeholder engagement process for waiver of competitive bidding requirements in advance of the submission of such proposals to the Board of Supervisors for consideration of a waiver of the City's competitive bidding policy; and

WHEREAS, On November 1, 2023, the Port and SkyStar Wheel, LLC, a Missouri limited liability company ("SkyStar"), entered a six-month license for a portion of SWL 301; and

WHEREAS, During the license period, Port staff sought stakeholder feedback and explored the potential to competitively bid the site for an observation wheel and concluded that a competitive process was unlikely to result in more than one proposal; and

WHEREAS, The Port Commission approved Resolution No. 24-15 on February 27, 2024, adopting findings under the California Environmental Quality Act (California Public Resources Code, Sections 21000 et seq.) and Chapter 31 of the San Francisco Administrative Code (collectively, "CEQA"), and approving an 18-month lease ("Lease 17136") to continue SkyStar's use of a portion of SWL 301 that will expire on October 31, 2025, subject to any necessary approvals by the Board of Supervisors ("Board") including a waiver of the City's competitive bidding policies; and

WHEREAS, The Board adopted Resolution No. 194-24, which was enacted on May 1, 2024, and waived competitive bidding procedures for Lease 17136; and

WHEREAS, Port staff desires to renew the SkyStar Lease as an appropriate interim use of the site that generates revenue for the Port, creates foot traffic that helps activate the Fisherman's Wharf area, maintains economic momentum from the Port's current investments in the recovery of the Fisherman's Wharf portfolio, and supports the goals of the Port's Fisherman's Wharf Forward project; and

WHEREAS, Port staff and SkyStar have negotiated an additional lease ("Renewal Lease No. 17322"), to allow SkyStar to continue Wheel operations at the site for an initial 18-month term, with an option for SkyStar to extend the term for an additional 18 months, including base and percentage rent increases and other terms and conditions as described in the staff report accompanying Port Commission Resolution No. 25-49; and

WHEREAS, The Renewal Lease No. 17322 allows a temporary continuation of the existing use of the site, with the same maximum intensity of use, and is therefore within the scope of the project evaluated by the Planning Department and for which the Port Commission adopted findings under CEQA in Port Commission Resolution No. 24-15; and

WHEREAS, On March 16, 2023, the Planning Commission certified the Final Environmental Impact Report (Planning Case No. 2019-023037ENV) ("FEIR") for The Port of San Francisco's Waterfront Plan; and

WHEREAS, On October 30, 2023, the Planning Department issued Addendum 2 (Planning Case No. 2023-009039ENV) ("Addendum 2") to the FEIR, which analyzed the environmental impacts of the relocation to and operation of the Wheel in Fisherman's Wharf for a period of up to three years, and identified the following mitigation measures to be potentially applicable to relocation and operation of the Wheel: M-CR-2a, Procedures for Accidental Discovery of Archeological Resources for Projects Involving Soil Disturbance; M-CR-2b, Archeological Monitoring Program; M-CR-2c, Archeological Testing Program; M-CR-2d, Treatment of Submerged and Deeply Buried Resources; and Mitigation Measure M-AQ-4c, Best Available Control Technology for Projects with Diesel Generators and Fire Pumps (each as further described in the FEIR and collectively, the "Mitigation Measures"); and

WHEREAS, On June 11, 2024, the Planning Department issued a Memorandum to File (Planning Case No. 2023-009039ENV) ("Memorandum to File") pursuant to the requirements of CEQA, analyzing an extension of the operation of the Wheel beyond the initial period analyzed in Addendum 2, including the construction of a new foundation shifting the Wheel approximately 15 feet west and 2 feet south from its then-current location, and determined that the modifications to the Project would not cause new significant impacts or result in a substantial increase in the severity of the impacts identified in Addendum 2, and that no new or revised mitigation measures would be required, which Memorandum to File was confirmed

as applicable to Renewal Lease 17322 by Planning Department staff in correspondence dated July 11, 2025; and

WHEREAS, San Francisco Administrative Code, Section 31.19(c)(1) provides that the Planning Department must reevaluate a modified project and that, "[i]f, on the basis of such reevaluation, the Environmental Review Officer determines, based on the requirements of CEQA, that no additional environmental review is necessary, this determination and the reasons therefore shall be noted in writing in the case record, and no further evaluation shall be required by this Chapter"; and

WHEREAS, In correspondence dated July 11, 2025, Planning Department staff confirmed that the Memorandum to File is applicable to Renewal Lease No. 17322 and that no additional environmental review is necessary; and

WHEREAS, On August 12, 2025, the Port Commission adopted Resolution No. 25-49, approving the Renewal Lease No. 17322 for 18 months and one 18-month extension option with SkyStar Wheel, LLC, and recommending the Board of Supervisors waive any applicable requirements of the competitive bidding process with respect to this renewal; now, therefore, be it

RESOLVED, The Board of Supervisors adopts the Environmental Findings in Port Commission Resolution No. 24-15 as its own; and, be it

FURTHER RESOLVED, The Board of Supervisors finds: that competitive bidding procedures would be impractical or impossible due to a likely lack of competition for a short term opportunity to continue operations; the timely and successful execution of the proposed short term lease would help attract visitation to the Port for the benefit of new and old businesses alike; the urgency of providing support to the recovery of Fisherman's Wharf and maintaining uninterrupted operations; and for these reasons, it would be in the public interest

to waive competitive bidding procedures so the Port may enter into a lease with SkyStar Wheel, LLC; and, be it

FURTHER RESOLVED, That the Board of Supervisors waives application of the competitive bidding procedures in Administrative Code, Sections 2.6-1 and 23.33 to Renewal Lease No. 17322; and, be it

FURTHER RESOLVED, That the Board of Supervisors hereby approves the Renewal Lease No. 17322 for a period of 18-months with one 18-month extension option, between the Port of San Francisco and SkyStar Wheel, LLC for a portion of SWL 301; and, be it

FURTHER RESOLVED, That within thirty (30) days of the Renewal Lease No. 17322 being fully executed by all parties, the Port shall provide a copy of the final contract to the Clerk of the Board for inclusion in the official file.

CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR

LEASE NO. L-17322

BY AND BETWEEN

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

AND

SKYSTAR WHEEL, LLC
A MISSOURI LIMITED LIABILITY COMPANY

PORTION OF SEAWALL LOT 301

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

GAIL GILMAN, PRESIDENT
STEPHEN ENGBLOM, VICE PRESIDENT
WILLIAM ADAMS, COMMISSIONER
STEVEN LEE, COMMISSIONER
KEN MCNEELY, COMMISSIONER

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EXHIBIT C ESTOPPEL CERTIFICATE
EXHIBIT D GOOD NEIGHBOR POLICY
EXHIBIT E PERCENTAGE RENT
EXHIBIT F DEPICTION OF PERMITTED USES
EXHIBIT G LICENSE NO. 17223 [?]

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SCHEDULE 1 ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2 HAZARDOUS MATERIALS DISCLOSURE
SCHEDULE 3 FEMA DISCLOSURE NOTICE

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LEASE AGREEMENT
BASIC LEASE INFORMATION

Lease Date:	_____,
Lease Number:	**L-17322**
Landlord or Port:	**CITY AND COUNTY OF SAN FRANCISCO,** a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Landlord's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Tenant:	**SKYSTAR WHEEL, LLC** a Missouri limited liability company
Tenant's Main Contact Person and Mailing Address:	Todd Schneider, Managing Partner SkyStar Wheel 12412 Powerscourt Drive, Suite 110 St Louis, MO 63131 Cell: (314) 308-2783 Email: todd@skystarwheel.com
Tenant's Billing Contact and Address:	Same as Main Contact
Tenant's Emergency Contact and Address:	Same as Main Contact
Tenant's Insurance Contact and Address (not broker):	Same as Main Contact
Contact Information for Tenant's Agent for Service of Process (including address):	1505 Corporation CSC Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
Premises:	Approximately 10,836 square feet at the east end of SWL 301, more commonly known as the Triangle Parking Lot in the City and County of San Francisco, State of California, as further depicted in ***Exhibit A***, attached hereto and made a part hereof, together with any and all improvements and alterations thereto.

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Facility:	SWL 301 San Francisco, California 94133			
Cross Defaults:	License No. 17223 as contemplated between Tenant and Port, which license is not executed. If and when License No. 17223 is executed, any uncured default under License No. 17223 or any other contract between Port and Tenant, shall be a default of this Lease.			
Premises Rentable Square Footage:	Approximately 10,836 rentable square feet of Improved Land			
Length of Term:	Eighteen (18) months			
Commencement Date:	November 1, 2025			
Rent Commencement Date:	November 1, 2025			
Anniversary Date:	November 1, 2026			
Expiration Date:	April 30, 2027			
Extension Option:	As further described in ***Section 33,*** Tenant has one (1) option to extend the Term of this Lease for 18 months from May 1, 2027 through October 31, 2028 (the "**Extension Option**"), provided: (i) No Event of Default by Tenant then exists, and (ii) Tenant satisfies all other conditions for exercise and effectiveness of the Extension Option as further described in ***Section 4.3***. Tenant shall provide Port written notice to exercise the Extension Option at least four (4) months and no more than six (6) months prior to April 30, 2027. Base Rent during the Extension Option Term shall be as shown in the *Monthly Base Rent* Section below.			
Early Termination Right:	Port has the right to terminate this Lease upon written notice to the Tenant, which notice must be delivered in writing no later than 90 days before the effective date of the termination.			
Monthly Base Rent:	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	1-12	10,836	$1.02 psf/mo (rounded)	$11,000.00
Rent Increase Date November 1, 2026	13-18	10,836	$1.07 psf/mo (rounded)	$11,550.00

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Portion of Extension Option	19-24	10,836	$1.07 psf/mo (rounded)	$11,550.00
Rent Increase Date November 1, 2027 Final Portion of Extension Option	25-36	10,836	$1.12 psf.mo (rounded)	$12,127.50
Percentage Rent	In addition to the Monthly Base Rent, Tenant agrees to pay Percentage Rent equal to eight percent (8%) of Gross Revenues as further described in ***Exhibit E***, which is attached to this Lease and incorporated herein.			
Additional Services and Compensation:	In addition to the Monthly Base Rent and Percentage Rent, Tenant shall conspicuously display the Port of San Francisco Logo on: **1.** All on-site banners and posters; **2.** All magazine, newspaper, and other Wheel advertising; and **3.** Inclusion in all press releases. Tenant is encouraged, but not required, to continue distribution of 500 complimentary General Admission tickets per month while this Lease is in effect to be used to benefit underserved communities in San Francisco.			
Security Deposit:	One Hundred Thousand Dollars ($100,000.00).			
Permitted Use:	Tenant and its Agents may enter and use the Premises to construct, maintain, store, operate, manage, and deconstruct an observation wheel and related structures, including its foundation (the "**Wheel**"), as depicted and described on ***Exhibit F*** on the terms and conditions of this Lease, including the following. <u>1. Additional requirements during periods of continued non-operation:</u> **A.** During any period of non-operation, Tenant may use and occupy the Premises for storage and any reasonably necessary improvements to facilitate operations, subject to all applicable permit approvals, including Port Building Permit(s). **B.** Tenant acknowledges that during any period during which Tenant lacks necessary permits to occupy and/or operate the Wheel, Port, after consultation with professional engineers and/or the Risk Management Division of the City Administrator's Office, may require Tenant to fully or partially deconstruct the Wheel. <u>2. Operational Requirements:</u> **A.** Tenant shall operate the Wheel in compliance with this Lease and all applicable rules, regulations, and codes, including but not limited to all applicable Cal/OSHA and Port Building Permit requirements. **B.** The Wheel is one hundred thirty-eight feet (138') in diameter by one hundred forty-eight feet (148') in height, on a base structure that is seventy-two feet (72') by fifty-seven feet (57') and is accompanied by ancillary structures as described on ***Exhibit F***. The Wheel features 35 fully enclosed, heated and air-conditioned gondolas that hold 6			

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	people each and one VIP gondola with a special luxury interior that holds 5 people. Total maximum occupancy not to exceed 215 persons. **C.** Tenant shall provide overnight security each day and night while this Lease is in effect, including set-up, any additional construction, breakdown, and cleanup. Only licensed security guards may stay overnight within the Premises. No vendors and no other staff may remain on site overnight. **D.** Tenant shall be allowed to sell photos, Wheel-related merchandise, and operate a wine and beer kiosk for evening operations (with a valid ABC license from a qualified operator) within the Premises; provided that: (i) the installations, pricing, and locations are approved by the Deputy Director of Real Estate and Development or the Deputy Director's designee, and (ii) all revenues from such sales are subject to Percentage Rent. **E.** Tenant shall (i) operate the Wheel in accordance with the terms of this Lease, use experienced, qualified, competent and adequate staff therefor, all of whom shall be the Tenant's Agents and none of whom shall be deemed for any purpose whatsoever to be agents or employees of the Port or City, (ii) keep the Premises free of food, spills, and debris and in a neat, clean, orderly and attractive condition at all times. If Tenant fails to maintain the Premises in the condition required hereunder and Port provides written notice to Tenant or oral notice to the Tenant's manager or a senior employee on duty at the Wheel describing such deficiency, then Tenant shall promptly cause the deficiency to be corrected. **F.** Days and Hours of Operation During the term, Tenant shall use its best efforts to maximize public and local community use of the Wheel. The Wheel may operate seven days a week from 10:00AM to 10:00PM with slight adjustments for weather, weekends, and special events.
Admission Fees:	Tenant agrees to charge no more than the following admission and rental fees for use of the Wheel: 1. General Admission - $19.00 2. Seniors over 65 years of age and Children under 13 years of age - $13.00. Children two years and under – free. 3. VIP Experience - $50.00 per person 4. San Francisco Resident Rates – Adult residents of San Francisco pay $16.25; Children and Seniors pay $11.05. Tenant may propose modifications to admissions fees; provided however, that Tenant shall provide Port with no less than 30-day notice of the proposed modifications and no modifications are effective without Port's written approval, which approval shall be in Port's sole and absolute discretion.
Other Requirements	**A.** Tenant shall comply with Port's Good Neighbor Policy, which is attached as ***Exhibit D***.

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	B. All water-filled barriers and weights must be filled with sea water, not potable water. **C.** Tenant shall not sell, serve, or permit the sale or service of food or alcoholic beverages on the Premises, except as permitted in the kiosk as described in the *Permitted Use* section above. **D.** Tenant agrees that it will not play or permit live or recorded music, or other amplified sound on the Premises without the express written consent of Port.
Wheel Lighting:	Tenant shall not display decorative or other lights on the Wheel facing the landside of the premises (e.g., facing South) in more than one color while this Lease is in effect. The default color shall be white (with small red center), but Tenant and Port may agree to display another color for specified periods, such as to commemorate holidays, civic events, or local sports teams. Other than white lighting will be restricted to seven (7) days leading up to and including the applicable event or holiday, and at no time will the lights facing San Francisco show multiple colors at the same time. These restrictions will not apply to the lights facing away from San Francisco. The Port reserves the right to approve changes to the Wheel Lighting plan in its sole discretion.
Condition of Premises:	Tenant accepts the Premises in its "AS IS" condition, without representation or warranty of any kind by Port, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Premises or any facilities on the Premises for Tenant's use. Without limiting the foregoing, this Lease is made subject to all applicable Laws, rules and ordinances governing the use of the Premises, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Premises, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Tenant's sole obligation to conduct an independent investigation of the Premises and all matters relating to its use of the Premises hereunder, including, without limitation, the suitability of the Premises for such uses. Tenant shall obtain any further permission necessary because of any other existing rights affecting the Premises. Under California Civil Code Section 1938, to the extent applicable to this Lease, Tenant is hereby advised that the Premises has not undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether it meets all applicable accessibility requirements. Any construction activities or improvement to the Premises will require a Port Building Permit. This link provides the building permit application: https://www.sfport.com/files/2022-01/Building%20Permit%20Application%20FILLABLE%201.31.22.pdf On the expiration of this Lease, or any earlier termination or revocation of this Lease, Tenant shall surrender the Premises to Port free from hazards and clear of all debris, as further described: **A.** Tenant shall remove or have removed all structures and improvements from the Premises, including all foundation and footings improvements, and shall restore or have restored and repaved the Premises.

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	B. Tenant shall remove or have removed any and all personal property from the Premises, including but not limited to any kiosks, tents, signs and any other improvements permitted under this Lease and each preceding lease or license between Port and Tenant, and shall repair, at its cost, any damage to the Premises caused by such removal.
Maintenance and Repair:	Sole responsibility of Tenant – no exceptions. **A.** Tenant shall always maintain all aspects of the Premises in good operating condition using experienced and qualified persons. Such maintenance shall include all necessary repairs and replacements, and be performed (i) at no cost to Port, (ii) by licensed contractors or qualified mechanics, (iii) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the remainder of the Premises, and (iv) in accordance with all applicable Laws, rules and regulations. Tenant shall keep the Premises in a clean, safe, attractive and sanitary condition to Port's reasonable satisfaction. If any portion of the Premises or any of Port's property located on or about the Premises is damaged by any activities conducted by Tenant or their Agents or Invitees, Tenant shall immediately, at no cost to Port, repair any and all such damage and restore such damaged Premises or Port's property to its previous condition. **B.** Tenant's maintenance obligations pursuant to this Section shall include all routine maintenance of the Premises, including but not limited to removing graffiti and inspecting the Wheel components for structural integrity. **C.** During the hours the Wheel is open for business, Tenant shall provide adequate and accessible waste, compost and recycling receptacles for Wheel customers in the Premises and secure or store such receptacles when the Wheel is closed for business. **D.** Port shall not be responsible for the security, maintenance, or repair of, or any damage to, the Premises including any Alterations, equipment, accessories, or inventory therein. **E.** Tenant shall arrange for waste management (recycling, composting, trash) services from Recology by submitting an Event Services Request Form by email at sfevents@recology.com or by calling (415) 330-8422 to schedule services. **F.** At the end of each workday, Tenant is required to inspect and thoroughly clean the area in and around the Premises. Tenant shall remove and properly dispose of any accumulated trash and debris, including any plastic or styrofoam packaging materials from operations. Tenant may fulfill this obligation through its agents, employees, or vendors but Tenant shall remain solely responsible for clean-up. All other maintenance and repair, including without limitation all nonstructural interior portions of the Premises and all Tenant Improvements, is Tenant's sole responsibility, as further described in Section 11 below.
Utilities:	Tenant's sole responsibility, as further described in Section 12 below. Tenant must use commercially reasonable efforts to work with PG&E to finalize the transition from the current diesel-powered generator to

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	electricity as contemplated in draft license No. 17223. Tenant shall complete the transition no later than the Commencement Date of this Lease.
Location of Asbestos in Facility:	See ***Schedule 1*** attached hereto.
Signage:	Subject to Port permitting, Tenant shall post a 24" x 24" metal sign at its entrance gate providing the emergency contact name and phone number. The sign shall be removed upon expiration or termination of this Lease.
Hazardous Materials Disclosure:	**See *Schedule 2* attached hereto.**
Groundwater Monitoring:	There are two (2) PG&E Environmental Monitoring Wells, MW10 and MW02, located in the Premises (the "Wells"). Regulatory agency groundwater monitoring is performed on a quarterly basis with each sampling event scheduled over two days. MW10 - Day 1 for 15-30 minutes, Day 2 for approximately 1.5 hours. MW02 – Day 1 only for 15-30 minutes. PG&E's consultant, Haley & Aldrich ("H&A") will access the site and set up a safe exclusion zone at the well head (4' x 4' area) or run tubing from the well head to the west immediately adjacent to SWL 301. Tenant agrees to allow H&A access to the Wells and to schedule future monitoring visits for the duration of the term.
Regulatory Permits:	As a condition precedent to the effectiveness of this Lease, the Tenant shall, at its sole cost and expense obtain and submit to the Port for review, as applicable, the following permits and approvals issued by governmental agencies prior to commencing any operation or opening the SkyStar Wheel to the public. Upon the Tenant's failure to submit to the Port the following permits and approvals as specified above, the Port may, at its sole discretion and without notice to or approval from the Tenant, terminate this Lease: A. Port of San Francisco Building Permit; 1. Civil Plan 2. Project Plans 3. Structural Engineering Report 4. Soils Geotechnical Report 5. Special Inspection Report 6. DOSH Letter B. San Francisco Fire Department Permits; C. Cal/OSHA Permit; D. California Environmental Quality Act (CEQA) Application for Environmental Review from City Planning; E. Bay Conservation and Development Commission (BCDC) approval; and F. Any other permit or approval deemed necessary by the Port, any City Agency, and/or other governmental authority.

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Americans with Disabilities Act (ADA)Requirements:	Tenant acknowledges that the Americans with Disabilities Act (the "**ADA**") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Tenant warrants that it will fulfill that obligation and that it will not discriminate against disabled persons in the provision of services pursuant to this Lease. Tents, canopies, and supports must comply with California Building Code Section 11B-307 regarding protruding objects. They must also be clear of any curb ramps and landings.
Bay Conservation and Development Commission (BCDC)Requirements:	The Premises is dedicated public access area under Bay Conservation and Development Commission (BCDC) jurisdiction. It is the sole responsibility of Tenant to comply with any conditions BCDC may impose.
Environmental Requirements	**A.** Tenant shall comply with Port's Zero Waste Event Policy, which prohibits the sale, use, and distribution of plastic water bottles, food ware and bags. It also prohibits the intentional release of balloons. **B.** San Francisco Bottled Water Ordinance. Tenant is subject to all applicable provisions of Environment Code Chapter 24, which are hereby incorporated. Accordingly, the sale or distribution of drinking water in a sealed box, bag, can, glass bottle, Rigid Plastic Bottle (as defined in S.F. Environment Code Chapter 24), or other container intended primarily for single service use and having a capacity of one liter or less is prohibited at outdoor events if more than 100 people attend. A violation of this provision is a material default under this Lease and is subject to administrative fines as prescribed by S.F. Environment Code Chapter 24. PROHIBITED ACTIVITES: Tenant shall be prohibited from the following activities: **A.** Storage of Hazardous Materials or hazardous waste, including but not limited to paints, fuels, oils, and compressed gases. **B.** Vehicle (including delivery truck) maintenance, washing, or fueling. **C.** Discharge of any material into Bay water, including but not limited to plastic and Styrofoam packaging materials. Tenant is advised that the Premises discharges directly into the Bay.
Planning Requirements:	All public access areas, including sidewalks and plaza adjacent to and surrounding the Premises must always remain unobstructed and accessible to the public.

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San Francisco Fire Department (SFFD)Requirements:	**A.** Tenant shall not block, obscure, or obstruct any firefighting activities or equipment such as, but not limited to, fire lane, hydrants, FDCs, standpipes, or fire escape. **B.** Tenant must ballast all canopies and abate all tripping hazards. **C.** Per *2.13 Submittal Requirements for Temporary Tents and Membrane Structures 2022,* for temporary tents in excess of 400 sq. ft., only cement blocks are allowed to ballast tents. Ten (10) lbs. per square foot of ballast is required. **D.** Tenant shall obtain the following Permits from SFFD: 1. Temporary Place of Assembly Permit. 2. Operational Permit for the Wheel. Permits for regulated activities such as LPG, generator, and/or temporary membrane structures, if applicable.
Special Events	Tenant acknowledges the Port is a popular location for races and walks and other events (each, a "**Special Event**") and portions of Port property, including but not limited to roads, near or leading to the Premises may be partially or completely closed to vehicle traffic and/or the public to accommodate such Special Events. Port will notify Tenant of expected road closures for Special Events at least 15 days in advance except in exigent circumstances.
Development Project:	• Seawall Improvement Project • Fisherman's Wharf Revitalized, LLC • Fisherman's Wharf Forward project
Prior Lease:	The parties agree that as of the Commencement Date, Lease No. L-17136 dated as of May 1, 2024 (the "**Prior Lease**"), between SkyStar Wheel, LLC and Port is hereby terminated; provided, however, that the parties shall continue to be liable for any obligations under the Prior Lease which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Lease, including, for the avoidance of doubt, any obligations under License No. 17107 dated as of October 1, 2023.
Additional Insurance Provisions	**A.** Tenant shall be responsible, at its expense, for separately insuring Tenant's personal property, the Wheel, and any Alterations made by or on behalf of Tenant **B.** Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in *Section 16* with insurance coverage maintained by one or more of Tenant's agents, vendors, contractors or subcontractors as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of *Section 16*. **C.** Tenant acknowledges that the Port self-insures against casualty, property damage and public liability risks and agrees Port shall not be

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	required to carry any third-party insurance with respect to the Premises or otherwise.
Parking:	Tenant acknowledges that this Lease does not include vehicle parking rights or spaces. If Tenant requires parking, Tenant must contract independently with other parties for parking at areas outside the Premises.
Lease Prepared By:	Don Kavanagh, Senior Property Manager

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LEASE AGREEMENT

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as landlord, and the Tenant identified in the Basic Lease Information ("**Tenant**"). The basic lease information (the "**Basic Lease Information**"), the exhibits, schedule and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as this "**Lease**". In the event of any conflict or inconsistency between the Basic Lease Information and this Lease Agreement, the Basic Lease Information will control.

1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Port does hereby lease to Tenant, and Tenant does hereby hire and take from Port, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. DEFINITIONS.

Definitions used in this Lease are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"**ACMs**" is defined in Section 15.6 below.

"**ADA**" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"**Additional Rent**" means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

"**Affiliate**" means: (i) a Person that Controls or is Controlled by Tenant, or is Controlled by the same Person that Controls Tenant; or (ii) if Tenant is a natural Person, any designated successor by trust, will, or court order following Tenant's death or incapacity.

"**Agents**" when used with reference to either party to this Lease or any other person means the officers, directors, employees, agents, commissioners, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"**Alterations**" means any alterations, installations, improvements, or additions to any Improvements or to the Premises.

"**Anniversary Date**" means the first and each subsequent anniversary of the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the Commencement Date.

"**Assignment**" means a proposed or actual Transfer of Tenant's rights, title, and interest in all or any part of the Premises under a contractual assignment or an assignment by operation of Law.

"**Award**" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

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"**Base Rent**" means the monthly Base Rent specified in the Basic Lease Information and described further in Section 5.1 hereof.

"**BCDC**" means the San Francisco Bay Conservation and Development Commission.

"**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents used in Tenant's business operations for the Premises, whether maintained by Tenant or a third-party contractor.

"**business day**" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

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

"**Cal-OSHA**" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"**Changes**" is defined in Section 10.2 below.

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

"**Claims**" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"**Commencement Date**" means the date on which the Term commences as specified in the Basic Lease Information.

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

"**Common Areas**" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other tenants or permittees, and that are designated by Port from time to time for the general common use or convenience of Port, Tenant, or other tenants of Port, and the respective authorized Agents and Invitees of the same. The Common Areas include, without limitation, driveways, delivery areas, pedestrian walkways, service corridors accessing loading docks, utility rooms, and other areas or improvements provided or designated by Port for common use. The Common Areas shall not include any parking areas located outside the boundaries of the Facility.

"**Concession**" is defined in Section 30.16 below.

"**Conduct Code**" is defined in Section 28.13 below.

"**Control**" means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

"**Core Benefits**" is defined in Section 28.1(c) below.

"**CPA**" means an independent certified public accounting firm acceptable to Port in its reasonable discretion.

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"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"**Encroachment Area**" is defined in Section 3.3 below.

"**Encroachment Area Charge**" is defined in Section 3.3 below.

"**Environmental Laws**" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Facility.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Environmental Regulatory Approval**" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. "**Exacerbation**" has a correlating meaning.

"**Excess Rent**" means Sublease rent and any other sums paid or payable to Tenant under a Sublease, excluding the value of goodwill, in excess of Tenant's concurrent Rent obligation for the Sublease premises.

"**Expiration Date**" means the date on which the Term expires as specified in the Basic Lease Information.

"**Event of Default**" is defined in Section 21 below.

"**Facility**" means the pier, building or other structure in or on which the Premises is located.

"**Facility Systems**" means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Facility.

"**financial statements**" mean a current balance sheet and profit and loss statements that have been reviewed or examined by a CPA.

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"**Habitual Late Payer**" means Tenant has received (a) at least two (2) notices of monetary default, or (b) at least three (3) notices of default within a twelve (12) month period.

"**Handle**" or "**Handling**" means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"**Hard costs**" is defined in Section 11.3 below.

"**Hazardous Material**" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not 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 occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises or the Facility, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release 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, any other part of the Facility, or other Port property, the loss or restriction of the use or any amenity of the Premises, any other part of the Facility, or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"**Hazardous Material Condition**" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises.

"**HEPA**" is defined in Section 13.2 below.

"**Improvements**" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises or any other part of the Facility, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

"**Improvement Costs**" is defined in Section 4.2 below.

"**Improvements Pertaining to the Realty**" means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

"**Indemnified Parties**" is defined in Section 19.1 below.

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

"**Interest Rate**" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous

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Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"**Invitees**" means Tenant's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them, except that for the purposes of Article 20 (Assignment and Subletting), "**Invitees**" excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

"**Late Charge**" means a fee of fifty dollars ($50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to Port which require Tenant's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Facility, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

"**LC Proceeds**" is defined in Section 7.2 below.

"**LC Value**" is defined in Section 7.2 below.

"**Lease**" is defined in the preamble to this Lease.

"**Letter of Credit**" is defined in Section 7.2 below.

"**Non-Affiliate**" means a Person that is not an Affiliate.

"**Notice of Removal**" is defined in Section 13.4 below.

"**Notice to Cease Prohibited Use**" is defined in Section 8.3 below.

"**Notice to Vacate**" is defined in Section 3.3 below.

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

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**PACMs**" is defined in Section 15.6 below.

"**Person**" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

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

"**Port Guidelines**" as defined in Section 13.2(e).

"**Port program or project**" means (a) any development, removal or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating), or (c) the Seawall Earthquake Safety Program.

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"**Port representative**" means Port, a City auditor, or any auditor or representative designated by Port.

"**Port Work**" is defined in Section 13.9 below.

"**Premises**" means the real property described in Section 3.1 below and depicted on ***Exhibit A***.

"**preservative–treated wood containing arsenic**" is defined in Section 28.12 below.

"**Prevailing party**" is defined in Section 23.1 below.

"**Prohibited Use(s)**" is defined in Section 8.2 below.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, or other officials, including BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment.

"**Remediate**" or "**Remediation**" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "**Remediation**" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"**Renewable Energy System**" is defined in Section 12.5 below.

"**Rent**" means the Base Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to Section 5.

"**Rent Commencement Date**" means the date on which the payment of Rent commences as specified in the Basic Lease Information.

"**Repair Period**" means two hundred ten (210) days after the date of damage to the Premises or the Facility by fire or other casualty.

"**Rules and Regulations**" means the Rules and Regulations, if any, applicable to the Facility as may be amended from time to time.

"**saltwater immersion**" is defined in Section 28.12 below.

"**Seawall**" is defined in Section 3.7.

"**Security Deposit**" means the amount specified in the Basic Lease Information and as further described in Section 7 below.

"**Sublease**" means a proposed or actual Transfer of all or any part of the Premises under a sublease or a sub-sublease.

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"**Subletting Expenses**" means verifiable and reasonable brokerage commissions incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

"**SWPPP**" is defined in Section 15.8(a) below.

"**Taking**" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"**Tenant**" means the party identified as Tenant in the Basic Lease Information.

"**Tenant's Property**" means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant's Property, in either case without cost to Port.

"**Term**" is defined in Section 4.1 below.

"**trade fixtures**" means those items of personalty, furniture, equipment, machinery used in trade by Tenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant at the Premises.

"**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, encumbrance, sublease, or other transfer of any of Tenant's interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) if Tenant is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Tenant (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any subtenant, assignee, or other Transferee of Tenant's interest in the Lease or premises is sold, assigned, encumbered, or otherwise Transferred.

"**Transfer Agreement**" means all document(s) effecting or evidencing Tenant's proposed sale, assignment, encumbrance, sublease, or other Transfer.

"**Transfer Date**" means the effective date of a Transfer.

"**Transfer Notice**" means Tenant's prior written notice to Port of an intent to Transfer to a Non-Affiliate, specifying: (a) the Transferee's name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee's proposed use of the Premises, including any required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee's personal, business, and credit references.

"**Transfer Terms**" means the terms and conditions in the proposed or final Transfer Agreement, as appropriate in context.

"**Transferee**" means the Person to which Tenant makes or proposes to make a Transfer.

"**Utilities**" means electricity, water, gas, heat, sewers, oil, telecommunication services and all other Utilities.

"**Waiving Party**" is defined in Section 16.5 below.

"**Work**" when used in reference to construction is defined in Section 13.2(c) below.

"**worth at the time of award**" is defined in Section 22.2 below.

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3. PREMISES; AS-IS CONDITION.

3.1. *Premises*.

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on ***Exhibit A*** attached hereto and incorporated herein by reference. Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises. Port and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

(b) Tenant shall have the non-exclusive right to use, together with other tenants, the Common Areas. All of the Common Areas shall at all times be subject to the exclusive control, regulation, and management of Port. Port shall have the right to construct, maintain, and operate lighting facilities on all Common Areas; to patrol all Common Areas; to temporarily close any Common Areas for maintenance, repairs or alterations; from time to time to change the area, level, location and arrangement of Common Area facilities; to use the Common Areas and restrict access and use of the same during the maintenance, repair, construction or reconstruction of buildings, additions or improvements; to erect buildings, additions and improvements on the Common Areas from time to time; and to restrict parking by tenants, their Agents and Invitees. Port may operate and maintain the Common Areas and perform such other acts and make such other changes at any time and from time to time in the size, shape, location, number and extent of the Common Areas or any of them as Port in its sole discretion shall determine; provided, however, that no exercise by Port of its rights hereunder shall unreasonably restrict access to the Premises.

3.2. *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 Premises has not been inspected by a CASp and Port shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

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

3.3. ***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 federal and state disability access Laws. As further set

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forth in Section 9 (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 the ADA and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. ***No Right to Encroach***.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in Section 3.4(c), at law or in equity.

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below (Indemnity and Exculpation) shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

3.5. ***Proximity of Development Project***. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease

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Information, if any, is scheduled to be, or may be, constructed on the Premises or on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. 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 Port, City and their Agents arising out of such inconvenience or disturbance.

3.6. ***No Light, Air or View Easement***. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Facility or by any vessels berthed near the Facility shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Base Rent or Additional Rent, or affect this Lease in any way or Tenant's obligations hereunder.

3.7. ***Unique Nature of Premises***. Tenant acknowledges that: (a) the Facility 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; (b) the Facility is located along the waterfront adjacent to, on top of, and bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.8; (c) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (d) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (e) 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/or (f) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

3.8. ***Seawall***. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("**Seawall**") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: https://www.sfportresilience.com. Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.9. ***As-Is Condition***. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.8 including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information on the Port's website; the FEMA disclosure notice attached as ***Schedule 3***. Tenant represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the

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condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.10. ***Release and Waiver***. As part of its agreement to accept the Premises in their "**As Is With All Faults**" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Facility and the Seawall, including any Hazardous Materials in, on, under, above or about the Facility (including soil and groundwater conditions), (ii) the suitability of the Facility and/or the Premises for the development of the Improvements, the Permitted Uses, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Facility and/or the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City.

3.11. ***Port's Rights Regarding Premises***. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT.

4.1. ***Term***. The term of this Lease (the "**Term**") shall be for the period of months specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date. If the Commencement Date and Expiration Date occur on a date other than the Commencement Date and the Expiration Date set forth in the Basic Lease Information, then promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as ***Exhibit B***, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

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4.2. ***Termination Rights***.

(a) Port has the right to terminate this Lease under this Section when the Premises is needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Section, upon ninety (90) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 90-day period.

(b) Port has the right to terminate this Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's structures, substructure or utilities has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as specifically set forth in this Section. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Section.

For a period ending fifteen (15) calendar days after receipt of Port's notice of termination, Tenant may request Port's consent, in Port's sole and absolute discretion, to allow Tenant to make the repairs required by Port in accordance with this Lease and any additional conditions reasonably imposed by Port, in consideration of Concessions from Port. If Port consents in writing, Port's notice of termination will be deemed rescinded and of no further effect.

(c) Within sixty (60) days after Tenant's surrender under this Section, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements in any Port building permits for such work obtained by Tenant and which are approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial Term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial Term of this Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

4.3. ***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.

5. RENT.

Tenant shall pay to Port, in the manner herein described, the following Rent:

5.1. ***Base Rent***. Throughout the Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information. Tenant shall make the first payment of Base Rent upon

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execution of this Lease and from and after the Rent Commencement Date, shall pay the Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month.

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

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

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

5.5. ***Net Lease***. It is the purpose of this Lease and intent of Port and Tenant that 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. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties 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, but except as expressly provided to the contrary in this Lease, 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. 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, except as otherwise expressly provided in this Lease. 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

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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.

5.6. ***Additional Charges***. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 15.8 (Storm Water Pollution Prevention), 28.1(d) (CMD Form), and 32 (Estoppel Certificate) or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars ($100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars ($150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.6 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.6 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.6 and the reasonableness of the amount of the charges described in this Section 5.6.

6. TAXES AND ASSESSMENTS.

6.1. ***Payment of Taxes***. During the Term, Tenant agrees to pay, when due, to the proper authority any and all real and personal property taxes, general and special assessments, real property transfer taxes, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, or any transfer of a leasehold interest or subleasehold interest in the Premises (including but not limited to the transfer of the leasehold interest in the Premises pursuant to the Lease) whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any of the above taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall Indemnify Port, City, and their Agents from and against all Claims resulting therefrom.

6.2. ***Possessory Interest Tax***. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same

become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

7. SECURITY DEPOSIT.

7.1. ***Cash Deposit***. Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Base Rent, the Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease.

7.2. ***Letter of Credit***. At Tenant's option, the Security Deposit may be provided by an irrevocable, stand-by and unconditional negotiable letter of credit (the "**Letter of Credit**") in a form approved by Port in its sole discretion. The "**LC Value**" means the face amount of the Letter of Credit. "**LC Proceeds**" means all or any portion of the proceeds from the Letter of Credit.

(a) The Letter of Credit must:

(i) be in a form acceptable to Port and issued by a nationally-chartered bank with capitalization of at least $100 million, and otherwise reasonably satisfactory to Port (the "**Issuer**");

(ii) be replaced, renewed, or extended at least sixty (60) days before any expiration date stated in the Letter of Credit, if necessary to ensure that the full LC Value is available to Port at all times until sixty (60) days after the Expiration Date;

(iii) be Issuer's irrevocable, unconditional independent and binding obligation to honor any draw, including partial and multiple draws, presented to Issuer at sight upon the presentation at a branch in San Francisco of Port's signed statement to the Issuer (1) stating that a Tenant default has occurred and is continuing under this Lease, and any applicable grace period has expired or Port is otherwise entitled to draw on the Letter of Credit; or (2) requesting an extension of the Letter of Credit's expiration date to the maximum time allowed, or, in the alternative, a draw of the full LC Value, because Tenant has not presented Port with a replacement, renewal, or extension as required under this Section, all in accordance with applicable rules; and

(iv) be freely transferable upon Port's (or Port's successors') delivery of any documents required by Issuer confirming a transfer.

(b) Port may use any portion of LC Proceeds in the same manner as a Security Deposit. If Port makes a draw in any amount, Tenant must deliver to Port an amendment to the Letter of Credit or a replacement Letter of Credit providing Port with the full LC Value within five (5) business days after notice from Port to Tenant specifying the amount of the draw and the particular purpose to which the LC Proceeds were applied.

(c) Tenant agrees that Port will have until three (3) months after the Expiration Date (or later date of Port's acceptance of Tenant's surrender of the Premises) to return any LC Proceeds drawn but not applied towards Port costs or damages; and that Port will

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have no further liability to Tenant with respect to the Letter of Credit or LC Proceeds following a transfer of the beneficial interest to a transferee in accordance with the Issuer's requirements.

7.3. If Base Rent is increased beyond the amount set forth in the Basic Lease Information for the last year of the Term, then from and after such increase, Tenant shall increase the amount of the Security Deposit (or LC Value) to maintain the same ratio of the Security Deposit to Base Rent as existed on the date immediately prior to such Base Rent increase. Any increase in the Security Deposit (or amendment to or replacement of the Letter of Credit) shall be delivered to Port on the same date that such increase in Base Rent is first due.

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit (and/or LC Proceeds) in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein, including but not limited to the removal and disposition of any personal or real property, fixtures, Improvements or Alterations such as the foundation and footings required to operate the Wheel. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit (and/or LC Proceeds) in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit (and/or LC Proceeds) may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same.

8. USE OF THE PREMISES.

8.1. ***Permitted Use***. The Premises shall be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose.

8.2. ***Prohibited Use***. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

(a) any activity, or the maintaining of any object, which is not within the Permitted Use;

(b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(c) any activity or object which will exceed load restrictions, if any, or cause damage to the Premises;

(d) any activity which constitutes waste or nuisance, including, but not limited to, 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;

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(e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;

(g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;

(i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;

(j) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;

(k) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;

(l) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;

(m) the washing of any vehicles or equipment; or

(n) other Prohibited Uses identified in the Basic Lease Information, if any.

8.3. ***Notice of Prohibited Use Charge***. In the event Port determines after inspection that Prohibited Uses are occurring, then Tenant shall immediately cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

9. COMPLIANCE WITH LAWS AND REGULATIONS.

Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of the Facility and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties. Tenant further understands and agrees that it is Tenant's obligation, at Tenant's sole cost and expense, to cause the Premises and Tenant's activities and operations conducted thereon, to be in compliance with the ADA. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations and Improvements strictly complies with all requirements of the ADA. If Tenant's use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any part of the Facility outside of the

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Premises to comply with the ADA, then, at Port's sole election, Port or Tenant will perform the work at Tenant's sole cost and expense.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, 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 the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, 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 seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. 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.

10. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.

10.1. ***Port Acting as Owner of Property***. Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Examples of Port actions as a Regulatory Agency include Port issuance of building, encroachment and other construction-related permits, and the Chief Harbor Engineer's actions to protect public health and safety.

10.2. ***Regulatory Approvals***. Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "**Changes**") may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency.

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To

the fullest extent permitted by Law, Tenant agrees to Indemnify City, Port and their Agents from and against any Claim which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of Sections 10.1 and 10.2, by signing this Lease, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Facility and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Facility. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

10.3. ***Compliance with City's Risk Manager's Requirements***. Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

11.1. ***Tenant Maintenance and Repair Obligations***. Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, starting on the Commencement Date, including any period of early entry under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with Port for the same Premises, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor.

Tenant shall not make, nor cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard or regulation, including, without limitation, the Port Building Code or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence.

11.2. ***Port's Right to Inspect***. Without limiting Section 24 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent

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responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. ***Port's Right to Repair***. In the event Tenant fails to maintain the Premises in accordance with this Lease or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefore. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars ($2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees. With respect to any work where the total hard costs of such work are less than Two Thousand Dollars ($2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200).

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

For purposes of this Lease, the term "**ordinary wear and tear**" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises and/or the Facility in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

11.4. ***Acts of Nature***. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 17 in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES.

12.1. ***Utilities***. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant. Tenant shall procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to Tenant, Tenant may seek another provider.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements.

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Tenant shall not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises using current in excess of 110 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises, including without limitation, electronic data processing machines. If Tenant requires electric current in excess of that usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the San Francisco Public Utilities Commission or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

In the event any Law imposes mandatory or voluntary controls on Port, the Facility, or the property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event Port is required or elects to make alterations to any part of the Facility in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Rent reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. Port shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

Without Port's prior written consent, which Port may give or refuse in its sole and absolute discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Facility or the pier, as applicable, and as may be further described in the Basic Lease Information. If Port consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to Port, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Port and otherwise in compliance with Section 13 below, to the extent necessary to assure that no damage to the Premises or the Facility or weakening of any structural or substructural supports, as the case may be, will be occasioned thereby.

12.2. ***Services***. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, janitorial service and extermination service.

12.3. ***On-Site Renewable Energy***. At any time during the Term, Port shall have the right, at its sole and absolute discretion, to install, or cause another party to install, a renewable energy system, using sources such as solar (photovoltaic or solar thermal power), wind, tidal or

biofuel power ("**Renewable Energy System**") on the roof of the Facility or otherwise on or near the Premises for the purpose of supplying power to the Facility or other locations. Notwithstanding Section 12.1, unless the cost per kilowatt of power to Tenant from such Renewable Energy System is greater than the cost per kilowatt Tenant would otherwise pay for power, Tenant shall purchase all or a portion of its power needs from the operator of the Renewable Energy System.

12.4. ***Energy Consumption Disclosure***. Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time (**"Energy Consumption Reporting Laws"**), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

13. IMPROVEMENTS AND ALTERATIONS.

13.1. *Port Consent Required*.

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) As a condition to giving consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and/or (ii) a payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount up to one hundred fifty percent (150%) but not less than one hundred percent (100%) of the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

(c) At least thirty (30) days before commencing any Alterations or Improvements to the Premises, Tenant shall notify Port. Tenant's notice shall be accompanied by final construction documents for the Alterations or Improvements, if applicable. Port shall have the right to object to any of the Alterations or Improvements within sixty (60) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's consent within the 60-day period shall be deemed Port's disapproval of the Alterations.

(d) None of the following will constitute Alterations or Improvements requiring Port's consent, unless the installation will affect Facility Systems or the structure of the building: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; (ii) painting the interior of the Premises; and (iii) carpeting the Premises.

13.2. ***Construction Requirements***. All Alterations and Improvements to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by Port in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

(b) All Alterations and Improvements shall be performed at the sole cost and expense of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly

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licensed and bonded contractors or mechanics approved by Port, and subject to any conditions that Port may reasonably impose.

(c) 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. Tenant shall undertake commercially reasonably measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(d) At the completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within sixty (60) days after completion of the Improvements, Port, after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

(e) Without limiting Section 15 below (Hazardous Materials), in the event that asbestos-containing materials ("**ACM**") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

(f) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("**HEPA**") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.2(g), lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any

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action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.3. ***Improvements Part of Realty***. Except as set forth in Section 13.4 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender).

13.4. ***Removal of Improvements***. Prior to the Expiration Date or earlier termination of this Lease, Port may give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

13.5. ***Removal of Non-Permitted Improvements***. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with Section 13.2 above, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of Section 13 shall survive the expiration or earlier termination of this Lease.

13.6. ***All-Gender Toilet Facilities***. If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An "**all-gender toilet facility**" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "**extensive renovations**" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

13.7. ***Signs***. Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is 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, as revised by Port from time to time, 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

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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.

13.8. ***Improvements on Roof***. Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.9, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts to notify Port in advance of such entry.

13.9. ***Port's Alterations***. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

14. LIENS.

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, 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, plus interest at the Interest Rate, and all reasonable expenses incurred by Port in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Port by Tenant upon demand. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port, the Premises, and the Facility, from mechanics' and materialmen's liens. Tenant shall give to Port at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to Indemnify Port, City and their respective Agents from and against any Claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

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Without limiting the foregoing, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Facility or Port's interest therein or under this Lease.

15. HAZARDOUS MATERIALS.

15.1. ***Requirements for Handling***. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office purposes.

15.2. ***Tenant Responsibility***. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

(a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property except as permitted under Section 15.1;

(b) will not cause or permit any Hazardous Material Condition; and

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

15.3. ***Tenant's Environmental Condition Notification Requirements***.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises;

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(iv) Any Hazardous Material Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Prevention Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Material Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

15.4. ***Requirement to Remediate***.

(a) Tenant's Remediation obligations under this subsection are subject to subsection (b).

(i) After notifying Port in accordance with Section 15.3(a), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of or Changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port for comment and approval before

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submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises or the Facility, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises or the Facility in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

15.5. ***Port's Right to Audit***. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 24 (Port's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

15.6. ***Notification of Asbestos***. Port hereby notifies Tenant, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("**ACMs**") and/or presumed asbestos-containing materials ("**PACMs**") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in ***Schedule 1*** attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in ***Schedule 1*** attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 15.6 hereof and the notice or report attached as ***Schedule 1*** hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant.

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Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for Tenant's acts or omissions that result in (1) asbestos-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

15.7. ***Notification of Lead***. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises or Facility. Disturbance or removal of lead is regulated by, among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and Port Building Code § 3424.

Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of lead in or about the Premises may limit Tenant's ability to perform any Improvements or Alterations to the Premises without Tenant first performing abatement of such lead. The presence of lead in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

15.8. ***Storm Water Pollution Prevention***.

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning operations on the Premises.

(b) Post-Construction Requirements. In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

15.9. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in ***Schedule 1*** attached hereto, naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, and the Hazardous Materials described in the reports listed in ***Schedule 2***, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 78700 and related Laws. Tenant must disclose the information contained in this Section 15.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease.

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Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 78700 as well as the penalties that apply for failure to meet such obligations.

15.10. ***Survival***. Tenant's obligations under Section 15 shall survive the expiration or earlier termination of this Lease. For purposes of this Section 15, the term "**Commencement Date**" shall mean the commencement date (including any early entry period, if any) of the Prior Lease.

16. INSURANCE.

16.1. ***Required Insurance Coverage***. Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars ($1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars ($1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation, Tenant's Agents and Invitees.

(c) Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with Sections 8.2(h) and 8.2(i) above, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of Tenant's Property and Alterations, in, on, or about the Premises, personal property insurance on an all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Tenant's sole discretion, for the replacement of Tenant's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Tenant by Port pursuant to this Lease in such amounts as Port deems reasonably appropriate and Tenant shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Tenant's Property, Alterations, or any Improvements regardless of cause of loss.

(e) Construction Activities. At all times during any period of Tenant's construction of Improvements or Alterations subject to Section 13,

(i) Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars ($500,000) per incident, One Million Dollars ($1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars ($100,000) per accident, Five Hundred Thousand Dollars ($500,000) aggregate disease coverage and One Hundred Thousand Dollars ($100,000) disease coverage per employee; and (d) owners and contractors protective liability with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death). Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Tenant shall carry "**Builder's All Risk**" insurance on a form reasonably approved by Port, in the amount of one hundred percent (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, that are or will be part of the permanent Improvements, against "**all risk**" and "special form" hazards.

(iii) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(f) Sexual Molestation. Sexual molestation and abuse coverage with minimum limits of $2,000,000 per occurrence and $4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(g) Contractor's Pollution Legal Liability Insurance. Tenant, at its sole cost and expense, shall procure and maintain Contractor's Pollution Legal Liability Insurance with a combined single limit of Two Million Dollars ($2,000,000.00) each claim, Five Million Dollars ($5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(h) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility with respect to risks comparable to those associated with the use of the Premises.

16.2. ***Claims-Made Policies***. If any of the insurance required in Section 16.1 above is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

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16.3. ***Annual Aggregate Limits***. If any of the insurance required in Section 16.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

16.4. ***Payment of Premiums***. Tenant shall pay the premiums for maintaining all required insurance.

16.5. ***Waiver of Subrogation Rights***. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

16.6. ***General Insurance Matters***.

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, COMMISSIONERS, EMPLOYEES AND AGENTS**," shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port.

(d) Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Tenant's broker shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

17. DAMAGE AND DESTRUCTION.

17.1. Damage and Destruction. If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant,

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its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

Port shall use its commercially reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and Port's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, Port shall have the option to notify Tenant of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Lease shall continue in full force and effect and the monthly Base Rent shall be reduced as provided herein; or (b) Port's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If Port elects not to appropriate funds for such repair, Port shall give written notice to Tenant within sixty (60) days after the date Port elects not to appropriate funds of its election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If at any time during the last six (6) months of the Term, the Premises or the Facility is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. Notwithstanding any other provision of this Lease, in the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for a Port program or project that is inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

17.2. ***Waiver***. Port and Tenant intend that the provisions of Section 17 govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

18. EMINENT DOMAIN.

18.1. ***General***. If all or part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the Date of Taking.

18.2. ***Partial Takings***. If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b)

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Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination, which shall be not less than thirty (30) nor more than sixty (60) days after the date of notice.

18.3. ***Taking of the Facility***. If any substantial portion of the Facility is taken under the power of eminent domain or conveyance in lieu thereof, whether any portion of the Premises is taken or not, Port shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the Date of Taking.

18.4. ***Temporary Takings***. Notwithstanding anything to the contrary contained in Section 18, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

18.5. ***Award; Waiver; Termination of Lease; Rent***. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

19.1. ***General Indemnity***. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

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19.2. ***Hazardous Materials Indemnity***.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. ***Scope of Indemnities***. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

19.4. ***Exculpation and Waiver***. To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, the Facility or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date, (ix) inability to use all or any portion of

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the Premises due to sea level rise, and (x) any other acts, omissions or causes to the fullest extent permitted by law.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease 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 Lease shall remain effective. Therefore, with respect to the Claims released in this Lease, 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Initials: _____ _____
Tenant *Tenant*

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 this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

19.5. ***Survival***. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

20. ASSIGNMENT AND SUBLETTING.

20.1. *Transfer to Affiliate*.

(a) Tenant may make a Transfer to an Affiliate without obtaining Port's consent, provided: (1) at the time Tenant provides Port with notice, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) if the proposed Transferee is a successor to Tenant by purchase, such proposed Transferee shall acquire all or substantially all of the stock or assets of Tenant's business or, if such proposed Transferee is a successor to Tenant by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Tenant; (3) such proposed Transferee must have a net worth which is at least equal to the greater of Tenant's net worth as of the Commencement Date or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization as evidenced to Port's reasonable satisfaction; (4) such proposed Transferee operates the business in the Premises for the Permitted Use and no other purpose; and (5) Tenant gives Port written notice at least sixty (60) days prior to the effective date of the proposed Transfer and provides copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date. A Transfer to an Affiliate that does not meet the criteria specified in this Section 20.1(a) shall be subject to Port's prior written consent under Section 20.2.

(b) Port will have the right to: (i) request additional documentation and information relating to Tenant's relationship with the Transferee for three (3) months after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Transfer on the grounds that the Transferee is not an Affiliate as defined in this Lease, if written notice is delivered to Tenant within three (3) months after Port's receipt of all required and requested information.

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(c) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease.

20.2. ***Transfer to Non-Affiliate***.

(a) Except for a Transfer to an Affiliate meeting the requirements of Section 20.1, Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any City or Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; or (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port.

(ii) Tenant also agrees that Port will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee to assume all of Tenant's obligations under this Lease; and (2) giving Port the right to terminate without notice all of Tenant's then-existing Subleases if this Lease is terminated before the existing Subleases expire.

(b) At least sixty (60) days before any Transfer to a Non-Affiliate, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the three (3) years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

For up to thirty (30) days after receipt of the complete Transfer Notice, Port will have the right to: (1) terminate this Lease as of the proposed Transfer Date; (2) sublease or take an assignment from Tenant of the interest that Tenant proposes to Transfer, on the same terms and conditions as stated in the Transfer Agreement; and (3) negotiate and contract directly with the Transferee on terms acceptable to Port in its sole and absolute discretion.

(c) If Port consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within ninety (90) days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 90-day period, then Port's consent will expire, unless Tenant gives Port a new Transfer Notice, in which case Port again will be entitled to exercise any of the options under this Section.

(d) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Transfer will have no effect with respect to any other Transfer.

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(e) Tenant agrees to reimburse Port for all costs, including attorneys' fees, that Port incurs to review, investigate, process, document, disapprove, or approve any Transfer request.

20.3. ***Sublease***. In addition to all requirements in Section 20.2, the following provisions apply to any Transfer in the form of a Sublease.

(a) Until the occurrence of an Event of Default, Tenant will have the right to receive and collect rents from the Sublease. The Sublease must require the Transferee to pay the rent and other sums due under the Sublease directly to Port upon receiving Port's written notice that Tenant is in default under this Lease, a copy of which Port will deliver to Tenant. Tenant agrees that it will hold in trust for Port's benefit any Sublease rent or other sums that Tenant collects from the Transferee after Port's notice to the Transferee, and Tenant will be obligated to forward the same to Port immediately upon receipt. Port's collection of rents and other sums under this Section will not constitute Port's acceptance of attornment by the Transferee.

(b) Tenant agrees to pay to Port immediately upon receipt all Excess Rent, less Subletting Expenses, as Additional Rent. In calculating Excess Rent, Subletting Expenses will be amortized on a straight-line basis over the term of the Sublease, without interest. For example, if: (i) the term of the Sublease is 5 years; (ii) Sublease rent is $5,000 per month; (iii) Tenant's concurrent Rent payable for the Sublease premises is $3,000 per month; (iv) Tenant's Subletting Expenses are $15,000 in brokerage commissions and $15,000 for new tenant improvements for the Sublease premises, then the amount of Excess Rent Tenant must pay to Port in connection with the Sublease is $1,500 per month, as shown in the calculation below.

Term of Sublease:	5 years x 12 months = 60 months
Subletting Expenses:	$15,000 + $15,000 = $30,000
Amortized Subletting Expenses:	$30,000/60 months = $500/month
Excess Rent:	$5,000/month - $3,000/month = $2,000/month
Additional Rent:	$2,000/month - $500/month = $1,500/month

20.4. ***Transfer Agreement Requirements***. Any Transfer Agreement must include the provisions set forth below.

(a) The Transferee's express assumption of, and acknowledgement and agreement that the Transferee will be jointly and severally liable for, all of Tenant's obligations under this Lease;

(b) The Indemnification clause and waiver of claims provisions in Section 19 (Indemnity and Exculpation);

(c) Insurance provisions requiring that all of the Transferee's liability and other insurance policies name "The City and County of San Francisco, the San Francisco Port Commission, and their officers, commissioners, agents, employees, and representatives" as additional insureds and acknowledging Port's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;

(d) A provision stating that if this Lease is terminated for any reason, the Transferee's right to possession under the Transfer Agreement will terminate;

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(e) A provision under which the Transferee expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws; and

(f) A provision under which the Transferee expressly agrees to report the transfer to the County Assessor in accordance with Section 6.2 of this Lease.

20.5. ***Notice to Port***. In addition to the obligations under Section 6.2, 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 Assessor 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).

20.6. ***Transfer Audit***. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer until the later of (i) four (4) years after the end of each Lease Year to which such records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties as to the accuracy of Tenant's financial reporting on the Transfer, until such audit or controversy is concluded. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Affiliates where applicable.

20.7. ***Acknowledgement***. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 20.

20.8. ***Transfer Definitions***. For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer. Other applicable definitions are in Section 2.

21. DEFAULT BY TENANT.

Any of the following shall constitute an event of default (the "**Event of Default**") by Tenant hereunder:

(a) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any 12-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute an Event of Default by Tenant hereunder without any further action by Port or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(b) abandonment or vacation of the Premises by Tenant; or

(c) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing Port to immediately terminate this Lease upon written notice without an opportunity to cure; or

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(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 32 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

(e) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provisions of Section 20 above; or

(f) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 16 above, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

(g) failure by Tenant to comply with the provisions of Section 15 above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(h) failure by Tenant to discharge any lien or encumbrance placed on the Facility or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Facility or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(i) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(j) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

(k) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or

(l) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days;

(m) without limiting the provisions of Sections 21(c) or 21(g) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and

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Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

22. PORT'S REMEDIES.

Upon default by Tenant, Port shall, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

22.1. ***Tenant's Right to Possession Not Terminated***. Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

22.2. ***Termination of Tenant's Right to Possession***. Port may terminate Tenant's right to possession of the Premises at any time. No act by Port other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease shall not constitute a termination of Tenant's right to possession. If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following.

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

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(c) The worth at the time of 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 be reasonably avoided; plus

(d) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although Port shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of this Lease do not waive Port's rights to recover damages upon termination.

The "**worth at the time of award**" of the amounts referred to in Sections 22.2(a) and 22.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "**worth at the time of award**" of the amount referred to in Section 22.2(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

22.3. ***Appointment of Receiver***. If Tenant is in default of this Lease, Port shall have the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Port to terminate this Lease.

22.4. ***Port's Right to Cure Tenant's Default***. Port, at any time after Tenant commits a default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

22.5. ***No Accord and Satisfaction***. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

22.6. ***Waiver of Redemption***. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any default of Tenant hereunder.

22.7. ***Habitual Late Payer***. In the event Tenant is deemed to be a Habitual Late Payer, in addition to any other remedies available to Port, Port may require that Tenant enter into direct electronic payment arrangements and/or Port may require payments of Rent be made in advance on a quarterly basis.

22.8. ***Remedies Not Exclusive***. The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later

allowed by Law or in equity. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

23.1. ***Litigation Expenses***. The Prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2. ***Appeals***. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

23.3. ***City Attorney***. For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. PORT'S ENTRY ON PREMISES.

24.1. ***Entry for Inspection***. Port and its authorized Agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

24.2. ***General Entry***. In addition to its rights pursuant to Section 24.1 above, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises or to perform any services which Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which Tenant is in default;

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

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(f) To obtain environmental samples and perform equipment and facility testing.

24.3. ***Emergency Entry***. Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these 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 of Tenant from the Premises or any portion of the Premises.

24.4. ***No Liability***. Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

24.5. ***Nondisturbance***. Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in Section 24 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

25. SURRENDER AND QUITCLAIM.

25.1. ***Surrender***. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.2 or 26.3 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Port to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

25.2. ***Quitclaim***. Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or Port, become

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the property of Port, free and clear of all liens and without payment therefore by Port and shall be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant shall promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any portion that Port agrees are to remain part of the Premises.

25.3. ***Abandoned Property***. Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

25.4. ***Survival***. Tenant's obligation under this Section 25 shall survive the expiration or earlier termination of this Lease.

26. HOLDING OVER.

26.1. ***Terms of Holdover Tenancy***. Any holding over after the expiration of the Term shall not constitute a renewal of this Lease, but shall be deemed a month-to-month tenancy upon the terms, conditions, and covenants of this Lease, except as provided in this Section. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. Tenant shall Indemnify Port from and against any and all loss or liability resulting from Tenant's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

26.2. ***With Consent***. If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the higher of: (a) the Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

26.3. ***Without Consent***. If Tenant holds over without the prior written consent of Port, the Base Rent for the first month shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease, plus an amount equal to the average monthly Percentage Rent paid to Port in the preceding twelve months. If Tenant continues to hold over without the prior written consent of Port, then each subsequent monthly Base Rent shall equal five hundred percent (500%) of the Base Rent payable in the immediately preceding month as defined in this Section, plus an amount equal to the average monthly Percentage Rent paid to Port in the preceding twelve months.

27. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits,

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on or underlying the Premises and Tenant acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Tenant for any Claims arising from the State's exercise of its rights nor shall such action entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

28. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this 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.

28.1. *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 Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment 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 28.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, 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 131.2 of the Labor and Employment Code.

(d) CMD 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 CMD.

(e) Penalties. Tenant understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of $50.00 for each person for each calendar day during

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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.

28.2. ***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 Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this 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 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the 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 Article 121 of Division II of the Labor and Employment Code. Tenant shall notify the Office of Labor Standards Enforcement ("**OLSE**") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. 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 121.5 of the Labor and Employment Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) 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.

(f) 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.

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

(h) 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.

(i) Within ten (10) 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.

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(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than $25,000.00 (or $50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed $75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed $75,000.00 in the fiscal year.

28.3. ***First Source Hiring***. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Tenant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Lease.

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

28.5. ***Indoor Air Quality***. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

28.6. ***Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution***. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

28.7. ***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

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people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

28.8. ***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.).

28.9. ***Restrictions on the Use of Pesticides***. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. 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.

28.10. ***MacBride Principles Northern Ireland***. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

28.11. ***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

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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.

28.12. ***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.

28.13. ***Notification of Limitations on Contributions***. If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 28.13 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) 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 one hundred thousand dollars ($100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 28.13 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

28.14. ***Sunshine Ordinance***. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

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28.15. ***Conflicts of Interest***. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

28.16. ***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.

28.17. ***Prevailing Wages and Working Conditions***. Tenant shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Labor and Employment Code Division II, Articles 101, 103 and 104 (formerly 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 Labor and Employment Code Division II, Articles 101, 103 and 104 (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 Labor and Employment Code Division II, Articles 101, 103 and 104. 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 Labor and Employment Code Division II, Articles 101, 103 and 104. 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 any remedy provided by Law, including those specified in San Francisco Labor and Employment Code Division II, Articles 101, 103 and 104 against the breaching party.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Labor and Employment Code Division II, Article 102 (formerly Administrative Code Chapter 21C): a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 102.3), a Show (as defined in Section 102.4), a Special Event (as defined in Section 102.8), Broadcast Services (as defined in Section 102.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 102.10), and Security Guard Services for Events (as defined in Section 102.11).

28.18. ***Local Hire***. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Labor and Employment Code Division II, Articles 101 and 108 (formerly 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 the Threshold Amount (as defined in San Francisco Administrative Code Section 6.1) 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 whether 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 Labor and Employment Code Division II, Articles 101 and 108. 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 Labor and Employment Code Division II, Articles 101 and 108 against the breaching party.

28.19. ***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.

28.20. ***Food Service and Packaging Waste Reduction Ordinance***. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this 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.

28.21. ***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 specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

28.22. ***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 Labor and Employment Code Division II, Article 142 (formerly Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; "**Article 142**"), 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 Article 142 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 Article 142.

(f) Tenant and subtenants shall post the notice prepared by 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 Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 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.

If Tenant has any questions about the applicability of Article 142, 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 142.8.

28.23. ***Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings***. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant

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including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

28.24. ***Tenant's Compliance with City Business and Tax Regulations Code***. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 28.27 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

28.25. ***Consideration of Salary History***. Tenant shall comply with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K), the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at https://sfgov.org/olse/consideration-salary-history.

29. NOTICES.

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

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

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

30. MISCELLANEOUS PROVISIONS.

30.1. ***California Law; Venue***. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease

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has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

30.2. ***Entire Agreement***. This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease or changes from those drafts to the executed version of this Lease shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

30.3. ***Amendments***. No amendment of this Lease or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

30.4. ***Severability***. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

30.5. ***Interpretation of Lease***.

(a) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties,

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without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(g) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

30.6. ***Successors***. The terms, covenants, agreements and conditions set forth in this Lease shall bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

30.7. ***Real Estate Broker's Fees***. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this Lease. Tenant agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Lease.

30.8. ***Counterparts***. For convenience, the signatures of the parties to this Lease may be executed and acknowledged on separate pages which, when attached to this Lease, shall constitute one complete Lease. This Lease may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

30.9. ***Authority***. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is at the time of execution and at all times while this Lease is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

30.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

30.11. ***Time is of Essence***. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

30.12. ***Cumulative Remedies***. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

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30.13. ***Survival of Indemnities***. Termination or expiration of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any sums due, nor shall it affect any provision of this Lease that expressly states it shall survive termination or expiration hereof.

30.14. ***Relationship of the Parties***. Port is not, and none of the provisions in this Lease shall be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

30.15. ***No Recording***. Tenant shall not record this Lease or any memorandum hereof in the Official Records.

30.16. ***Additional Written Agreement Required***. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "**Concession**") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

31. LIMITATION ON DAMAGES.

31.1. ***No Recourse Beyond Value of Premises***. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant shall look solely to the fair market value of Port's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all other liability. Before filing suit for an alleged default by Port, Tenant shall give Port notice and reasonable time to cure the alleged default.

31.2. ***Non-Liability of City Officials, Employees and Agents***. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City and/or Port under this Lease. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

31.3. ***Limitation on Port's Liability Upon Transfer***. In the event of any transfer of Port's interest in and to the Facility, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this 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.

32. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as ***Exhibit C***. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as

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herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

33. EXTENSION OPTION.

33.1. ***Options to Extend Term***. Provided all the terms and conditions of this Section 33 are satisfied by Tenant, and Tenant is in good standing, Port grants to Tenant one (1) option (the "**Extension Option**") as to the entire Premises only for an additional eighteen (18) months (the "**Extension Term**") commencing upon the first day after the expiration date. Tenant may exercise the Extension Option by giving Port written notice as described in the Basic Lease Information. Any such notice by Tenant shall be irrevocable by Tenant. If any Event of Default by Tenant has occurred or 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 (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), 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 and the Term shall expire on the day the Term would have expired had Tenant never exercised the Extension Option.

33.2. ***Base Rent and Other Terms***. If Tenant elects to exercise the Extension Option, then 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 last day of the Extension Term and the Base Rent hereunder shall be determined as set forth in the Basic Lease Information.

34. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION OR ENACTED AN ORDINANCE APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION OR ORDINANCE, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION OR ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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IN WITNESS WHEREOF, PORT and TENANT execute this Lease 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: _____
Scott Landsittel
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **SKYSTAR WHEEL, LLC**,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: Justin Bigelow
Deputy City Attorney

Lease Prepared By: Don Kavanagh, Senior Property Manager _____
(initial)

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

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

The Commencement Date of the Lease is hereby established as _____, 20___ , the Rent Commencement Date of the Lease is hereby established as _____, 20___ the Anniversary Date is hereby established as _____ ____, 20___ and the Expiration Date as _____ ____, 20___.

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

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the "**Property**"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION** ("**Port**") [and to _____ ("**Developer/Lender**")] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except by:

3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

4. That the commencement date under the Lease was _____, 20__, the expiration date of said Lease is _____, 20___.

5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is $_____.

6. The security deposit held by Port under the terms of the Lease is $_____ and Port holds no other deposit from Tenant for security or otherwise.

7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.

8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.

9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.

11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20___.

[Name of Tenant]

By:

Name:

Title:

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EXHIBIT D

GOOD NEIGHBOR POLICY

[To Be Attached]

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EXHIBIT E
PERCENTAGE RENT

[To Be Attached]

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EXHIBIT F

DEPICTION OF PERMITTED USES
[To Be Attached]

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SCHEDULE 1

ASBESTOS NOTIFICATION AND INFORMATION
NOTICE TO EMPLOYEES,
OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS

[Attachment on following page(s)]

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SCHEDULE 2

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program ("NFIP"), Federal Emergency Management Agency ("FEMA") issued the final flood insurance rate maps ("FIRMs") for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 ("Floodplain Management Program Ordinance") and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco ("City"), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as "Special Flood Hazard Areas" ("SFHAs"), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter "A" or "V" on the FIRMs. Port's structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission ("SFPUC") has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at https://www.sfpuc.gov/learning/emergency-preparedness/flood-maps. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC's Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City's Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

DRAFT

San Francisco Floodplain Management Program website:
https://onesanfrancisco.org/San-Francisco-Floodplain-Management-Program

Port Floodplain Management Program Website:
https://www.sfport.com/business/permit-services/floodplain-management-program

FEMA's NFIP website:
www.FloodSmart.gov.

DRAFT

SCHEDULE 3

HAZARDOUS MATERIAL DISCLOSURE

DRAFT

Item 25-1017: SkyStar Wheel, LLC Lease Renewal

Informational Presentation regarding a proposed renewal lease with SkyStar Wheel, LLC, for an 18-month extension with one 18-month extension option including a waiver of any applicable requirements of the competitive bidding process

October 29, 2025

Presented by: Scott Landsittel, Deputy Director, Real Estate & Development

PORT OF SAN FRANCISCO


SkyStar Wheel looking North - Aerial


SkyStar Wheel looking West - Aerial

SkyStar Lease L-17322 – Background

- SkyStar Wheel since November 2023
- Lease expires October 31, 2025
- Through August 2025, SkyStar hosted 621,000 riders and produced $761,000 revenue for the Port
- 2,400 complimentary tickets to disadvantaged communities
- A competitive bidding process is unlikely to generate a competing investment interest
- Port cannot offer a long term for any new lease due to Fisherman's Wharf Revitalized proposed development
- Competitive bidding is *impractical*
- Port staff worked with SkyStar on the terms for the renewal.

PORT OF SAN FRANCISCO

Proposed Terms

The main terms of the renewal Lease L-17322 include:

Term: New, 18-month term commencing on November 1, 2025, and expiring on April 30, 2027 and one 18-month option to renew that would extend the term to October 31, 2028. Port has the right to terminate the Lease on 90-days' notice to accommodate Fisherman's Wharf Revitalized physical development

Rent: New Monthly Base Rent will be $11,000 and increases to $11,550 effective November 2026. Percentage rent increases from 5.00% to 8.00%. SkyStar will continue to pay both Base Rent and Percentage Rent

Security Deposit: Increase to $100,000 to help ensure Port can address any lingering physical issues after SkyStar vacates the site at lease expiration.

Holdover: If SkyStar does not vacate at the expiration or early termination of the lease holdover rent increases to from 200% of base plus percentage rent for the first month and 500% thereafter.

The Port Commission approved the proposed lease on August 8, 2025 under Resolution 25-49

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

LEASE NO. L-17136

BY AND BETWEEN

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

AND

SKYSTAR WHEEL, LLC
A MISSOURI LIMITED LIABILITY COMPANY

SWL 301

MAY 1, 2024

ELAINE FORBES
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
ED HARRINGTON, COMMISSIONER
STEVEN LEE, COMMISSIONER

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SCHEDULE 2 HAZARDOUS MATERIALS DISCLOSURE
SCHEDULE 3 FEMA DISCLOSURE NOTICE

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LEASE AGREEMENT
BASIC LEASE INFORMATION

Lease Date:	May 1, 2024
Lease Number:	**L-17136**
Landlord or Port:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Landlord's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Tenant:	**SKYSTAR WHEEL, LLC** a Missouri limited liability company
Tenant's Main Contact Person and Mailing Address:	Todd Schneider SkyStar Wheel 12412 Powerscourt Drive, Suite 110 St. Louis, MO 63131 Mobile: (314) 308-2783 Email: todd@skystarwheel.com
Tenant's Billing Contact and Address:	Todd Schneider SkyStar Wheel 12412 Powerscourt Drive, Suite 110 St. Louis, MO 63131 Mobile: (314) 308-2783 Email: todd@skystarwheel.com
Tenant's Emergency Contact and Address:	Todd Schneider SkyStar Wheel 12412 Powerscourt Drive, Suite 110 St. Louis, MO 63131 Mobile: (314) 308-2783 Email: todd@skystarwheel.com
Tenant's Insurance Contact and Address (not broker):	Todd Schneider SkyStar Wheel 12412 Powerscourt Drive, Suite 110 St. Louis, MO 63131 Mobile: (314) 308-2783 Email: todd@skystarwheel.com

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Contact Information for Tenant's Agent for Service of Process (including address) :	1505 Corporation CSC Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502			
Premises:	Approximately 10,836 square feet at the east end of SWL 301, more commonly known as the Triangle Parking Lot in the City and County of San Francisco, State of California, as further depicted in ***Exhibit A***, attached hereto and made a part hereof, together with any and all improvements and alterations thereto.			
Facility:	SWL 301 San Francisco, California 94133			
Premises Rentable Square Footage:	Approximately 10,836 rentable square feet of Improved Land			
Length of Term:	Eighteen (18) months			
Commencement Date:	May 1, 2024			
Rent Commencement Date:	May 1, 2024			
Expiration Date:	October 31, 2025			
Monthly Base Rent:	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
.	1-6	10,836	$0.94	$10,185.84
Rent Increase Date: November 1, 2024	7-18	10,836	$0.97	$10,491.42
Percentage Rent:	In addition to the Monthly Base Rent, Tenant agrees to pay Percentage Rent equal to five percent (5%) of Gross Revenues as further described in ***Exhibit E***, which is attached to this Lease and incorporated herein.			
Additional Services and Compensation	In addition to the Monthly Base Rent and Percentage Rent, Tenant shall conspicuously display of Port of San Francisco Logo on: **1.** All on-site banners and posters; **2.** All magazine, newspaper, and other advertising of the Wheel; and **3.** Inclusion in all press releases. Tenant is encouraged, but not required, to continue distribution of 500 complimentary General Admission tickets per month while this Lease is in effect to be used to benefit underserved communities in San Francisco.			

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Security Deposit:	Twenty Thousand Nine Hundred Eighty-Two Dollars and Eighty-Three Cents ($20,982.83).
Permitted Use:	Tenant and its Agents may enter and use the Premises to construct, maintain, store, operate, manage, and deconstruct an observation wheel and related structures (the "**Wheel**"), as depicted and described on ***Exhibit F*** on the terms and conditions of this Lease, including the following. 1. Additional requirements during periods of continued non-operation: **A.** Tenant acknowledges submission of structural engineering report(s) to Port pursuant to the Prior License (defined below) that require foundation enhancements to comply with regulations and safety orders regarding Permanent Amusement Rides (including but not limited to 8 Cal. Code of Regs. §§ 344.5-344.17 & 3195.1-3195.14). **B.** Tenant acknowledges that unless and until the Wheel is permitted for use and occupancy by the California Division of Occupational Safety and Health (Cal/OSHA) and all applicable local agencies, the Wheel may not be occupied for revenue or non-revenue service. **C.** During any period of non-operation, Tenant may use and occupy the Premises for storage and any reasonably necessary improvements to facilitate operations, subject to all applicable permit approvals, including Port Building Permit(s). **D.** Tenant acknowledges that during any period during which Tenant lacks necessary permits to occupy and/or operate the Wheel, Port, after consultation with professional engineers and/or the Risk Management Division of the City Administrator's Office, require Tenant to fully or partially deconstruct the Wheel. 2. Operational Requirements: **A.** Tenant shall operate the Wheel in compliance with this Lease and all applicable rules, regulations, and codes, including but not limited to all applicable Cal/OSHA and Port Building Permit requirements. **B.** The Wheel is one hundred thirty-eight feet (138') in diameter by one hundred forty-eight feet (148') in height, on a base structure that is seventy-two feet (72') by fifty-seven feet (57') and is accompanied by ancillary structures as described on ***Exhibit F***. The Wheel features 35 fully-enclosed, heated and air-conditioned gondolas that hold 6 people each and one VIP gondola with a special luxury interior that holds 5 people; for a total maximum occupancy not to exceed 215 persons. **C.** Tenant shall provide overnight security each day and night while this Lease is in effect, including set-up, any additional construction, breakdown, and cleanup. Only licensed security guards may stay overnight within the Premises. No vendors and no other staff may remain on site overnight.

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	D. Tenant shall be allowed to sell photos and Wheel-related merchandise within the Premises; provided that: (i) the installations, pricing, and locations are approved by the Deputy Director of Real Estate and Development or the Deputy Director's designee, and (ii) all revenues from such sales are subject to Percentage Rent. **E.** Tenant shall (i) operate the Wheel in accordance with the terms of this Lease, use experienced, qualified, competent and adequate staff therefor, all of whom shall be the Tenant's Agents and none of whom shall be deemed for any purpose whatsoever to be agents or employees of the Port or City, (ii) keep the Premises free of food, spills, and debris and in a neat, clean, orderly and attractive condition at all times. If Tenant fails to maintain the Premises in the condition required hereunder and Port provides written notice to Tenant or oral notice to the Tenant's manager or a senior employee on duty at the Wheel describing such deficiency, then Tenant shall promptly cause the deficiency to be corrected. **F.** Days and Hours of Operation During the term, Tenant shall use its best efforts to maximize public and local community use of the Wheel. The Wheel may operate seven days a week from 10:00AM to 10:00PM with slight adjustments for weather, weekends, and special events.
Admission Fees:	Tenant may charge the following admission and rental fees for use of the Wheel: 1. General Admission - $18.00 2. Seniors over 65 years of age and Children under 13 years of age - $12.00 3. VIP Experience - $50.00 4. San Francisco Resident Rates - residents of San Francisco shall receive a fifteen percent (15%) discount Tenant may propose modifications to admissions fees and rates to be effective no earlier than November 1, 2024; provided however, that Tenant shall provide Port with no less than 30-day notice of the proposed modifications and no modifications are effective without Port's written approval, which approval shall be in Port's sole and absolute discretion.
Other Requirements:	**A.** Tenant shall comply with Port's Good Neighbor Policy, which is attached as ***Exhibit D***. **B.** All water-filled barriers and weights must be filled with sea water, not potable water. **C.** Tenant shall not sell, serve, or permit the sale or service of food or alcoholic beverages on the Premises. **D.** Tenant agrees that it will not play or permit live or recorded

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	music, or other amplified sound on the Premises without the express written consent of Port.
Wheel Lighting:	Tenant shall not display decorative or other lights on the Wheel facing the landside of the premises (e.g., facing South) in more than one color while this Lease is in effect. The default color shall be white (with small red center), but Tenant and Port may agree to display another color for specified periods, such as to commemorate holidays, civic events, or local sports teams. Other than white lighting will be restricted to seven (7) days leading up to and including the applicable event or holiday, and at no time will the lights facing San Francisco show multiple colors at the same time. These restrictions will not apply to the lights facing away from San Francisco. The Port reserves the right to change the Wheel Lighting plan in its sole discretion.
Condition of Premises:	Tenant accepts the Premises in its "AS IS" condition, without representation or warranty of any kind by Port, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Premises or any facilities on the Premises for Tenant's use. Without limiting the foregoing, this Lease is made subject to all applicable Laws, rules and ordinances governing the use of the Premises, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Premises, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is Tenant's sole obligation to conduct an independent investigation of the Premises and all matters relating to its use of the Premises hereunder, including, without limitation, the suitability of the Premises for such uses. Tenant shall obtain any further permission necessary because of any other existing rights affecting the Premises. Under California Civil Code Section 1938, to the extent applicable to this Lease, Tenant is hereby advised that the Premises has not undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether it meets all applicable accessibility requirements. Any construction activities or improvement to the Premises will require a Port Building Permit. https://sfport.com/files/2022-01/Building%20Permit%20Application%20FILLABLE%201.31.22.pdf On the expiration of this Lease, or any earlier termination or revocation of this Lease, Tenant shall surrender the Premises to Port free from hazards and clear of all debris, as further described: **A.** Tenant shall have removed all structures and improvements from the Premises, and shall have restored and repaved the Premises. **B.** Tenant shall have removed any and all personal property from the Premises, including but not limited to any kiosks, tents, signs and any other improvements permitted hereunder, and shall repair, at its cost, any damage to the Premises caused by such removal.

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Maintenance and Repair:	Sole responsibility of Tenant – no exceptions. **A.** Tenant shall always maintain all aspects of the Premises in good operating condition using experienced and qualified persons. Such maintenance shall include all necessary repairs and replacements, and be performed (i) at no cost to Port, (ii) by licensed contractors or qualified mechanics, (iii) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the remainder of the Premises, and (iv) in accordance with all applicable Laws, rules and regulations. Tenant shall keep the Premises in a clean, safe, attractive and sanitary condition to Port's reasonable satisfaction. If any portion of the Premises or any of Port's property located on or about the Premises is damaged by any activities conducted by Tenant or their Agents or Invitees, Tenant shall immediately, at no cost to Port, repair any and all such damage and restore such damaged Premises or Port's property to its previous condition. **B.** Tenant's maintenance obligations pursuant to this Section shall include all routine maintenance of the Premises, including but not limited to removing graffiti and inspecting the Wheel components for structural integrity. **C.** During the hours the Wheel is open for business, Tenant shall provide adequate and accessible waste, compost and recycling receptacles for Wheel customers in the Premises and secure or store such receptacles when the Wheel is closed for business. **D.** Port shall not be responsible for the security, maintenance, or repair of, or any damage to, the Premises including any Alterations, equipment, accessories, or inventory therein. **E.** Tenant shall arrange for waste management (recycling, composting, trash) services from Recology by submitting an Event Services Request Form by email at sfevents@recology.com or by calling (415) 330-8422 to schedule services. **F.** At the end of each workday, Tenant is required to inspect and thoroughly clean the area in and around the Premises. Tenant shall remove and properly dispose of any accumulated trash and debris, including any plastic or styrofoam packaging materials from operations. Tenant may fulfill this obligation through its agents, employees, or vendors but Tenant shall remain solely responsible for clean-up. All other maintenance and repair, including without limitation all non-structural interior portions of the Premises and all Tenant Improvements, is Tenant's sole responsibility, as further described in Section 11 below.
Utilities:	Tenant's sole responsibility, as further described in Section 12 below

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Location of Asbestos in Facility:	See ***Schedule 1*** attached hereto.
Signage:	Subject to Port permitting, Tenant shall post a 24" x 24" metal sign, or other appropriate signage, at its entrance gate providing the emergency contact name and phone number for Tenant. The sign shall be removed upon expiration or termination of this Lease.
Hazardous Materials Disclosure:	See ***Schedule 2*** attached hereto.
Groundwater Monitoring:	There are two (2) PG&E Environmental Monitoring Wells, MW10 and MW02, located in the Premises. Regulatory agency groundwater monitoring is performed on a quarterly basis with each sampling event scheduled over two days. MW10 - Day 1 for 15-30 minutes, Day 2 for approximately 1.5 hours. MW02 – Day 1 only for 15-30 minutes. PG&E's consultant, Haley & Aldrich (H&A) will access site and set up a safe exclusion zone at the well head (4' x 4' area) or run tubing from the well head to the west immediately adjacent to SWL 301. Tenant agrees to allow H&A access to the Wells and to schedule future monitoring visits, for the duration of the term.
Regulatory Permits:	As a condition precedent to the effectiveness of this Lease, the Tenant shall, at its sole cost and expense obtain and submit to the Port for review, the following permits and approvals issued by governmental agencies prior to commencing any operation or opening the SkyStar Wheel to the public. Upon the Tenant's failure to submit to the Port the following permits and approvals as specified above, the Port may, at its sole discretion and without notice to or approval from the Tenant, terminate this Lease: **A.** Port of San Francisco Building Permit; 1. Civil Plan 2. Project Plans 3. Structural Engineering Report 4. Soils Geotechnical Report 5. Special Inspection Report 6. DOSH Letter **B.** San Francisco Fire Department Permits; **C.** Cal/OSHA Permit; **D.** California Environmental Quality Act (CEQA) Application for Environmental Review from City Planning; **D** Bay Conservation and Development Commission (BCDC) approval; and **E.** Any other permit or approval deemed necessary by the Port, any City Agency, and/or other governmental authority.
Americans with Disabilities Act (ADA)Requirements:	Tenant acknowledges that the Americans with Disabilities Act (the "**ADA**") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a

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	contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Tenant warrants that it will fulfill that obligation and that it will not discriminate against disabled persons in the provision of services pursuant to this Lease. Tents, canopies, and supports must comply with California Building Code Section 11B-307 regarding protruding objects. They must also be clear of any curb ramps and landings.
Bay Conservation and Development Commission (BCDC)Requirements:	The Premises is dedicated public access area under Bay Conservation and Development Commission (BCDC) jurisdiction. It is the sole responsibility of Tenant to comply with any conditions BCDC may impose.
Environmental Requirements	**A.** Tenant shall comply with Port's Zero Waste Event Policy which prohibits the sale, use and distribution of plastic water bottles, food ware and bags. It also prohibits the intentional release of balloons. **B.** San Francisco Bottled Water Ordinance. Tenant is subject to all applicable provisions of Environment Code Chapter 24 which are hereby incorporated. Accordingly, the sale or distribution of drinking water in a sealed box, bag, can, glass bottle, Rigid Plastic Bottle (as defined in SF Environment Code Chapter 24), or other container intended primarily for single service use and having a capacity of one liter or less is prohibited at outdoor events if more than 100 people attend. A violation of this provision is a material default under this Lease and is subject to administrative fines as prescribed by SF Environment Code Chapter 24. PROHIBITED ACTIVITES: Tenant shall be prohibited from the following activities: **A.** Storage of Hazardous Materials or hazardous waste, including but not limited to paints, fuels, oils, and compressed gases. **B.** Vehicle (including delivery truck) maintenance, washing, or fueling. **C.** Discharge of any material into Bay water, including but not limited to plastic and Styrofoam packaging materials. Tenant is advised that the Premises discharges directly into the Bay.
Planning Requirements:	All public access areas, including sidewalks and plaza adjacent to and surrounding the Premises must always remain unobstructed and accessible to the public.
San Francisco Fire Department (SFFD)Requirements:	**A.** Tenant shall not block, obscure, or obstruct any firefighting activities or equipment such as, but not limited to, fire lane, hydrants, FDCs, standpipes, or fire escape. **B.** Tenant must ballast all canopies and abate all tripping hazards.

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	C. Per *2.13 Submittal Requirements for Temporary Tents and Membrane Structures 2022,* for temporary tents in excess of 400 sq. ft., only cement blocks are allowed to ballast tents. Ten (10) lbs. per square foot of ballast is required. **D.** Tenant shall obtain the following Permits from SFFD: 1. Temporary Place of Assembly Permit. 2. Operational Permit for the Wheel. Permits for regulated activities such as LPG, generator, and/or temporary membrane structures, if applicable.
Special Events:	Tenant acknowledges the Port is a popular location for races and walks and other events (each, a "**Special Event**") and portions of Port property, including but not limited to roads, near or leading to the Premises may be partially or completely closed to vehicle traffic and/or the public to accommodate such Special Events. Port will notify Tenant of expected road closures for Special Events at least 15 days in advance except in exigent circumstances.
Development Project(s):	Seawall Improvement Project Fisherman's Wharf Revitalized LLC (unsolicited proposal)
Prior License:	The parties agree that as of the Commencement Date, License No. 17107 dated as of October 1, 2023 (the "**Prior License**"), between SkyStar Wheel, LLC and Port is hereby terminated; provided, however, that the parties shall continue to be liable for any obligations under the Prior License which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior License.
Additional Insurance Provisions:	**A.** Tenant shall be responsible, at its expense, for separately insuring Tenant's personal property, the Wheel, and any Alterations made by or on behalf of Tenant **B.** Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in ***Section 16*** with insurance coverage maintained by one or more of Tenant's agents, vendors, contractors or subcontractors as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of ***Section 16***. **C.** Tenant acknowledges that the Port self-insures against casualty, property damage and public liability risks and agrees Port shall not be required to carry any third-party insurance with respect to the Premises or otherwise.
Parking:	Tenant acknowledges that this Lease does not include vehicle parking rights or spaces. If Tenant requires parking, Tenant must contract independently with other parties for parking at areas outside the Premises.

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Lease Prepared By:	Don Kavanagh, Senior Property Manager

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LEASE AGREEMENT

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as landlord, and the Tenant identified in the Basic Lease Information ("**Tenant**"). The basic lease information (the "**Basic Lease Information**"), the exhibits, schedule and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as this "**Lease**". In the event of any conflict or inconsistency between the Basic Lease Information and this Lease Agreement, the Basic Lease Information will control.

1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Port does hereby lease to Tenant, and Tenant does hereby hire and take from Port, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. DEFINITIONS.

Definitions used in this Lease are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"**ACMs**" is defined in Section 15.6 below.

"**ADA**" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"**Additional Rent**" means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

"**Affiliate**" means: (i) a Person that Controls or is Controlled by Tenant, or is Controlled by the same Person that Controls Tenant; or (ii) if Tenant is a natural Person, any designated successor by trust, will, or court order following Tenant's death or incapacity.

"**Agents**" when used with reference to either party to this Lease or any other person means the officers, directors, employees, agents, commissioners, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"**Alterations**" means any alterations, installations, improvements, or additions to any Improvements or to the Premises.

"**Assignment**" means a proposed or actual Transfer of Tenant's rights, title, and interest in all or any part of the Premises under a contractual assignment or an assignment by operation of Law.

"**Award**" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"**Base Rent**" means the monthly Base Rent specified in the Basic Lease Information and described further in Section 5.1 hereof.

"**BCDC**" means the San Francisco Bay Conservation and Development Commission.

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"**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents used in Tenant's business operations for the Premises, whether maintained by Tenant or a third-party contractor.

"**business day**" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

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

"**Cal-OSHA**" means the Division of Occupational Safety and Health of the California Department of Industrial Relations.

"**Changes**" is defined in Section 10.2 below.

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

"**Claims**" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"**Commencement Date**" means the date on which the Term commences as specified in the Basic Lease Information.

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

"**Common Areas**" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other tenants or permittees, and that are designated by Port from time to time for the general common use or convenience of Port, Tenant, or other tenants of Port, and the respective authorized Agents and Invitees of the same. The Common Areas include, without limitation, driveways, delivery areas, pedestrian walkways, service corridors accessing loading docks, utility rooms, and other areas or improvements provided or designated by Port for common use. The Common Areas shall not include any parking areas located outside the boundaries of the Facility.

"**Concession**" is defined in Section 30.16 below.

"**Conduct Code**" is defined in Section 28.13 below.

"**Control**" means the direct or indirect ownership of: (a) fifty percent (50%) or more of each class of equity interests in the entity; or (b) fifty percent (50%) or more of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the entity or otherwise has the right to direct or cause the direction of substantially all of the management and policies of the entity.

"**Core Benefits**" is defined in Section 28.1 below.

"**CPA**" means an independent certified public accounting firm acceptable to Port in its reasonable discretion.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"**disturbed or removed**" is defined in Section 13.2 below.

"**Encroachment Area**" is defined in Section 3.3 below.

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"**Encroachment Area Charge**" is defined in Section 3.3 below.

"**Environmental Laws**" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Facility.

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"**Environmental Regulatory Approval**" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. "**Exacerbation**" has a correlating meaning.

"**Excess Rent**" means Sublease rent and any other sums paid or payable to Tenant under a Sublease, excluding the value of goodwill, in excess of Tenant's concurrent Rent obligation for the Sublease premises.

"**Expiration Date**" means the date on which the Term expires as specified in the Basic Lease Information.

"**Event of Default**" is defined in Section 21 below.

"**Facility**" means the pier, building or other structure in or on which the Premises is located.

"**Facility Systems**" means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Facility.

"**financial statements**" mean a current balance sheet and profit and loss statements that have been reviewed or examined by a CPA.

"**Habitual Late Payer**" means Tenant has received (a) at least two (2) notices of monetary default, or (b) at least three (3) notices of default within a twelve (12) month period.

"**Handle**" or "**Handling**" means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

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"**Hard costs**" is defined in Section 11.3 below.

"**Hazardous Material**" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not 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 occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"**Hazardous Material Claim**" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises or the Facility, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release 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, any other part of the Facility, or other Port property, the loss or restriction of the use or any amenity of the Premises, any other part of the Facility, or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"**Hazardous Material Condition**" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises.

"**HEPA**" is defined in Section 13.2 below.

"**Improvements**" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises or any other part of the Facility, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

"**Improvement Costs**" is defined in Section 4.2 below.

"**Improvements Pertaining to the Realty**" means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

"**Indemnified Parties**" is defined in Section 19.1 below.

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

"**Interest Rate**" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions

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before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"**Invitees**" means Tenant's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them, except that for the purposes of Article 20 (Assignment and Subletting), "**Invitees**" excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

"**Late Charge**" means a fee of fifty dollars ($50.00).

"**Law**" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to Port which require Tenant's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Facility, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

"**Lease**" is defined in the preamble to this Lease.

"**Non-Affiliate**" means a Person that is not an Affiliate.

"**Notice of Removal**" is defined in Section 13.4 below.

"**Notice to Cease Prohibited Use**" is defined in Section 8.3 below.

"**Notice to Vacate**" is defined in Section 3.3 below.

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

"**OSHA**" means the United States Occupational Safety and Health Administration.

"**PACMs**" is defined in Section 15.6 below.

"**Percentage Rent**" is defined in the Basic Lease Information and is further described in ***Exhibit H***.

"**Person**" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

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

"**Port program or project**" means (a) any development, removal or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating) or (c) the Seawall Earthquake Safety Program.

"**Port representative**" means Port, a City auditor, or any auditor or representative designated by Port.

"**Port Work**" is defined in Section 13.9 below.

"**Premises**" means the real property described in Section 3.1 below and depicted on ***Exhibit A***.

"**preservative–treated wood containing arsenic**" is defined in Section 28.12 below.

"**Prevailing party**" is defined in Section 23.1 below.

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"**Prohibited Use(s)**" is defined in Section 8.2 below.

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, or other officials, including BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"**Release**" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment.

"**Remediate**" or "**Remediation**" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "**Remediation**" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"**Renewable Energy System**" is defined in Section 12.3 below.

"**Rent**" means the Base Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to Section 5.

"**Rent Commencement Date**" means the date on which the payment of Rent commences as specified in the Basic Lease Information.

"**Repair Period**" means two hundred ten (210) days after the date of damage to the Premises or the Facility by fire or other casualty.

"**Rules and Regulations**" means the Rules and Regulations, if any, applicable to the Facility as may be amended from time to time.

"**saltwater immersion**" is defined in Section 28.12 below.

"**Seawall**" is defined in Section 3.8.

"**Security Deposit**" means the amount specified in the Basic Lease Information and as further described in Section 7 below.

"**Sublease**" means a proposed or actual Transfer of all or any part of the Premises under a sublease or a sub-sublease.

"**Subletting Expenses**" means verifiable and reasonable brokerage commissions incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

"**SWPPP**" is defined in Section 15.8 below.

"**Taking**" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

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"**Tenant**" means the party identified as Tenant in the Basic Lease Information.

"**Tenant's Property**" means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant's Property, in either case without cost to Port.

"**Term**" is defined in Section 4.1 below.

"**trade fixtures**" means those items of personalty, furniture, equipment, machinery used in trade by Tenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant at the Premises.

"**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, encumbrance, sublease, or other transfer of any of Tenant's interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) if Tenant is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Tenant (including without limitation a dissolution, merger, consolidation, transfer or sale); or (d) any interest of any subtenant, assignee, or other Transferee of Tenant's interest in the Lease or premises is sold, assigned, encumbered, or otherwise Transferred.

"**Transfer Agreement**" means all document(s) effecting or evidencing Tenant's proposed sale, assignment, encumbrance, sublease, or other Transfer.

"**Transfer Date**" means the effective date of a Transfer.

"**Transfer Notice**" means Tenant's prior written notice to Port of an intent to Transfer to a Non-Affiliate, specifying: (a) the Transferee's name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee's proposed use of the Premises, including any required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee's personal, business, and credit references.

"**Transfer Terms**" means the terms and conditions in the proposed or final Transfer Agreement, as appropriate in context.

"**Transferee**" means the Person to which Tenant makes or proposes to make a Transfer.

"**Utilities**" means electricity, water, gas, heat, sewers, oil, telecommunication services and all other Utilities.

"**Waiving Party**" is defined in Section 16.5 below.

"**Work**" when used in reference to construction is defined in Section 13.2 below.

"**worth at the time of award**" is defined in Section 22.2 below.

3. PREMISES; AS-IS CONDITION.

3.1. *Premises*.

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on ***Exhibit A*** attached hereto and incorporated herein by reference. Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of

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the Premises may be less than the rentable square footage of the Premises. Port and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

(b) Tenant shall have the non-exclusive right to use, together with other tenants, the Common Areas. All of the Common Areas shall at all times be subject to the exclusive control, regulation, and management of Port. Port shall have the right to construct, maintain, and operate lighting facilities on all Common Areas; to patrol all Common Areas; to temporarily close any Common Areas for maintenance, repairs or alterations; from time to time to change the area, level, location and arrangement of Common Area facilities; to use the Common Areas and restrict access and use of the same during the maintenance, repair, construction or reconstruction of buildings, additions or improvements; to erect buildings, additions and improvements on the Common Areas from time to time; and to restrict parking by tenants, their Agents and Invitees. Port may operate and maintain the Common Areas and perform such other acts and make such other changes at any time and from time to time in the size, shape, location, number and extent of the Common Areas or any of them as Port in its sole discretion shall determine; provided, however, that no exercise by Port of its rights hereunder shall unreasonably restrict access to the Premises.

3.2. ***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 Premises has not been inspected by a CASp and Port shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

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

3.3. ***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 federal and state disability access Laws. As further set forth in Section 9 (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 the ADA and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. ***No Right to Encroach***.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate

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such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in Section 3.4(c), at law or in equity.

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below (Indemnity and Exculpation) shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

3.5. ***Proximity of Development Project***. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, constructed on the Premises or on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. 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 Port, City and their Agents arising out of such inconvenience or disturbance.

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3.6. ***No Light, Air or View Easement***. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Facility or by any vessels berthed near the Facility shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Base Rent or Additional Rent, or affect this Lease in any way or Tenant's obligations hereunder.

3.7. ***Unique Nature of Premises***. Tenant acknowledges that: (a) the Facility 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; (a) the Facility is located along the waterfront adjacent to, on top of, and bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.8; (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (d) 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/or (e) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

3.8. ***Seawall***. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("**Seawall**") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: https://www.sfportresilience.com. Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.9. ***As-Is Condition***. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.8 including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information on the Port's website; the FEMA disclosure notice attached as ***Schedule 3***. Tenant represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

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3.10. ***Release and Waiver***. As part of its agreement to accept the Premises in their "**As Is With All Faults**" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Facility **[**and the Seawall**]**, including any Hazardous Materials in, on, under, above or about the Facility (including soil and groundwater conditions), (ii) the suitability of the Facility and/or the Premises for the development of the Improvements, the Permitted Uses, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Facility and/or the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City.

3.11. ***Port's Rights Regarding Premises***. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT.

4.1. ***Term***. The term of this Lease (the "**Term**") shall be for the period of months specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date. If the Commencement Date and Expiration Date occur on a date other than the Commencement Date and the Expiration Date set forth in the Basic Lease Information, then promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as ***Exhibit B***, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.2. ***Termination Rights***.

(a) Port has the right to terminate this Lease under this Section when the Premises is needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Section, upon ninety (90) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 90-day period.

(b) Port has the right to terminate this Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's structures, substructure or utilities has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as

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specifically set forth in this Section. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Section.

For a period ending fifteen (15) calendar days after receipt of Port's notice of termination, Tenant may request Port's consent, in Port's sole and absolute discretion, to allow Tenant to make the repairs required by Port in accordance with this Lease and any additional conditions reasonably imposed by Port, in consideration of Concessions from Port. If Port consents in writing, Port's notice of termination will be deemed rescinded and of no further effect.

(c) Port has the right to terminate this Lease under this Section if Tenant has failed to obtain all necessary regulatory permits and approvals to recommence occupancy and revenue operations by July 15, 2024.

For a period ending fifteen (15) calendar days after receipt of Port's notice of termination, Tenant may request Port's consent, in Port's sole and absolute discretion, to allow Tenant to make necessary repairs or improvements and/or obtain all necessary regulatory permits and approvals to recommence occupancy and revenue operations, and any additional conditions reasonably imposed by Port. If Port consents in writing, Port's notice of termination will be deemed rescinded and of no further effect.

(d) Within sixty (60) days after Tenant's surrender under this Section, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements in any Port building permits for such work obtained by Tenant and which are approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial Term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial Term of this Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

4.3. ***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.

5. RENT.

Tenant shall pay to Port, in the manner herein described, the following Rent:

5.1. ***Base Rent***. Throughout the Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information. Tenant shall make the first payment of Base Rent upon execution of this Lease and from and after the Rent Commencement Date, shall pay the Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the

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Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month.

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

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

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

5.5. ***Net Lease***. It is the purpose of this Lease and intent of Port and Tenant that 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. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties 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, but except as expressly provided to the contrary in this Lease, 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. 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, except as otherwise expressly provided in this Lease. 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.

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5.6. ***Additional Charges***. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 15.8 (Storm Water Pollution Prevention), 28.1(d) (CMD Form), and 32 (Estoppel Certificate) or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars ($100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars ($150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.6 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.6 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.6 and the reasonableness of the amount of the charges described in this Section 5.6.

6. TAXES AND ASSESSMENTS.

6.1. ***Payment of Taxes***. During the Term, Tenant agrees to pay, when due, to the proper authority any and all real and personal property taxes, general and special assessments, real property transfer taxes, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, or any transfer of a leasehold interest or subleasehold interest in the Premises (including but not limited to the transfer of the leasehold interest in the Premises pursuant to the Lease) whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any of the above taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall Indemnify Port, City, and their Agents from and against all Claims resulting therefrom.

6.2. ***Possessory Interest Tax***. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located

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thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

7. SECURITY DEPOSIT.

Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Base Rent, the Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. If Base Rent is increased beyond the amount set forth in the Basic Lease Information for the last year of the Term, then from and after such increase, Tenant shall increase the amount of the Security Deposit to maintain the same ratio of the Security Deposit to Base Rent as existed on the date immediately prior to such Base Rent increase. Any increase in the Security Deposit shall be delivered to Port on the same date that such increase in Base Rent is first due.

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same.

8. USE OF THE PREMISES.

8.1. ***Permitted Use***. The Premises shall be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose.

8.2. ***Prohibited Use***. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "**Prohibited Use**" and collectively, "**Prohibited Uses**"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

(a) any activity, or the maintaining of any object, which is not within the Permitted Use;

(b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

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(c) any activity or object which will exceed load restrictions, if any, or cause damage to the Premises;

(d) any activity which constitutes waste or nuisance, including, but not limited to, 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;

(e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;

(g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;

(i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;

(j) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;

(k) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, provided however that such excavated materials resulting from construction activities permitted under this Lease may be temporarily stored for no more than 72 hours prior to removal and disposal;

(l) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, provided however that such aggregate material or bulk storage reasonably necessary for construction activities permitted by Port shall be allowed during any Port-approved construction period;

(m) the washing of any vehicles or equipment; or

(n) other Prohibited Uses identified in the Basic Lease Information, if any.

8.3. ***Notice of Prohibited Use Charge***. In the event Port determines after inspection that Prohibited Uses are occurring, then Tenant shall immediately cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

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9. COMPLIANCE WITH LAWS AND REGULATIONS.

Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of the Facility and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties. Tenant further understands and agrees that it is Tenant's obligation, at Tenant's sole cost and expense, to cause the Premises and Tenant's activities and operations conducted thereon, to be in compliance with the ADA. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations and Improvements strictly complies with all requirements of the ADA. If Tenant's use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any part of the Facility outside of the Premises to comply with the ADA, then, at Port's sole election, Port or Tenant will perform the work at Tenant's sole cost and expense.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, 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 the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, 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 seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. 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.

10. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.

10.1. ***Port Acting as Owner of Property***. Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Examples of Port actions as a Regulatory Agency include Port issuance of building, encroachment and other construction-related permits, and the Chief Harbor Engineer's actions to protect public health and safety.

10.2. ***Regulatory Approvals***. Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "**Changes**") may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency.

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be

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borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

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

Without limiting the terms and conditions of Sections 10.1 and 10.2, by signing this Lease, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Facility and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Facility. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

10.3. ***Compliance with City's Risk Manager's Requirements***. Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

11.1. ***Tenant Maintenance and Repair Obligations***. Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, starting on the Commencement Date, including any period of early entry under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with Port for the same Premises, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor.

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Tenant shall not make, nor cause or suffer to be made, any repairs or other work for which a permit is required by any applicable building code, standard or regulation, including, without limitation, the Port Building Code or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence.

11.2. ***Port's Right to Inspect***. Without limiting Section 24 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. ***Port's Right to Repair***. In the event Tenant fails to maintain the Premises in accordance with this Lease or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefore. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars ($2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees. With respect to any work where the total hard costs of such work are less than Two Thousand Dollars ($2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200).

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

For purposes of this Lease, the term "**ordinary wear and tear**" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises and/or the Facility in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

11.4. ***Acts of Nature***. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 17 in the event of any damage or destruction of the Premises.

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12. UTILITIES AND SERVICES.

12.1. ***Utilities***. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant. Tenant shall procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission determines that it cannot feasibly provide service to Tenant, Tenant may seek another provider.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements.

Tenant shall not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises using current in excess of 110 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises, including without limitation, electronic data processing machines. If Tenant requires electric current in excess of that usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the San Francisco Public Utilities Commission or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

In the event any Law imposes mandatory or voluntary controls on Port, the Facility, or the property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event Port is required or elects to make alterations to any part of the Facility in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Rent reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. Port shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

Without Port's prior written consent, which Port may give or refuse in its sole and absolute discretion, Tenant shall not place or install in the Premises any equipment that weighs in

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excess of the normal load-bearing capacity of the floors of the Facility or the pier, as applicable, and as may be further described in the Basic Lease Information. If Port consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to Port, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Port and otherwise in compliance with Section 13 below, to the extent necessary to assure that no damage to the Premises or the Facility or weakening of any structural or substructural supports, as the case may be, will be occasioned thereby.

12.2. ***Services***. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, janitorial service and extermination service.

12.3. ***On-Site Renewable Energy***. At any time during the Term, Port shall have the right, at its sole and absolute discretion, to install, or cause another party to install, a renewable energy system, using sources such as solar (photovoltaic or solar thermal power), wind, tidal or biofuel power ("**Renewable Energy System**") on the roof of the Facility or otherwise on or near the Premises for the purpose of supplying power to the Facility or other locations. Notwithstanding Section 12.1, unless the cost per kilowatt of power to Tenant from such Renewable Energy System is greater than the cost per kilowatt Tenant would otherwise pay for power, Tenant shall purchase all or a portion of its power needs from the operator of the Renewable Energy System.

12.4. ***Energy Consumption Disclosure***. Tenant consents to Tenant's utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time (**"Energy Consumption Reporting Laws"**), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

13. IMPROVEMENTS AND ALTERATIONS.

13.1. ***Port Consent Required***.

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) As a condition to giving consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and/or (ii) a payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount up to one hundred fifty percent (150%) but not less than one hundred percent (100%) of the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

(c) At least thirty (30) days before commencing any Alterations or Improvements to the Premises, Tenant shall notify Port. Tenant's notice shall be accompanied by final construction documents for the Alterations or Improvements, if applicable. Port shall have the right to object to any of the Alterations or Improvements within sixty (60) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's consent within the 60-day period shall be deemed Port's disapproval of the Alterations.

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(d) None of the following will constitute Alterations or Improvements requiring Port's consent, unless the installation will affect Facility Systems or the structure of the building: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; (ii) painting the interior of the Premises; and (iii) carpeting the Premises.

13.2. ***Construction Requirements***. All Alterations and Improvements to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by Port in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

(b) All Alterations and Improvements shall be performed at the sole cost and expense of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by Port, and subject to any conditions that Port may reasonably impose.

(c) 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. Tenant shall undertake commercially reasonably measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(d) At the completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within sixty (60) days after completion of the Improvements, Port, after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

(e) Without limiting Section 15 below (Hazardous Materials), in the event that asbestos-containing materials ("**ACM**") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

(f) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without

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limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("**HEPA**") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.2, lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.3. ***Improvements Part of Realty***. Except as set forth in Section 13.4 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender).

13.4. ***Removal of Improvements***. Prior to the Expiration Date or earlier termination of this Lease, Port may give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

13.5. ***Removal of Non-Permitted Improvements***. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with Section 13.2 above, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of Section 13 shall survive the expiration or earlier termination of this Lease.

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13.6. ***All-Gender Toilet Facilities***. If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An "**all-gender toilet facility**" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "**extensive renovations**" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

13.7. ***Signs***. Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is 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, as revised by Port from time to time, 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.

13.8. ***Improvements on Roof***. Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.9, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts to notify Port in advance of such entry.

13.9. ***Port's Alterations***. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

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14. LIENS.

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, 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, plus interest at the Interest Rate, and all reasonable expenses incurred by Port in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Port by Tenant upon demand. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port, the Premises, and the Facility, from mechanics' and materialmen's liens. Tenant shall give to Port at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to Indemnify Port, City and their respective Agents from and against any Claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

Without limiting the foregoing, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Facility or Port's interest therein or under this Lease.

15. HAZARDOUS MATERIALS.

15.1. ***Requirements for Handling***. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office purposes.

15.2. ***Tenant Responsibility***. Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

(a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property except as permitted under Section 15.1;

(b) will not cause or permit any Hazardous Material Condition; and

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

15.3. ***Tenant's Environmental Condition Notification Requirements***.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

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(b) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises;

(iv) Any Hazardous Material Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Prevention Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Material Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

15.4. ***Requirement to Remediate***.

(a) Tenant's Remediation obligations under this subsection are subject to subsection (b).

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(i) After notifying Port in accordance with Section 15.3(a), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of or Changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises or the Facility, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises or the Facility in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

15.5. ***Port's Right to Audit***. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 24 (Port's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

15.6. ***Notification of Asbestos***. Port hereby notifies Tenant, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("**ACMs**") and/or presumed asbestos-containing materials ("**PACMs**") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in ***Schedule 1*** attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in ***Schedule 1*** attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 15.6 hereof and the notice or report attached as ***Schedule 1*** hereto and understands, after

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having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant.

Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for Tenant's acts or omissions that result in (1) asbestos-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

15.7. ***Notification of Lead***. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises or Facility. Disturbance or removal of lead is regulated by, among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and Port Building Code § 3424.

Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of lead in or about the Premises may limit Tenant's ability to perform any Improvements or Alterations to the Premises without Tenant first performing abatement of such lead. The presence of lead in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

15.8. ***Storm Water Pollution Prevention***.

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning operations on the Premises.

(b) Post-Construction Requirements. In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction

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stormwater control provisions of the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Management Requirements and Design Guidelines, subject to review and permitting by the Port.

15.9. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in ***Schedule 2*** attached hereto. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

15.10. ***Survival***. Tenant's obligations under Section 15 shall survive the expiration or earlier termination of this Lease. For purposes of this Section 15, the term "**Commencement Date**" shall mean the commencement date (including any early entry period, if any) of the Prior License.

16. INSURANCE.

16.1. ***Required Insurance Coverage***. Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars ($1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars ($1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation, Tenant's Agents and Invitees.

(c) Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with Sections 8.2(h) and

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8.2(i) above, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of Tenant's Property and Alterations, in, on, or about the Premises, personal property insurance on an all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Tenant's sole discretion, for the replacement of Tenant's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Tenant by Port pursuant to this Lease in such amounts as Port deems reasonably appropriate and Tenant shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Tenant's Property, Alterations, or any Improvements regardless of cause of loss.

(e) Construction Activities. At all times during any period of Tenant's construction of Improvements or Alterations subject to Section 13,

(i) Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars ($500,000) per incident, One Million Dollars ($1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars ($100,000) per accident, Five Hundred Thousand Dollars ($500,000) aggregate disease coverage and One Hundred Thousand Dollars ($100,000) disease coverage per employee; and (d) owners and contractors protective liability with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death). Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Tenant shall carry "**Builder's All Risk**" insurance on a form reasonably approved by Port, in the amount of one hundred percent (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, that are or will be part of the permanent Improvements, against "**all risk**" and "special form" hazards.

(iii) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(f) Sexual Molestation. Sexual molestation and abuse coverage with minimum limits of $2,000,000 per occurrence and $4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(g) Contractor's Pollution Legal Liability Insurance. Tenant, at its sole cost and expense, shall procure and maintain Contractor's Pollution Legal Liability Insurance with a combined single limit of Two Million Dollars ($2,000,000.00) each claim, Five Million Dollars

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($5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(h) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth above or to provide other coverage and/or different coverage amounts as may be required by Law, the City's Risk Manager or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility with respect to risks comparable to those associated with the use of the Premises.

16.2. ***Claims-Made Policies***. If any of the insurance required in Section 16.1 above is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

16.3. ***Annual Aggregate Limits***. If any of the insurance required in Section 16.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

16.4. ***Payment of Premiums***. Tenant shall pay the premiums for maintaining all required insurance.

16.5. ***Waiver of Subrogation Rights***. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

16.6. ***General Insurance Matters***.

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, COMMISSIONERS, EMPLOYEES AND AGENTS**," shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port.

(d) Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance

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compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Tenant's broker shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

17. DAMAGE AND DESTRUCTION.

17.1. Damage and Destruction. If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

Port shall use its commercially reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and Port's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, Port shall have the option to notify Tenant of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Lease shall continue in full force and effect and the monthly Base Rent shall be reduced as provided herein; or (b) Port's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If Port elects not to appropriate funds for such repair, Port shall give written notice to Tenant within sixty (60) days after the date Port elects not to appropriate funds of its election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If at any time during the last six (6) months of the Term, the Premises or the Facility is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. Notwithstanding any other provision of this Lease, in the event the Premises or the Facility is substantially damaged or destroyed and Port intends to

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rebuild for a Port program or project that is inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

17.2. ***Waiver***. Port and Tenant intend that the provisions of Section 17 govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

18. EMINENT DOMAIN.

18.1. ***General***. If all or part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the Date of Taking.

18.2. ***Partial Takings***. If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination, which shall be not less than thirty (30) nor more than sixty (60) days after the date of notice.

18.3. ***Taking of the Facility***. If any substantial portion of the Facility is taken under the power of eminent domain or conveyance in lieu thereof, whether any portion of the Premises is taken or not, Port shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the Date of Taking.

18.4. ***Temporary Takings***. Notwithstanding anything to the contrary contained in Section 18, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

18.5. ***Award; Waiver; Termination of Lease; Rent***. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

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19. INDEMNITY AND EXCULPATION.

19.1. ***General Indemnity***. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

19.2. ***Hazardous Materials Indemnity***.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. ***Scope of Indemnities***. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude Claims resulting solely from the willful misconduct or gross negligence of the Indemnified Parties.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

19.4. ***Exculpation and Waiver***. To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive,

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negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, the Facility or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes to the fullest extent permitted by law.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease 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 Lease shall remain effective. Therefore, with respect to the Claims released in this Lease, 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Initials: DS TS _____ _____

Tenant *Tenant*

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 this Lease was made, or that Tenant had the opportunity to consult with counsel, but declined to do so.

19.5. ***Survival***. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

20. ASSIGNMENT AND SUBLETTING.

20.1. *Transfer to Affiliate*.

(a) Tenant may make a Transfer to an Affiliate without obtaining Port's consent, provided: (1) at the time Tenant provides Port with notice, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) if the proposed Transferee is a successor to Tenant by purchase, such proposed Transferee shall acquire all or substantially all of the stock or assets of Tenant's business or, if such proposed Transferee is a successor to Tenant by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Tenant; (3) such proposed Transferee must have a net worth which is at least equal to the greater of Tenant's net worth as of the Commencement Date or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization as evidenced to Port's reasonable satisfaction; (4) such proposed Transferee operates the business in the Premises for the Permitted Use and no other purpose; and (5) Tenant

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gives Port written notice at least sixty (60) days prior to the effective date of the proposed Transfer and provides copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date. A Transfer to an Affiliate that does not meet the criteria specified in this Section 20.1(a) shall be subject to Port's prior written consent under Section 20.2.

(b) Port will have the right to: (i) request additional documentation and information relating to Tenant's relationship with the Transferee for three (3) months after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Transfer on the grounds that the Transferee is not an Affiliate as defined in this Lease, if written notice is delivered to Tenant within three (3) months after Port's receipt of all required and requested information.

(c) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease.

20.2. ***Transfer to Non-Affiliate***.

(a) Except for a Transfer to an Affiliate meeting the requirements of Section 20.1, Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any City or Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; or (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port.

(ii) Tenant also agrees that Port will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee to assume all of Tenant's obligations under this Lease; and (2) giving Port the right to terminate without notice all of Tenant's then-existing Subleases if this Lease is terminated before the existing Subleases expire.

(b) At least sixty (60) days before any Transfer to a Non-Affiliate, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the three (3) years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

For up to thirty (30) days after receipt of the complete Transfer Notice, Port will have the right to: (1) terminate this Lease as of the proposed Transfer Date; (2) sublease or take an assignment from Tenant of the interest that Tenant proposes to Transfer, on the same terms and conditions as stated in the Transfer Agreement; and (3) negotiate and contract directly with the Transferee on terms acceptable to Port in its sole and absolute discretion.

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(c) If Port consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within ninety (90) days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 90-day period, then Port's consent will expire, unless Tenant gives Port a new Transfer Notice, in which case Port again will be entitled to exercise any of the options under this Section.

(d) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Transfer will have no effect with respect to any other Transfer.

(e) Tenant agrees to reimburse Port for all costs, including attorneys' fees, that Port incurs to review, investigate, process, document, disapprove, or approve any Transfer request.

20.3. ***Sublease***. In addition to all requirements in Section 20.2, the following provisions apply to any Transfer in the form of a Sublease.

(a) Until the occurrence of an Event of Default, Tenant will have the right to receive and collect rents from the Sublease. The Sublease must require the Transferee to pay the rent and other sums due under the Sublease directly to Port upon receiving Port's written notice that Tenant is in default under this Lease, a copy of which Port will deliver to Tenant. Tenant agrees that it will hold in trust for Port's benefit any Sublease rent or other sums that Tenant collects from the Transferee after Port's notice to the Transferee, and Tenant will be obligated to forward the same to Port immediately upon receipt. Port's collection of rents and other sums under this Section will not constitute Port's acceptance of attornment by the Transferee.

(b) Tenant agrees to pay to Port immediately upon receipt all Excess Rent, less Subletting Expenses, as Additional Rent. In calculating Excess Rent, Subletting Expenses will be amortized on a straight-line basis over the term of the Sublease, without interest. For example, if: (i) the term of the Sublease is 5 years; (ii) Sublease rent is $5,000 per month; (iii) Tenant's concurrent Rent payable for the Sublease premises is $3,000 per month; (iv) Tenant's Subletting Expenses are $15,000 in brokerage commissions and $15,000 for new tenant improvements for the Sublease premises, then the amount of Excess Rent Tenant must pay to Port in connection with the Sublease is $1,500 per month, as shown in the calculation below.

Term of Sublease:	5 years x 12 months = 60 months
Subletting Expenses:	$15,000 + $15,000 = $30,000
Amortized Subletting Expenses:	$30,000/60 months = $500/month
Excess Rent:	$5,000/month - $3,000/month = $2,000/month
Additional Rent:	$2,000/month - $500/month = $1,500/month

20.4. ***Transfer Agreement Requirements***. Any Transfer Agreement must include the provisions set forth below.

(a) The Transferee's express assumption of, and acknowledgement and agreement that the Transferee will be jointly and severally liable for, all of Tenant's obligations under this Lease;

(b) The Indemnification clause and waiver of claims provisions in Section 19 (Indemnity and Exculpation);

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(c) Insurance provisions requiring that all of the Transferee's liability and other insurance policies name "The City and County of San Francisco, the San Francisco Port Commission, and their officers, commissioners, agents, employees, and representatives" as additional insureds and acknowledging Port's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;

(d) A provision stating that if this Lease is terminated for any reason, the Transferee's right to possession under the Transfer Agreement will terminate;

(e) A provision under which the Transferee expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws; and

(f) A provision under which the Transferee expressly agrees to report the transfer to the County Assessor in accordance with Section 6.2 of this Lease.

20.5. ***Notice to Port***. In addition to the obligations under Section 6.2, 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 Assessor 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).

20.6. ***Transfer Audit***. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer until the later of (i) four (4) years after the end of each Lease Year to which such records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties as to the accuracy of Tenant's financial reporting on the Transfer, until such audit or controversy is concluded. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Affiliates where applicable.

20.7. ***Acknowledgement***. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 20.

20.8. ***Transfer Definitions***. For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer. Other applicable definitions are in Section 2.

21. DEFAULT BY TENANT.

Any of the following shall constitute an event of default (the "**Event of Default**") by Tenant hereunder:

(a) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any 12-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such 12-month period shall constitute an Event of Default by Tenant hereunder without any further action by Port or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

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(b) abandonment or vacation of the Premises by Tenant; or

(c) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing Port to immediately terminate this Lease upon written notice without an opportunity to cure; or

(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 32 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

(e) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provisions of Section 20 above; or

(f) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 16 above, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

(g) failure by Tenant to comply with the provisions of Section 15 above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(h) failure by Tenant to discharge any lien or encumbrance placed on the Facility or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Facility or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(i) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(j) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

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(k) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or

(l) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days;

(m) without limiting the provisions of Sections 21(c) or 21(g) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

22. PORT'S REMEDIES.

Upon default by Tenant, Port shall, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

22.1. ***Tenant's Right to Possession Not Terminated***. Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

22.2. ***Termination of Tenant's Right to Possession***. Port may terminate Tenant's right to possession of the Premises at any time. No act by Port other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease shall not constitute a termination of Tenant's right to possession. If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following.

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(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of 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 be reasonably avoided; plus

(d) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although Port shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of this Lease do not waive Port's rights to recover damages upon termination.

The "**worth at the time of award**" of the amounts referred to in Sections 22.2(a) and 22.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "**worth at the time of award**" of the amount referred to in Section 22.2(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

22.3. ***Appointment of Receiver***. If Tenant is in default of this Lease, Port shall have the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Port to terminate this Lease.

22.4. ***Port's Right to Cure Tenant's Default***. Port, at any time after Tenant commits a default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

22.5. ***No Accord and Satisfaction***. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

22.6. ***Waiver of Redemption***. Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any default of Tenant hereunder.

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22.7. ***Habitual Late Payer***. In the event Tenant is deemed to be a Habitual Late Payer, in addition to any other remedies available to Port, Port may require that Tenant enter into direct electronic payment arrangements and/or Port may require payments of Rent be made in advance on a quarterly basis.

22.8. ***Remedies Not Exclusive***. The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law or in equity. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

23.1. ***Litigation Expenses***. The Prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2. ***Appeals***. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

23.3. ***City Attorney***. For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. PORT'S ENTRY ON PREMISES.

24.1. ***Entry for Inspection***. Port and its authorized Agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

24.2. ***General Entry***. In addition to its rights pursuant to Section 24.1 above, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises or to perform any services which Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which Tenant is in default;

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

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(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

(f) To obtain environmental samples and perform equipment and facility testing.

24.3. ***Emergency Entry***. Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these 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 of Tenant from the Premises or any portion of the Premises.

24.4. ***No Liability***. Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

24.5. ***Nondisturbance***. Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in Section 24 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

25. SURRENDER AND QUITCLAIM.

25.1. ***Surrender***. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.2 or 26.3 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Port to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

25.2. ***Quitclaim***. Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and shall be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant shall promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any portion that Port agrees are to remain part of the Premises.

25.3. ***Abandoned Property***. Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

25.4. ***Survival***. Tenant's obligation under this Section 25 shall survive the expiration or earlier termination of this Lease.

26. HOLDING OVER.

26.1. ***Terms of Holdover Tenancy***. Any holding over after the expiration of the Term shall not constitute a renewal of this Lease, but shall be deemed a month-to-month tenancy upon the terms, conditions, and covenants of this Lease, except as provided in this Section. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. Tenant shall Indemnify Port from and against any and all loss or liability resulting from Tenant's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

26.2. ***With Consent***. If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the higher of: (a) the Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

26.3. ***Without Consent***. If Tenant holds over without the prior written consent of Port, monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.

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27. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises and Tenant acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Tenant for any Claims arising from the State's exercise of its rights nor shall such action entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

28. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this 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.

28.1. *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 Articles 131 and 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 and 132 of Division II of the Labor and Employment 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 28.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, 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.

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(d) CMD 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 CMD.

(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.

28.2. ***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 Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this 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 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the 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 Article 121 of Division II of the Administrative Code. Tenant shall notify the Office of Labor Standards Enforcement ("**OLSE**") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. 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 121.5 of the Labor and Employment Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) 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.

(f) 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.

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

(h) 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.

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(i) Within ten (10) 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.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than $25,000.00 (or $50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed $75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed $75,000.00 in the fiscal year.

28.3. ***First Source Hiring***. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with all requirements of the ordinance as implemented by Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Tenant acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be a default of this Lease.

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

28.5. ***Indoor Air Quality***. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

28.6. ***Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution***. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

28.7. ***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

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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.

28.8. ***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.).

28.9. ***Restrictions on the Use of Pesticides***. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. 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.

28.10. ***MacBride Principles Northern Ireland***. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

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28.11. ***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.

28.12. ***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.

28.13. ***Notification of Limitations on Contributions***. If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 28.13 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) 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 one hundred thousand dollars ($100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 28.13 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

28.14. ***Sunshine Ordinance***. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary

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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.

28.15. ***Conflicts of Interest***. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

28.16. ***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.

28.17. ***Prevailing Wages and Working Conditions***. Tenant shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. 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 any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Labor and Employment Code Division II, Article 102 (formerly Administrative Code Chapter 21C): a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 102.3), a Show (as defined in Section 102.4), a Special Event (as defined in Section 102.8), Broadcast Services (as defined in Section 102.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 102.10), and Security Guard Services for Events (as defined in Section 102.11).

28.18. ***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

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"**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 whether 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.

28.19. ***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.

28.20. ***Food Service and Packaging Waste Reduction Ordinance***. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this 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.

28.21. ***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 specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

28.22. ***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 Labor and Employment Code Division II, Article 142 (formerly Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; "**Article 142**"), 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.

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(b) Tenant shall incorporate by reference the provisions of Article 142 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 Article 142.

(f) Tenant and subtenants shall post the notice prepared by 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 Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 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 Article 142, 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 Section142.8.

28.23. ***Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings***. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant

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including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

28.24. ***Tenant's Compliance with City Business and Tax Regulations Code.***

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 28.24 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

28.25. ***Consideration of Salary History***. Tenant shall comply with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K), the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at https://sfgov.org/olse/consideration-salary-history.

29. NOTICES.

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

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

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

30. MISCELLANEOUS PROVISIONS.

30.1. ***California Law; Venue***. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim

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that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

30.2. ***Entire Agreement***. This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease or changes from those drafts to the executed version of this Lease shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

30.3. ***Amendments***. No amendment of this Lease or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

30.4. ***Severability***. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

30.5. ***Interpretation of Lease***.

(a) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties,

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without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(g) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

30.6. ***Successors***. The terms, covenants, agreements and conditions set forth in this Lease shall bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

30.7. ***Real Estate Broker's Fees***. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this Lease. Tenant agrees to Indemnify Port from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Lease.

30.8. ***Counterparts***. For convenience, the signatures of the parties to this Lease may be executed and acknowledged on separate pages which, when attached to this Lease, shall constitute one complete Lease. This Lease may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

30.9. ***Authority***. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is at the time of execution and at all times while this Lease is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

30.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

30.11. ***Time is of Essence***. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

30.12. ***Cumulative Remedies***. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

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30.13. ***Survival of Indemnities***. Termination or expiration of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any sums due, nor shall it affect any provision of this Lease that expressly states it shall survive termination or expiration hereof.

30.14. ***Relationship of the Parties***. Port is not, and none of the provisions in this Lease shall be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

30.15. ***No Recording***. Tenant shall not record this Lease or any memorandum hereof in the Official Records.

30.16. ***Additional Written Agreement Required***. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "**Concession**") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

31. LIMITATION ON DAMAGES.

31.1. ***No Recourse Beyond Value of Premises***. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant shall look solely to the fair market value of Port's fee interest in the Premises for the recovery of any judgment or award. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all other liability. Before filing suit for an alleged default by Port, Tenant shall give Port notice and reasonable time to cure the alleged default.

31.2. ***Non-Liability of City Officials, Employees and Agents***. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City and/or Port under this Lease. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

31.3. ***Limitation on Port's Liability Upon Transfer***. In the event of any transfer of Port's interest in and to the Facility, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this 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.

32. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as ***Exhibit C***. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as

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herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

33. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT AUTHORIZE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE 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.

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IN WITNESS WHEREOF, PORT and TENANT execute this Lease 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

DocuSigned by:
By: Scott Landsittel
FC6CE420F26940F...
Scott Landsittel
Deputy Director, Real Estate and Development

Date Signed: 4/30/2024

TENANT: **SKYSTAR WHEEL, LLC**
A MISSOURI LIMITED LIABILITY COMPANY

DocuSigned by:
By: Todd Schneider
7A133C0F5CDB452...
Name: Todd Schneider
Title: Managing Partner

Date Signed: 4/30/2024

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

DocuSigned by:
By: Justin Bigelow
CE1A9E346F5C412...
Name: Justin Bigelow
Deputy City Attorney

Lease Prepared By: Don Kavanagh, Senior Property Manager DS DK (initial)

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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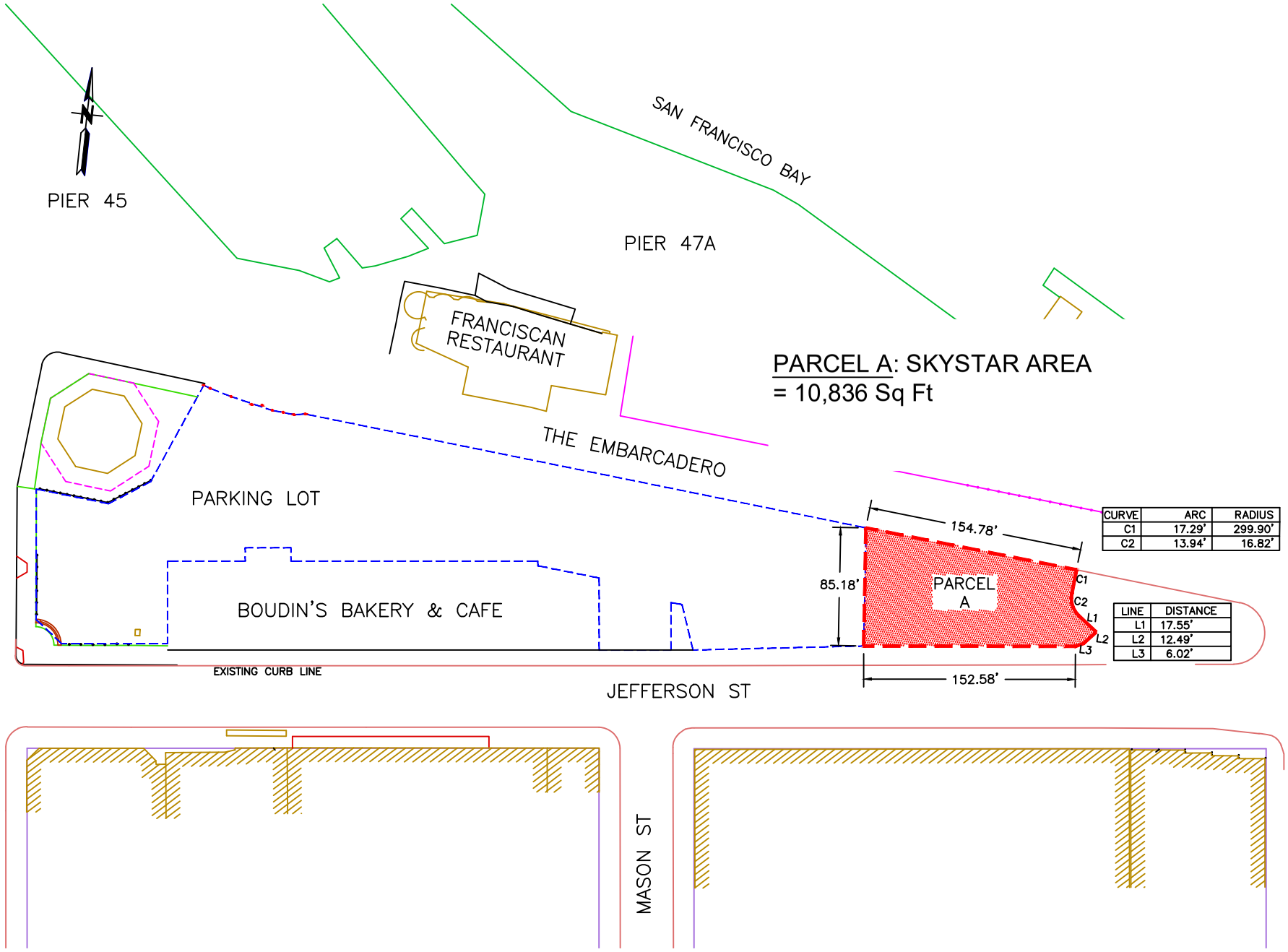


EXHIBIT A

INITIALS: PORT: DS LICENSEE: DS

DATE: 4/30/2024

LEASE NO.		TENANT:		
L-17136	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	SKYSTAR WHEEL, LLC SEAWALL LOT 301	DRAWN BY: NDF / EDITED BY: E.D. / DATE: APRIL 26, 2024 CHECKED BY: D. KAVANAGH / SCALE: 1" = 100' PLACE CODE NO. 3010–00	SHEET NO. OF SHEETS

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

Landlord:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Tenant:	
Lease Number:	
Lease Date:	
Premises:	[_____, Suite _____] San Francisco, California

The Commencement Date of the Lease is hereby established as _____, 20___ , the Rent Commencement Date of the Lease is hereby established as _____, 20___ the Anniversary Date is hereby established as _____ ____, 20___ and the Expiration Date as _____ ____, 20___.

PORT:

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

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the "**Property**"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION** ("**Port**") [and to _____ ("**Developer/Lender**")] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except by:

3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

4. That the commencement date under the Lease was _____, 20__, the expiration date of said Lease is _____, 20___.

5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is $_____.

6. The security deposit held by Port under the terms of the Lease is $_____ and Port holds no other deposit from Tenant for security or otherwise.

7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.

8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.

9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.

11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20___.

[Name of Tenant]

By:

Name:

Title:

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EXHIBIT D

GOOD NEIGHBOR POLICY

[To Be Attached]

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EXHIBIT D

GOOD NEIGHBOR POLICY

1. Licensee shall work closely with nearby neighborhood organizations to ensure ongoing communications regarding its operation and their impact on the surrounding area.

2. All garbage receptacles shall be enclosed, and no garbage shall be put on the sidewalk for collection, except as permitted by Article 5.1 of the Public Works Code.

3. Licensee or its agents shall provide adequate transit options. Patrons shall be encouraged to walk or take public transportation. Licensee shall provide an area for bicycle parking. For those that drive, adequate signage shall be well-lit and prominently displayed to advertise the availability of parking resources for Special Event patrons to mitigate the demand on city streets and parking in the neighborhood.

4. Licensee may illuminate the Wheel and the Platform per Exhibit B. Under no circumstances can the lighting on the Wheel extend past operating hours (i.e., 10:00PM). Minimal LED lighting for safety and security purposes on ground level of the Platform may remain on.

5. Licensee or its agents shall take all reasonable measures to ensure the sidewalks adjacent to the License Area are not blocked or unnecessarily affected by patrons or Special Event staff due to the operations of the License Area and shall provide security whenever patrons gather in the area or on the License Area.

6. Licensee or its agents shall implement other conditions and/or management practices necessary to ensure that management and/or patrons of the License Area maintain the quiet, safety and cleanliness of the License Area and the vicinity of the use, and do not block driveways of neighboring residents or businesses.

7. Absolutely no sound from the License Area shall be audible inside any surrounding residences or businesses in violation of San Francisco Police Code Section 2900.

8. Licensee or its agents shall provide adequate ventilation within the structures such that doors and/or windows are not left open for such purposes resulting in noise emission from the License Area.

9. Licensee shall inform event patrons to leave the License Area and neighborhood in a quiet, peaceful, and orderly fashion and urge patrons not to litter or block driveways in the neighborhood by placing adequate signage out during events.

10. Licensee or its agents shall provide a phone number to all interested neighbors that will be answered at all times by a manager or other responsible person who has the authority to adjust volume and respond to other complaints whenever entertainment is provided to allow for police and emergency personnel or other City personnel to contact that person concerning any incidents

Initial :
Port: DS DK

Tenant: DS TS

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EXHIBIT E
PERCENTAGE RENT

[To Be Attached]

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EXHIBIT E

PERCENTAGE RENT

1. Percentage Rent. Tenant agrees to pay to Port, in addition to the Base Lease Fee, a monthly Percentage Rent in an amount equal to five percent (5%) of Gross Revenue earned or received by Tenant, its affiliates, and any other person or entity operating under or pursuant to the Lease.

2. Monthly Payment; Monthly and Final Statements. The Percentage Rent shall be determined and paid by Tenant for each calendar month within twenty (20) days after the end of the prior calendar month, except that in the event this Lease terminates on a day other than the last day of a calendar month, Percentage Rent for such calendar month shall be determined and paid within twenty (20) days after such termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement (the "**Monthly Percentage Rent Statement**") in a form approved by Port. In addition, Tenant shall furnish to Port, within thirty (30) days after the expiration of the Term, a complete statement, showing the computation of the Percentage Rent for the entire Lease Term ("**Final Statement**") in a form approved by Port. The Final Statement is for verification and certification of Monthly Percentage Rent Statements only and shall not result in any averaging of the monthly Percentage Rent. Each Monthly Percentage Rent Statement and Final Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or the Term, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar month or the Term, as applicable.

(a) Each Monthly Percentage Rent Statement shall be certified as accurate, complete and current by a financial officer or other accountant employed by Tenant who is authorized and competent to make such Monthly Percentage Rent Statement. Each Final Statement shall be certified as accurate, complete and current by an independent certified public accounting firm acceptable to Port in its sole discretion. Tenant must submit payment of the balance owing together with any Final Statement showing that Tenant has underpaid Percentage Rent. At Port's option, overpayments may be refunded to Tenant or applied to any other amount then due under the Lease and unpaid.

(b) If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Final Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Monthly Percentage Rent Statement or Final Statement within the time period set forth in this ***Exhibit C*** (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of the Books and Records of Tenant, and each and every affiliate, person, or entity that has operated under or pursuant to the Lease (and the Books and Records of any other occupant of the Lease Area) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent Statement and Final Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this

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Exhibit C represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.

(c) Acceptance by Port of any monies paid to Port by Tenant as Percentage Rent as shown by any Monthly Percentage Rent Statement or Final Statement, shall not be an admission of the accuracy of said Monthly Percentage Rent Statement or Final Statement or the amount of such Percentage Rent payment.

3. Books and Records. Tenant shall keep (and shall cause its affiliates and any person or entity operating under or pursuant to this Lease to keep) at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Lease Area and shall retain such Books and Records for a period of the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is terminated (the "**Audit Period**").

4. 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 or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than fifteen (15) business days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after a Percentage Rent Statement is delivered to the Port.

5. Definitions. For purposes of this Exhibit C, the following definitions shall apply.

"**Gross Revenue**" means, subject only to the exceptions stated below, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Lease Area, including without limitation, all returns and refunds, employee meals, discounted and complimentary meals, beverages and services or similar benefits and/or goodwill, the total value, based on price, for the tickets, cover charges, merchandise and any other items and the operation of any event, including any special or fundraising event, and catering or food delivery business conducted by, from or at the Lease Area (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed). Except as specified below, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.

The following shall be excluded from Gross Revenues, provided that, Tenant provide to Port separate records to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly and Final Statements:

(i) The amount of any refund made or credit allowed due to a bona fide complaint from a customer concerning the quality of food, beverages, merchandise or service by Tenant;

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(ii) Sums collected for any sales or excise tax imposed directly upon Tenant by any duly constituted governmental authority, but only if stated separately from the selling price of the goods or merchandise, or services, and collected from customers and such amounts are in fact paid to the appropriate governmental entities for which they are collected;

(iii) All food and beverage sales to employees of Tenant, not to exceed, however, one percent (1%) of Gross Revenues in any single month, and provided further that said sales are at a discount;

(iv) Tips paid to Tenant's employees by its customers, so long as such tips go directly to Tenant's employees (and not Tenant or Tenant's management); and

(v) Bona fide promotional discounts to Tenant's customers for food, beverages and other sales, up to a maximum of one percent (1%) of Gross Revenues in any single month.

"**Books and Records**" means all of Tenant's (and Tenant's affiliates and any person or entity operating under or pursuant to this Lease) books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Lease Area, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Lease Area, and any other bookkeeping documents Tenant utilizes in its business operations for the Lease Area.
Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Lease Area and all exclusions therefrom.

Initials:

Port DS DK

Tenant DS TS

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EXHIBIT F

DEPICTION OF PERMITTED USES

[To Be Attached]

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SKYSTAR
ROLLING ACROSS AMERICA

Initial :
Port: DS DK
Tenant: DS TS

SKYSTAR WHEEL FISHERMAN'S WHARF SPECIAL EVENT ATTRACTION

SCHEMATIC DESIGN & ASSOCIATED BUILDING PERMIT SUBMITTAL DOCUMENTS

OCTOBER 18, 2023

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2.4 Visitor Experience

3.0 Technical Drawings

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1.0 EXECUTIVE SUMMARY

1.1 Project Description
1.2 Current Operations
1.3 Project Participants

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1.1 PROJECT DESCRIPTION

The SkyStar Wheel is the largest portable Observation Wheel in the United States. Since it's debut in Louisville, Kentucky in 2017, the Sky Star Wheel has been thrilling its riders in every city it has traveled - from Louisville, to Norfolk, Virginia, to Cincinnati, Ohio and for the past three years, Golden Gate Park, San Francisco. During its journey across the country it has served hundreds of thousands of people annually with an impeccably safe operation enjoyed by the widest demographic imaginable... grandkids to grandparents enjoy SkyStar.

SkyStar Wheel LLC. is very pleased to be working closely with the City and Port of San Francisco to explore moving this world-class attraction from Golden Gate Park to the heart of Fisherman's Wharf in time for the 2023 APEC conference, and to help celebrate and reinvigorate San Francisco's role as a premiere international and regional tourist destination. We believe this limited-time special event attraction will give visitors to Fisherman's Wharf a unique opportunity to experience an exciting new attraction that will help to showcase the City with magnificent views of the Golden Gate Bridge, the Bay Bridge, the City skyline, Alcatraz, and the beautiful bay that surrounds it.

Local Visitors and Tourism organizations, and many of the key businesses that serve the tourism industry in San Francisco, have expressed their full support for the SkyStar Observation Wheel Special Event in the heart of Fisherman's Wharf, and we look forward to becoming part of that community and working closely with the Port and City to bring this unique, special event attraction to the waterfront.



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1.2 CURRENT OPERATIONS

Since 2019 SkyStar LLC has worked closely with the city of San Francisco and its Recreation and Parks division to bring the Wheel to San Francisco and begin operations in Golden Gate Park. Despite the challenges of the COVID pandemic we were able offer the thrill of the SkyStar Observation Wheel to hundreds of thousands of guests during our time in the park.

However, we have always believed that a limited engagement special event operation of the Wheel along the waterfront in San Francisco would bring the Wheel experience to many more guests throughout the year, and in doing so generate more tourism dollars for local businesses and the City.

Our current operation in Golden Gate Park is fully permitted by the State of California, San Francisco City Planning, SFFD, and all other relevant agencies, and has recently been inspected and licensed though 2024.

Attached are the current Certificates of Authorization issued by the State of California's *Department of Industrial Relations, Division of Occupational Safety and Health Amusement Ride and Tramway Unit*, the agency responsible for inspecting and permitting an attraction of this nature.



State of California
Department of Industrial Relations
Division of Occupational Safety and Health
Amusement Ride and Tramway Unit

Reciept of Certification

From Owner/Operator

Golden Gate Park

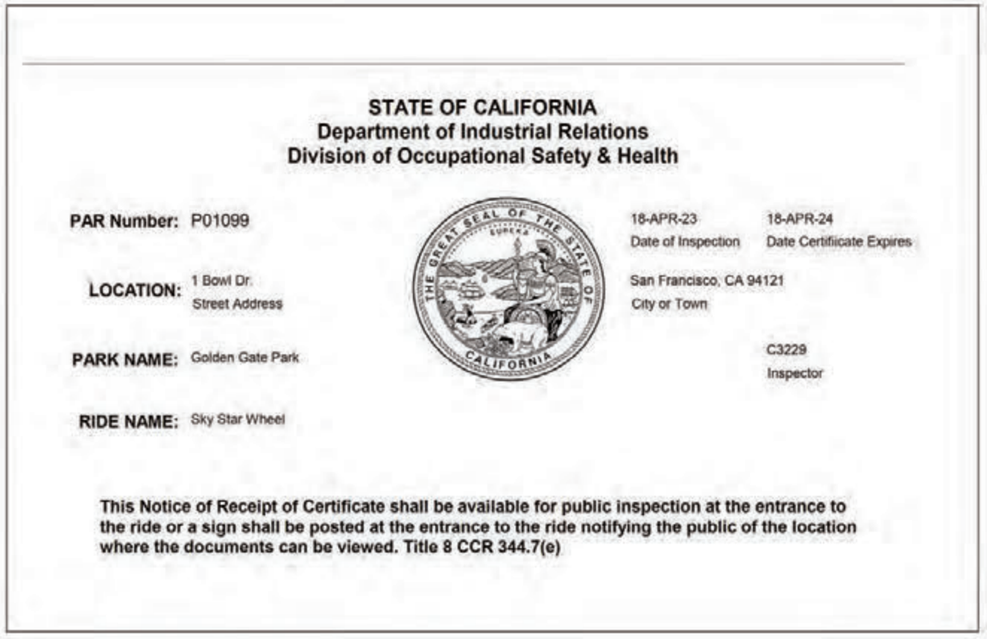
1 Bowl Drive, San Francisco, CA 94121

The State of California, Division of Occupational Safety and Health, Permanent Amusement Ride Section has received your Certification applicable to the ride listed below, and has determined that the ride meets the requirements of Title 8, CCR Section 344.7(b). This Certificate expires on May 12, 2023

SkyStar Wheel
PAR # 1099

Bobby Park
Senior Safety Engineer, Supervisor, QSI
Amusement Ride and Tramway Unit
Division of Occupational Safety and Health
Santa Ana

Scott Prather
Senior Safety Engineer, Supervisor, QSI
Amusement Ride and Tramway Unit
Division of Occupational Safety and Health
Sacramento



STATE OF CALIFORNIA
Department of Industrial Relations
Division of Occupational Safety & Health

PAR Number: P01099

18-APR-23 Date of Inspection
18-APR-24 Date Certificate Expires

LOCATION: 1 Bowl Dr. Street Address
San Francisco, CA 94121 City or Town

PARK NAME: Golden Gate Park

C3229 Inspector

RIDE NAME: Sky Star Wheel

This Notice of Receipt of Certificate shall be available for public inspection at the entrance to the ride or a sign shall be posted at the entrance to the ride notifying the public of the location where the documents can be viewed. Title 8 CCR 344.7(e)

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1.3 PROJECT PARTICIPANTS

PORT OF SAN FRANCISCO

SKYSTAR ROLLING ACROSS AMERICA

THE CITY AND COUNTY OF SAN FRANCISCO · SEAL · ORO EN PAZ FIERRO EN GUERRA

Fisherman's WHARF SAN FRANCISCO

SAN FRANCISCO BOUDIN SINCE 1849 SOURDOUGH FRESH EVERY DAY

BARBEE planning | design

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2.0 DESIGN OVERVIEW

2.1 Site Location
2.2 Existing Site Plan
2.3 Proposed Site Plan - Special Event
2.4 Temporary Construction Staging Area
2.4 Visitor Experience

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2.1 SITE LOCATION

These images show the existing parking lot facility at the Boudin Bakery in Fisherman's Wharf that is proposed to become the temporary home of the SkyStar Observation Wheel during it's limited-time engagement along the waterfront in San Francisco.

The yellow area denotes the temporary site footprint of SkyStar Wheel, which will occupy 34 existing parking spaces.



Current view looking West

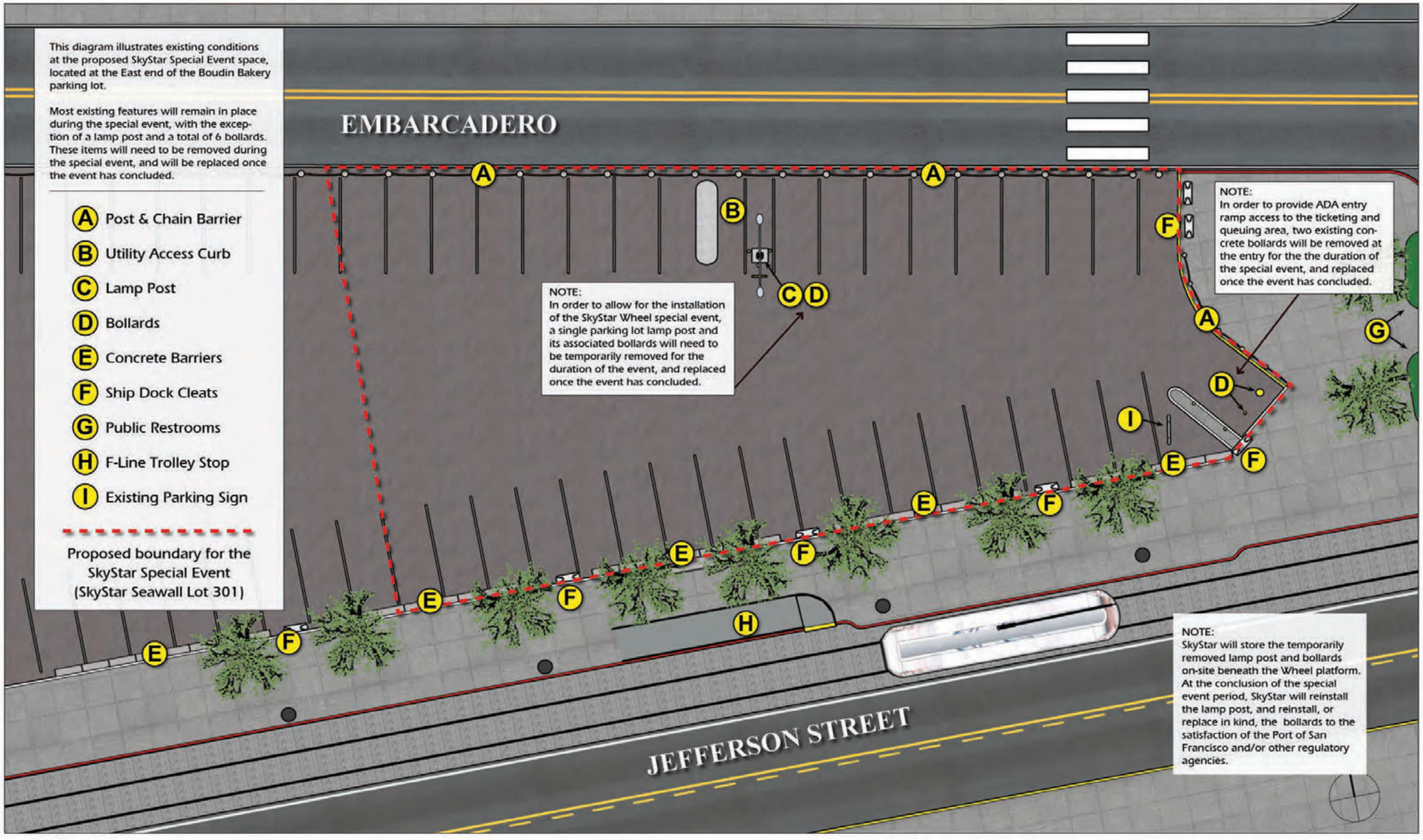


Current view looking NorthWest



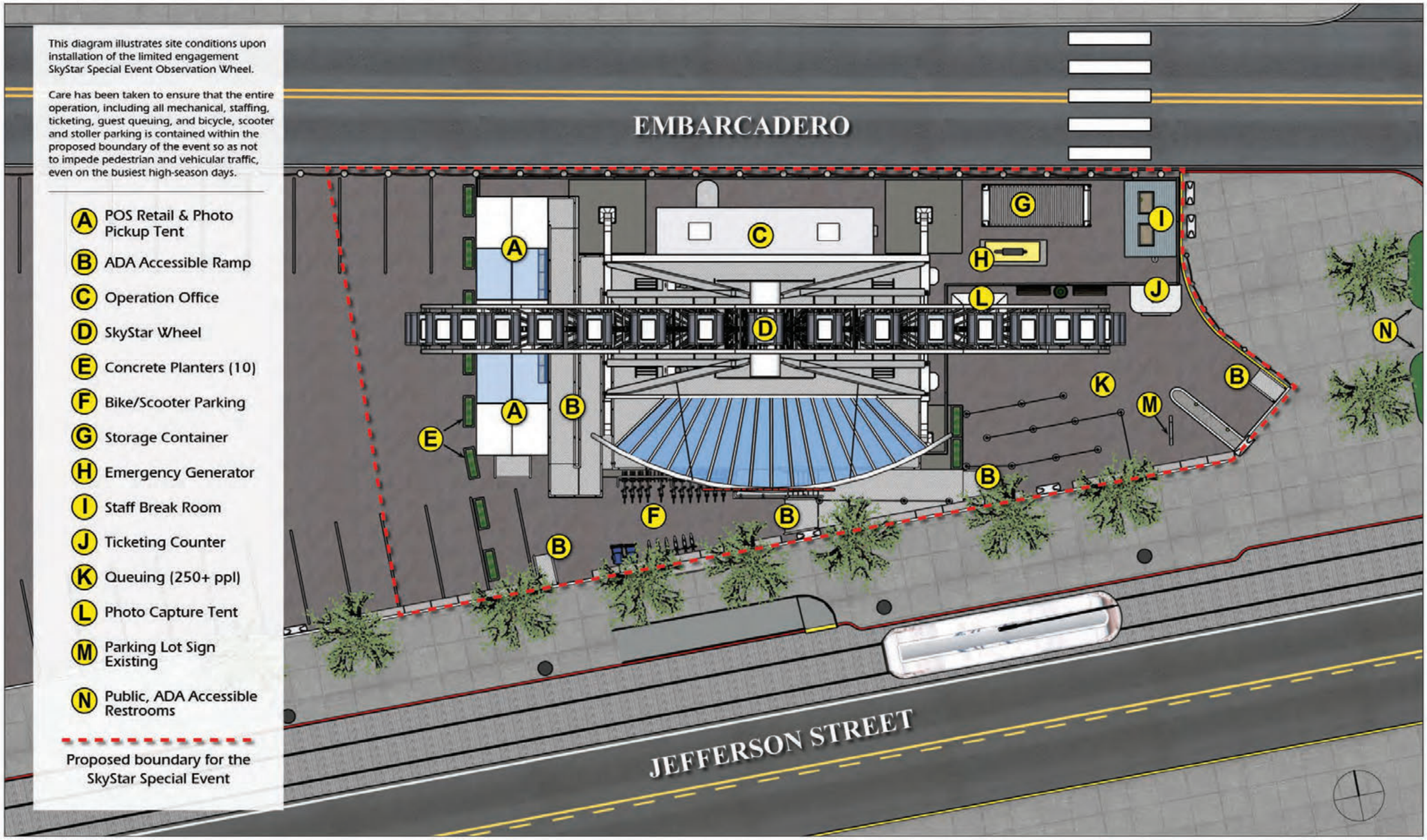
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2.2 EXISITNG SITE PLAN



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2.3 PROPOSED SITE PLAN - SPECIAL EVENT



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2.4 TEMPORARY CONSTRUCTION STAGING AREA



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2.5 VISITOR EXPERIENCE



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1. VIEW LOOKING SOUTH ALONG JEFFERSON STREET



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2. AERIAL VIEW LOOKING TOWARD PIER 43 ARCH



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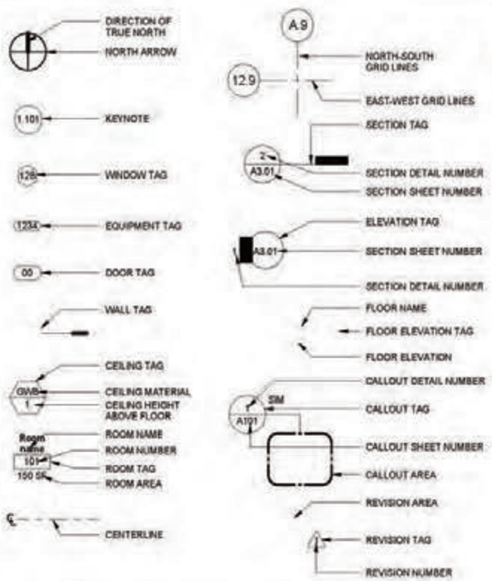
3.0 TECHNICAL DRAWINGS

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ABBREVIATIONS

@	AT	LAM.	LAMINATED
⌀	DIAMETER	LBS.	POUNDS
#	NUMBER	LEV.	LEVEL
		LOC.	LOCATION
A.C.T.	ACOUSTIC CEILING TILE		
A.D.	AREA DRAIN	MAX.	MAXIMUM
ADJ.	ADJACENT, ADJUSTABLE	M.D.F.	MEDIUM DENSITY FIBERBOARD
A.F.F.	ABOVE FINISHED FLOOR	MECH.	MECHANICAL
AL.	ALUMINUM	MEMB.	MEMBRANE
A.T.C.	ACOUSTIC TILE CEILING	MEZZ.	MEZZANINE
		MFR.	MANUFACTURER
BD.	BOARD	MIN.	MINIMUM
BETW.	BETWEEN	MISC.	MISCELLANEOUS
BLKG.	BLOCKING	M.O.	MASONRY OPENING
BM.	BEAM	MOD.	MODULE
B.O.	BOTTOM OF	M.S.	MACHINE SCREW
BOT.	BOTTOM	MTD.	MOUNTED
BRG.	BEARING	MTL.	METAL
BTWN.	BETWEEN		
		(N)	NEW
CAB.	CABINET	N.I.C.	NOT IN CONTRACT
CER.	CERAMIC	NO.	NUMBER
C.J.	CONTROL JOINT	NOM.	NOMINAL
℄	CENTER LINE	N.T.S.	NOT TO SCALE
CL.	CLOSET		
CLG.	CEILING	O.A.D.	OVERALL DIMENSION
CLR.	CLEAR	O.C.	ON CENTER
C.M.U.	CONCRETE MASONRY UNIT	O.D.	OUTSIDE DIAMETER
COL.	COLUMN	OPNG.	OPENING
CONC.	CONCRETE	OPP.	OPPOSITE
CONS.	CONSTRUCTION	O.F.C.I.	OWNER FURNISHED/ CONTRACTOR INSTALLED
CONT.	CONTINUOUS		
COOR.	COORDINATE	O.F.O.I.	OWNER FURNISHED/ OWNER INSTALLED
C.R.	COLD ROLLED		
C.T.	CERAMIC TILE	O.F.V.I.	OWNER FURNISHED/ VENDOR INSTALLED
CTSK.	COUNTERSINK		
		O.H.	OVAL HEAD
DBL.	DOUBLE	O.H.	OVERHEAD
DCA.	DRILLED CONCRETE ANCHOR		
DET.	DETAIL	P. LAM.	PLASTIC LAMINATE
D.F.	DRINKING FOUNTAIN	P.	PROPERTY LINE
DIA.	DIAMETER	PARA.	PARALLEL
DIM.	DIMENSION	PERP.	PERPENDICULAR
DIR.	DIRECTORY	PL.	PLATE
DISP.	DISPENSER	PLY.	PLYWOOD
DN.	DOWN	PLYWD.	PLYWOOD
DR.	DOOR	PT.	PAINT
DTL.	DETAIL	PTD.	PAINTED
DWG.	DRAWING	PTN.	PARTITION
(E)	EXISTING	Q.T.	QUARRY TILE
EA.	EACH	QTY.	QUANTITY
E.J.	EXPANSION JOINT		
EL.	ELEVATION	R.	RADIUS
ELEC.	ELECTRICAL	RAD.	RADIUS
EQ.	EQUAL	R.D.	ROOF DRAIN
EQUIP.	EQUIPMENT	RE.	REFER TO
E.W.C.	ELECTRIC WATER COOLER	REQD.	REQUIRED
EXIST.	EXISTING	RES.	RESILIENT
EXP.	EXPANSION	RESIL.	RESILIENT
EXP. JT.	EXPANSION JOINT	R.H.	ROUND HEAD
EXT.	EXTERIOR	RM.	ROOM
		R.O.	ROUGH OPENING
F.D.	FLOOR DRAIN		
F.E.	FIRE EXTINGUISHER	S.C.	SOLID CORE
F.E.C.	FIRE EXTINGUISHER CABINET	SCHED.	SCHEDULE
F.H.	FLAT HEAD	SECT.	SECTION
F.H.C.	FIRE HOSE CABINET	S.E.D.	SEE ELECTRICAL DRAWINGS
FIN.	FINISH	S.F.	SQUARE FOOT
FLR.	FLOOR	SHT.	SHEET
FLUOR.	FLUORESCENT	SIM.	SIMILAR
F.O.	FACE OF	S.M.D.	SEE MECHANICAL DRAWINGS
F.O.S.	FACE OF STUD	S.M.S.	SHEET METAL SCREW
F.O.W.	FACE OF WALL	S.P.D.	SEE PLUMBING DRAWINGS
F.S.	FULL SIZE	S.S.	STAINLESS STEEL
FURR.	FURRING	S.S.D.	SEE STRUCTURAL DRAWINGS

SYMBOLS LEGEND



SKYSTAR OBSERVATION WHEEL
SPECIAL EVENT ATTRACTON

2860 TAYLOR STREET, FISHERMAN'S WHARF
SAN FRANCISCO, CA 94133

SITE LOCATION MAP



PROJECT LOCATION



SCOPE OF WORK

THE PORTABLE SKYSTAR OBSERVATION WHEEL, WHICH TRAVELS AROUND THE COUNTRY AND IS CURRENTLY IN GOLDEN GATE PARK SINCE 2020, IS PROPOSED TO MOVED TO A NEW TEMPORARY LOCATION AT THE EAST-END OF THE BOUDIN BAKERY PARKING LOT IN FISHERMAN'S WHARF FOR A 3-YEAR SPECIAL EVENT, IN TIME FOR THE 2023 ASIAN PACIFIC ECONOMIC CONFERENCE, HOSTED BY SAN FRANCISCO IN NOVEMBER 2023.

THE WHEEL ITSELF, AND ASSOCIATED STRUCTURES INCLUDING TICKETING KIOSK, RETAIL AND PHOTO PICKUP TENTING, ETC. ARE PREFRABRICATED COMPONENTSOF THE RIDE PACKAGE, AND ALL OTHER STRUCTRES BROUGHT TO THE SITE IN SERVICE OF THE WHEEL AND THIS SPECIAL EVENT, WILL BE TEMPORARY IN NATURE.

APPLICABLE CODES AND STANDARDS

2022 CALIFORNIA BUILDING CODE
2022 PORT OF SF BUILDING CODE
2022 CALIFORNIA ELECTRICAL CODE
2022 CALIFORNIA MECHANICAL CODE
2022 CALIFORNIA PLUMBING CODE
2022 CALIFORNIA FIRE CODE
2022 SAN FRANCISCO FIRE CODE

2022 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF CALOSHA, AMUSEMENT RIDE SECTION
TEMPORARY AMUSEMENT RIDES (TAR)

PROJECT DIRECTORY

TENANT
SKYSTAR WHEEL LLC.
1610 DES PERES ROAD, SUITE 130
ST. LOUIS, MO 63131
CONTACT: TODD SCHNEIDER
PHONE: 314-308-2783
EMAIL: TODD@SKYSTARWHEEL.COM

DESIGNER
BARBEE PLANNING | DESIGN
2 CARMEL WAY
SAN ANSELMO, CA 94960
CONTACT: TODD BARBEE
PHONE: 415-720-7277
EMAIL: TODDBARBEE@COMCAST.NET

LANDLORD
PORT OF SAN FRANCISCO
PIER 1, THE EMBARCADERO,
SAN FRANCISCO, CA 94111
PHONE: 415-274-0400

ARCHITECT OF RECORD
BRW ARCHITECTS
1620 MONTGOMERY STREET
SAN FRANCISCO, CA 94111
CONTACT: CHRIS FORD, AIA - PRINCIPAL
PHONE: 415-749-2670
EMAIL: CFORD@BRWARCH.COM

SHEET INDEX

GENERAL

G0.0 COVERSHEET

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A1.1 SKYSTAR PLAN VIEW
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SP.0 SKYSTAR IDENTIFYING SIGNAGE
SP.1 SKYSTAR INFORMATION, WAYFINDING & EXIT SIGNAGE

BUILDING PERMIT SUBMITTAL DOCUMENTS (BRW ARCHITECTS)

ADA.1 DOORS, THRESHOLDS, & NOTES
ADA.2 STAIRS, RAMPS, ALCOVES, & NOTES
ADA.3 ACCESSIBLE DESIGN REQUIREMENTS

CODE CLASSIFICATION

PROJECT ADDRESS	EAST END OF BOUDIN BAKERY PARKING	
SEA WALL SECTION#	N/A	
	EXISTING	PROPOSED
USE	PARKING LOT	SPECIAL EVENT
OCCUPANCY	N/A	NO CHANGE
CONSTRUCTION CLASSIFICATION	N/A	NO CHANGE
GROSS BUILDING AREA	N/A	NO CHANGE
TOTAL BUILDING STORIES	N/A	NO CHANGE
FIRE SPRINKLER SYSTEM	NOT REQUIRED	

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Client:
SKYSTAR WHEEL LLC.
SKYSTAR FISHERMAN'S WHARF
1610 DES PERES ROAD, SUITE 130
ST. LOUIS, MO 63131

Designer:
TODD BARBEE
BARBEE PLANNING | DESIGN
2 CARMEL WAY
SAN ANSELMO, CA 94960

Project:
SKYSTAR OBSERVATION WHEEL
SPECIAL EVENT ATTRACTION
2860 TAYLOR STREET
SAN FRANCISCO, CA 94133

Project Number:
SKYSTAR82023

Rev.	Issue	Date
1	SCHEMATIC	08/18/2023
2	SCHEMATIC	08/23/2023
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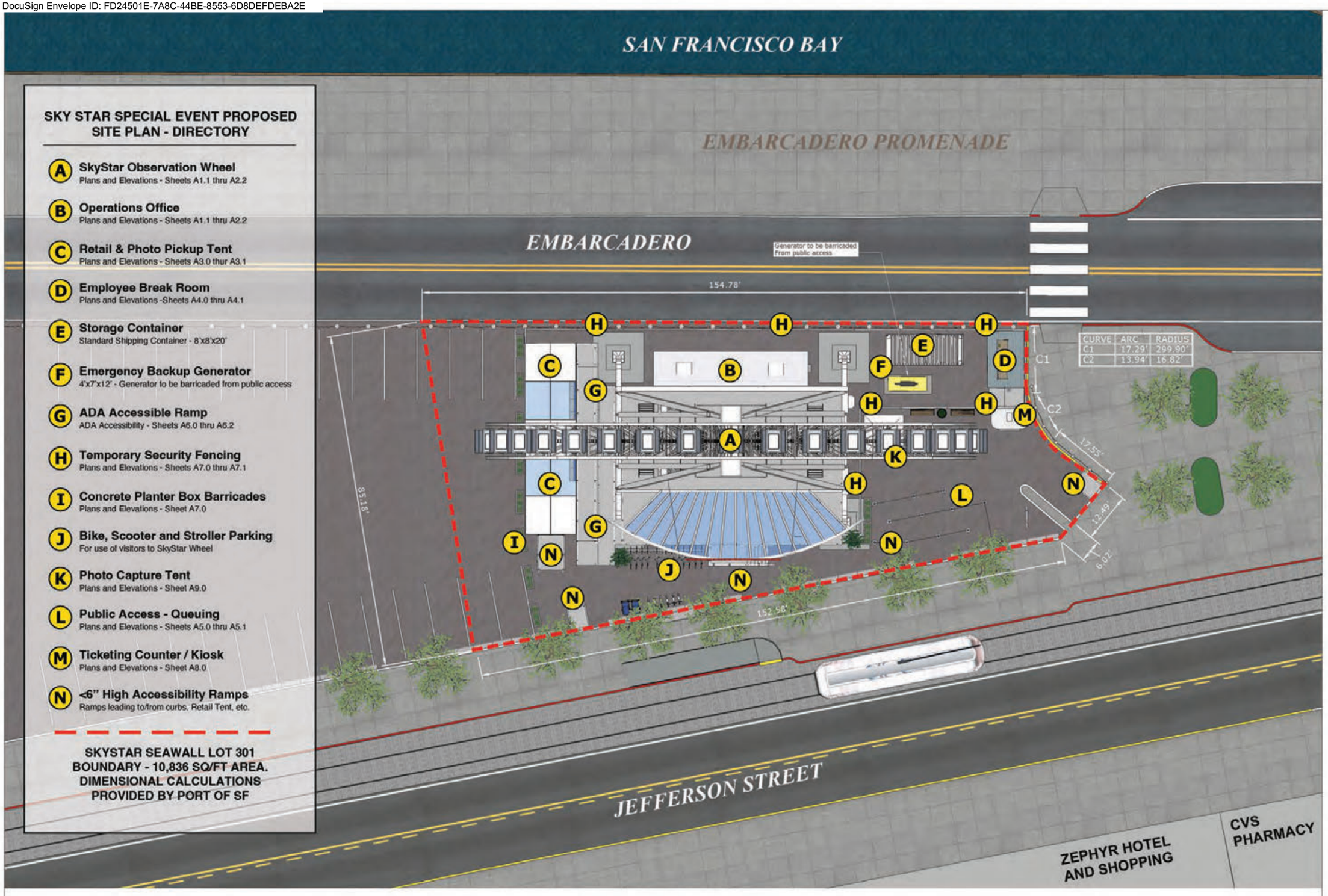
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GENERAL INFORMATION

Drawn by: TB Checked by: CT

Sheet Number:
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SKY STAR SPECIAL EVENT PROPOSED SITE PLAN - DIRECTORY

- **A** SkyStar Observation Wheel
  Plans and Elevations - Sheets A1.1 thru A2.2
- **B** Operations Office
  Plans and Elevations - Sheets A1.1 thru A2.2
- **C** Retail & Photo Pickup Tent
  Plans and Elevations - Sheets A3.0 thur A3.1
- **D** Employee Break Room
  Plans and Elevations -Sheets A4.0 thru A4.1
- **E** Storage Container
  Standard Shipping Container - 8'x8'x20'
- **F** Emergency Backup Generator
  4'x7'x12' - Generator to be barricaded from public access
- **G** ADA Accessible Ramp
  ADA Accessibility - Sheets A6.0 thru A6.2
- **H** Temporary Security Fencing
  Plans and Elevations - Sheets A7.0 thru A7.1
- **I** Concrete Planter Box Barricades
  Plans and Elevations - Sheet A7.0
- **J** Bike, Scooter and Stroller Parking
  For use of visitors to SkyStar Wheel
- **K** Photo Capture Tent
  Plans and Elevations - Sheet A9.0
- **L** Public Access - Queuing
  Plans and Elevations - Sheets A5.0 thru A5.1
- **M** Ticketing Counter / Kiosk
  Plans and Elevations - Sheet A8.0
- **N** <6" High Accessibility Ramps
  Ramps leading to/from curbs, Retail Tent, etc.

SKYSTAR SEAWALL LOT 301 BOUNDARY - 10,836 SQ/FT AREA. DIMENSIONAL CALCULATIONS PROVIDED BY PORT OF SF

1 SKYSTAR PORTABLE OBSERVATION WHEEL - SITE PLAN
A1.0 *scale: 1" = 11'*

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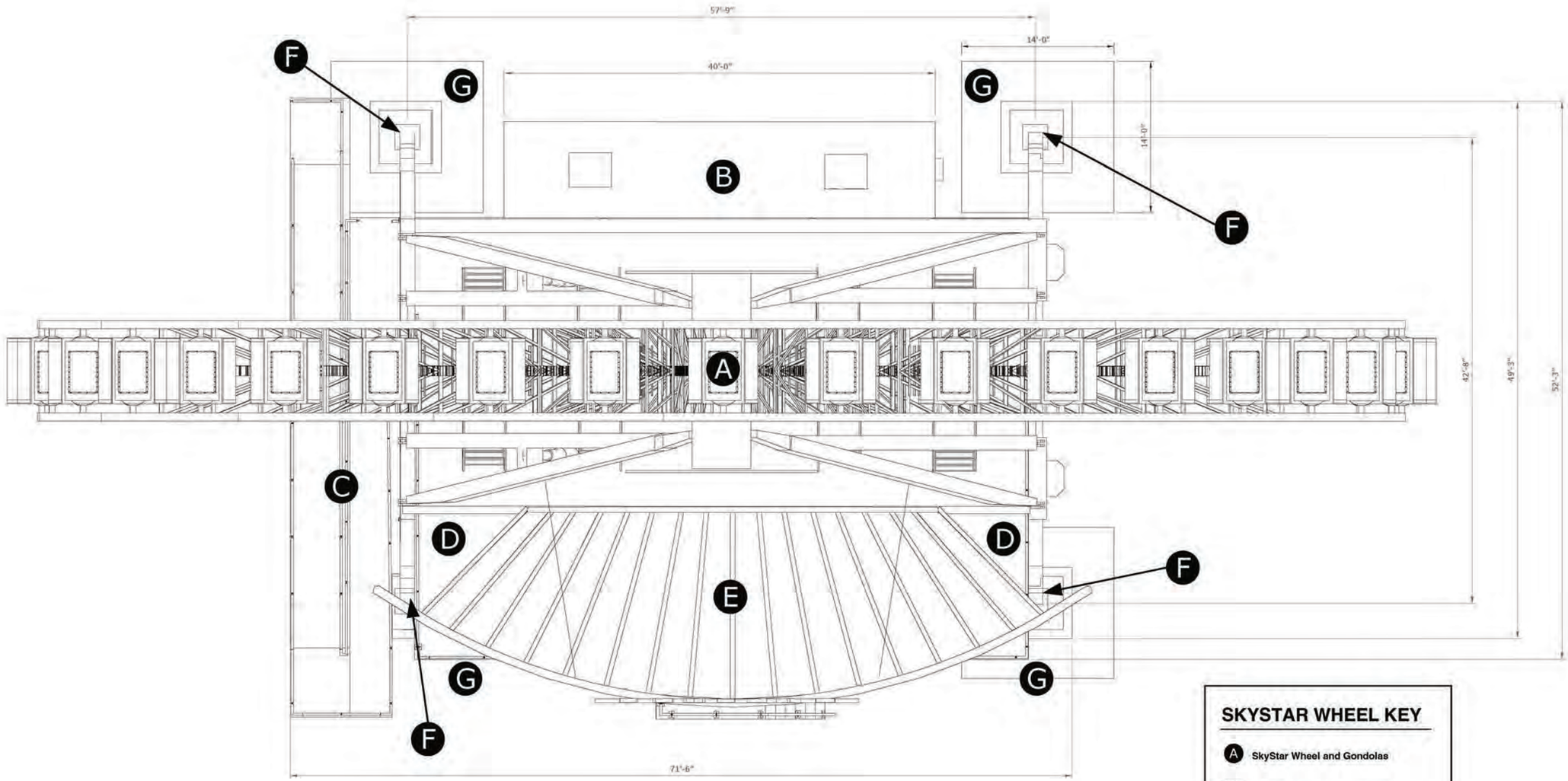
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1" = 11'

Drawing Description:
PROPOSED SKYSTAR PORTABLE WHEEL SITE PLAN DIRECTORY

Drawn by: TB Checked by: CT

Sheet Number:
A1.0

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SKYSTAR MAXIMUM OCCUPANT LOAD - 215PPL

DIMENSIONAL CALCULATIONS NOTED HERE ARE PROVIDED BY MANUFACTURER - SEE SHEET A2.3

SKYSTAR WHEEL KEY

- A SkyStar Wheel and Gondolas
- B SkyStar Operations and Offices
- C ADA Compliant Accessibility Ramp
- D SkyStar Platform and Stairs
- E SkyStar Awning
- F SkyStar Platform and Wheel Footings
- G Mega Deck HDPE Composite Mat

1 SKYSTAR OBSERVATION WHEEL - PLAN VIEW
A1.1 *scale: 1" = 5'*

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Scale:
1" = 5'

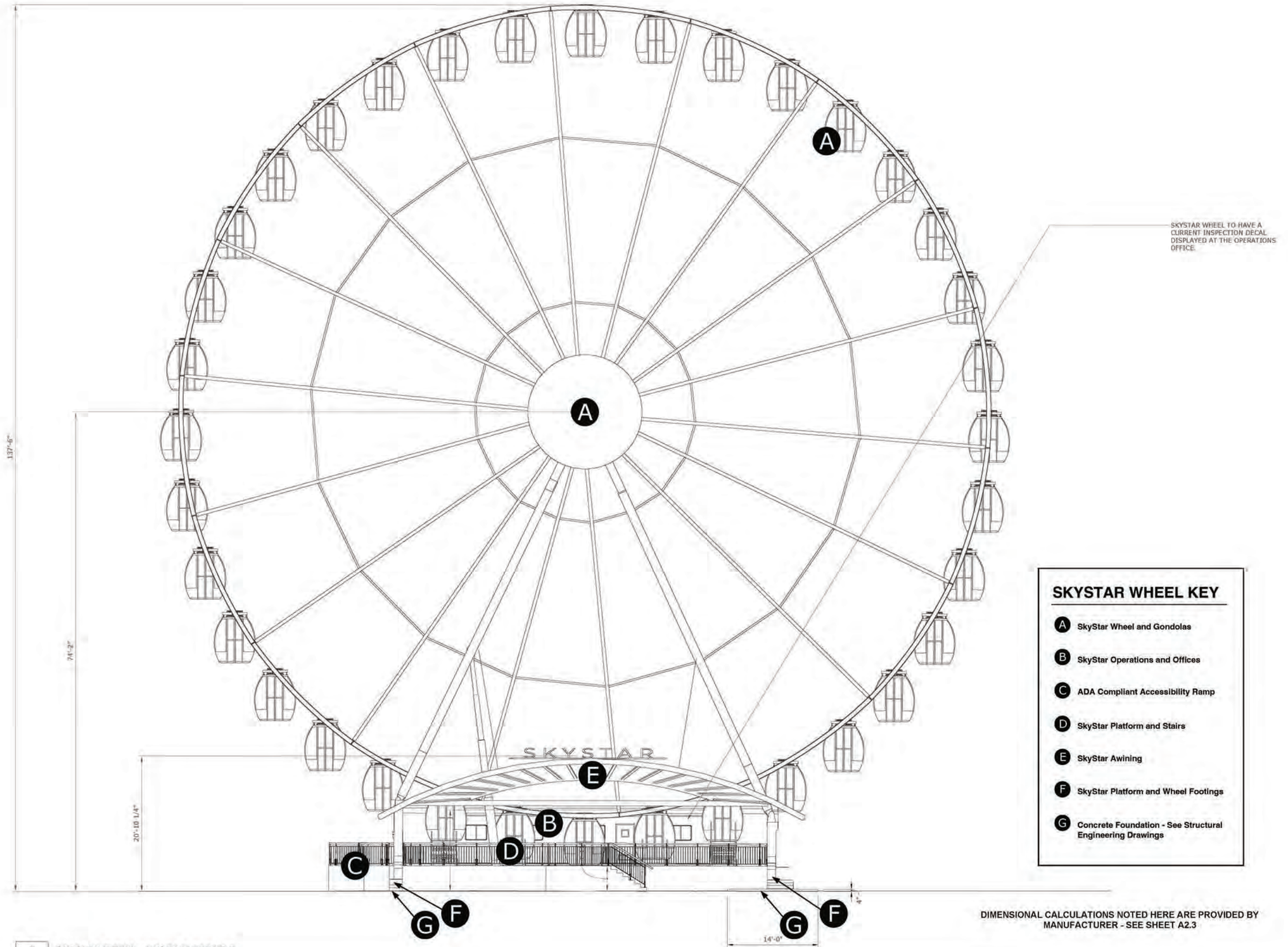
Drawing Description:
SKYSTAR PORTABLE WHEEL
PLAN VIEW

Drawn by: TB Checked by: CT

Sheet Number:

A1.1

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SKYSTAR WHEEL KEY

- A SkyStar Wheel and Gondolas
- B SkyStar Operations and Offices
- C ADA Compliant Accessibility Ramp
- D SkyStar Platform and Stairs
- E SkyStar Awining
- F SkyStar Platform and Wheel Footings
- G Concrete Foundation - See Structural Engineering Drawings

DIMENSIONAL CALCULATIONS NOTED HERE ARE PROVIDED BY MANUFACTURER - SEE SHEET A2.3

1 SKYSTAR WHEEL - FRONT ELEVATION
A2.0 *scale: 1" = 7'*

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1" = 7'

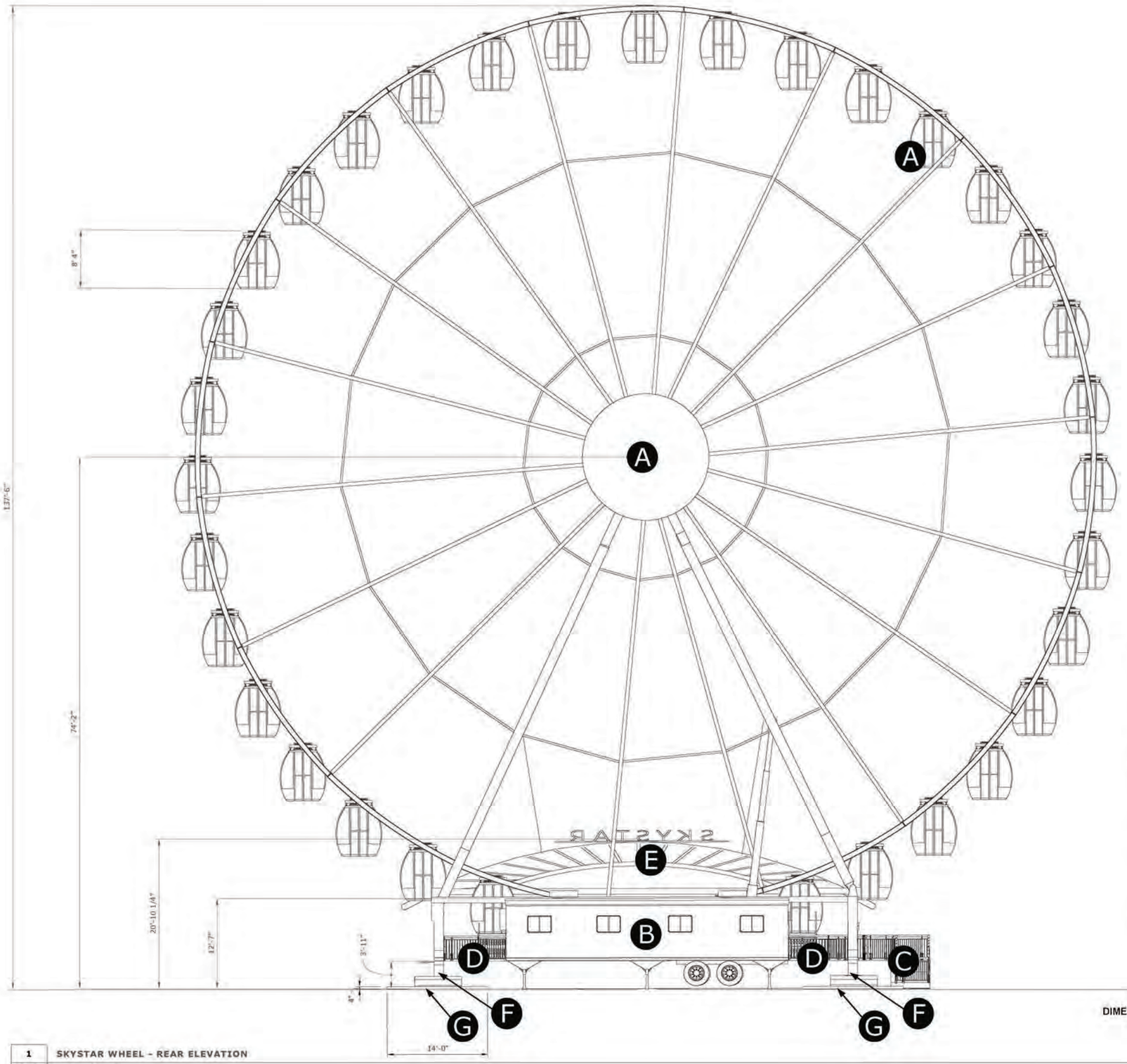
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SKYSTAR PORTABLE WHEEL
FRONT ELEVATION

Drawn by: TB Checked by: CT

Sheet Number:

A2.0

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SKYSTAR WHEEL KEY

- A SkyStar Wheel and Gondolas
- B SkyStar Operations and Offices
- C ADA Compliant Accessibility Ramp
- D SkyStar Platform and Stairs
- E SkyStar Awining
- F SkyStar Platform and Wheel Footings
- G Concrete Foundation - See Structural Engineering Drawings

DIMENSIONAL CALCULATIONS NOTED HERE ARE PROVIDED BY MANUFACTURER - SEE SHEET A2.3

1	SKYSTAR WHEEL - REAR ELEVATION
A2.1	*scale: 1" = 7'*

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Scale:
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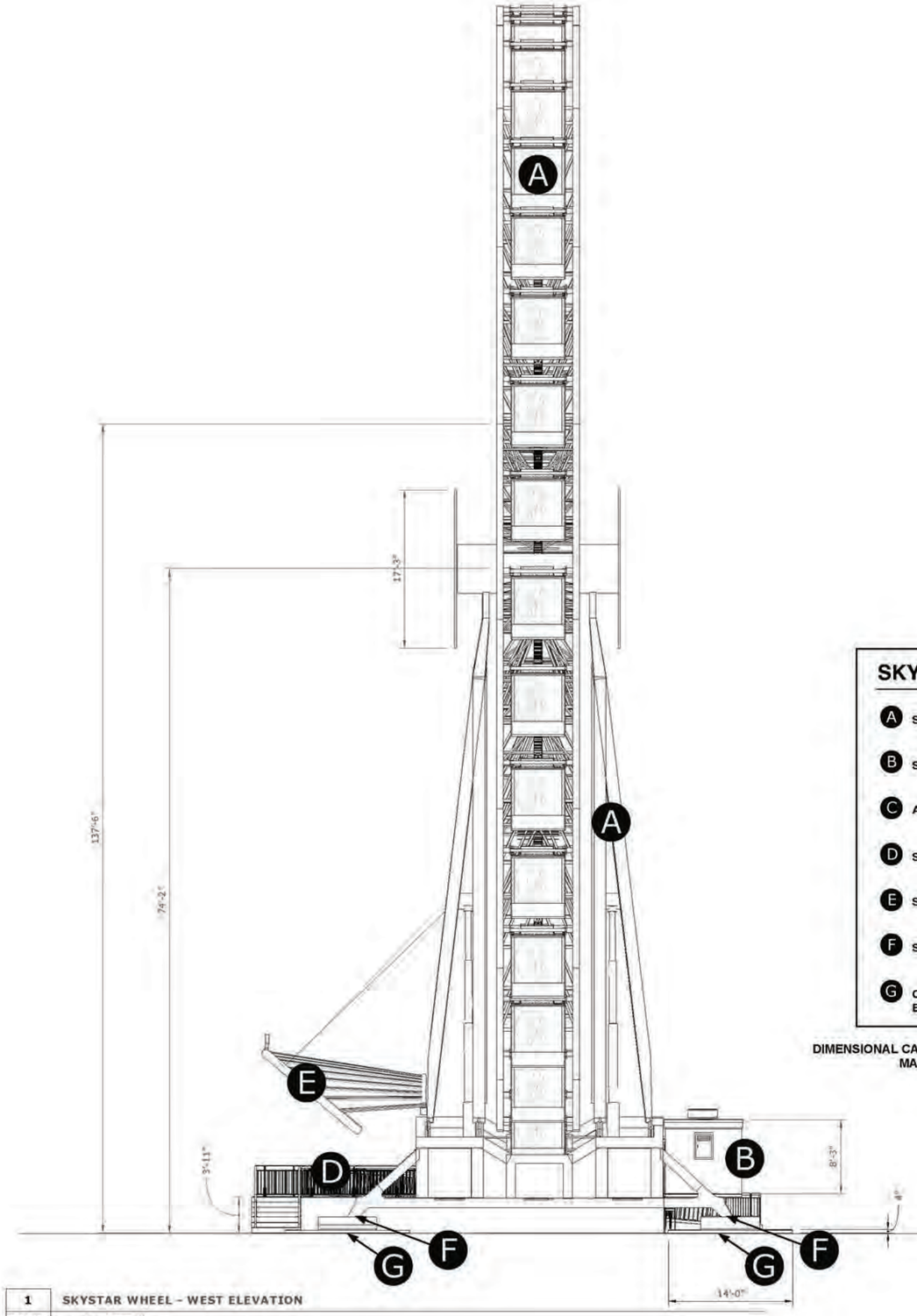
Drawing Description:
SKYSTAR PORTABLE WHEEL
REAR ELEVATION
PACKAGE

Drawn by: TB Checked by: CT

Sheet Number:

A2.1

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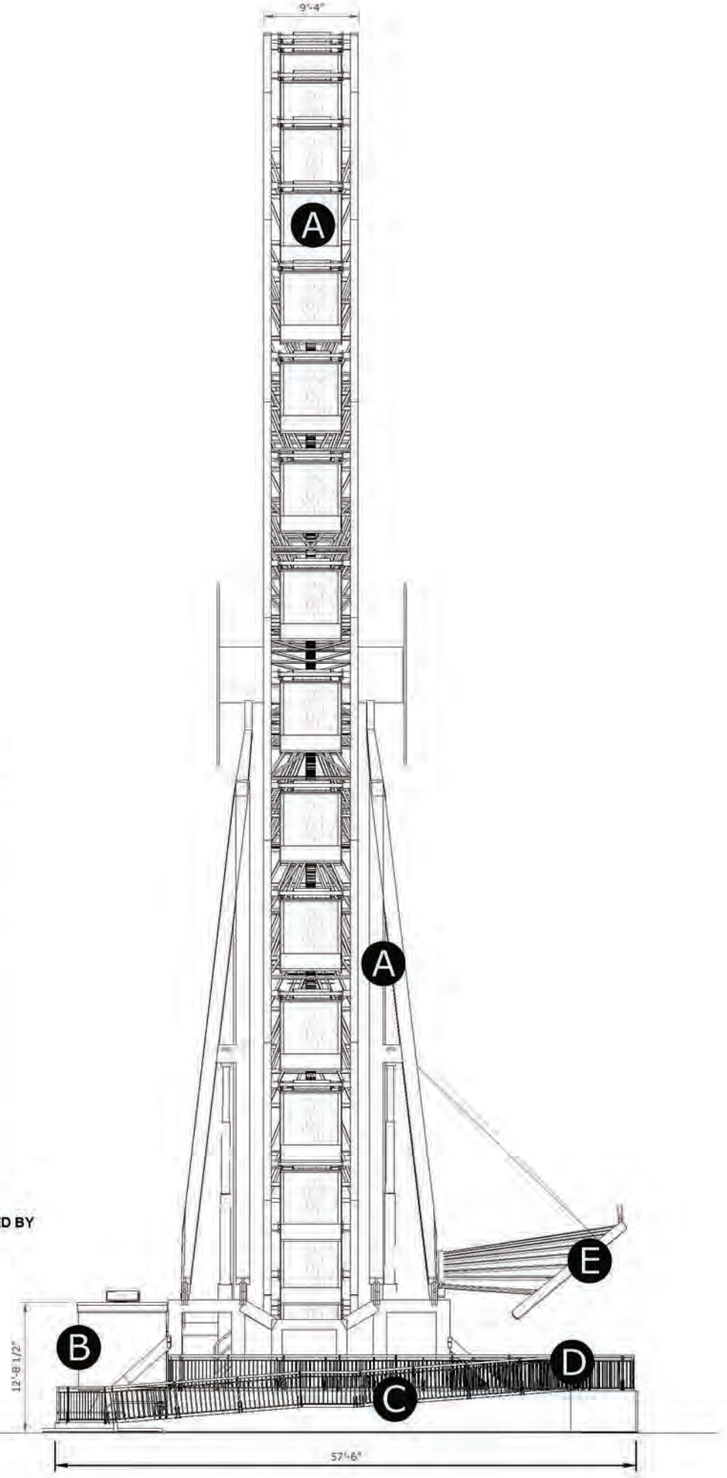


1 SKYSTAR WHEEL – WEST ELEVATION
A2.2 *scale: 1" = 7'*

SKYSTAR WHEEL KEY

- A SkyStar Wheel and Gondolas
- B SkyStar Operations and Offices
- C ADA Compliant Accessibility Ramp
- D SkyStar Platform and Stairs
- E SkyStar Awining
- F SkyStar Platform and Wheel Footings
- G Concrete Foundation - See Structural Engineering Drawings

DIMENSIONAL CALCULATIONS NOTED HERE ARE PROVIDED BY MANUFACTURER - SEE SHEET A2.3



2 SKYSTAR WHEEL – EAST ELEVATION
A2.2 *scale: 1" = 7'*

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13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
1" = 7'

Drawing Description:
SKYSTAR PORTABLE WHEEL RIGHT AND LEFT ELEVATION PACKAGE

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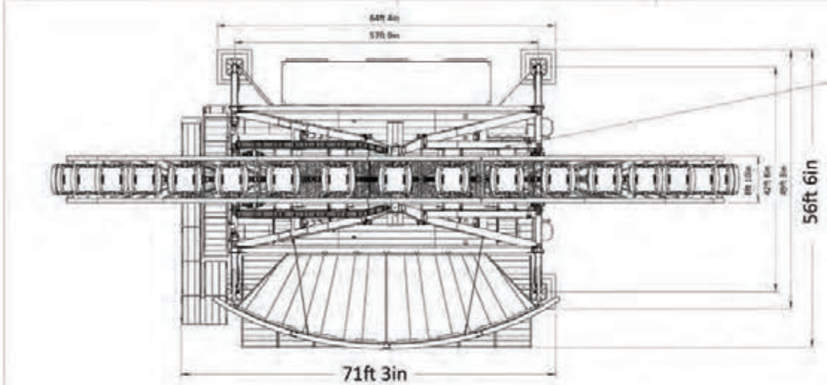
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SKYSTAR
ROLLING ACROSS AMERICA

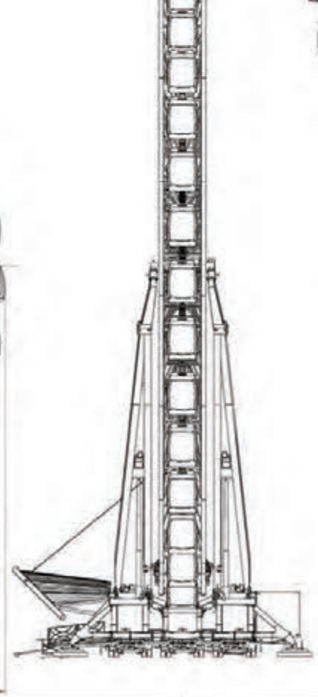
SKYSTAR
ROLLING ACROSS AMERICA



SKYSTAR WHEEL TO HAVE A CURRENT INSPECTION DECAL DISPLAYED AT THE OPERATIONS OFFICE.







MKS 4536 USA

A1

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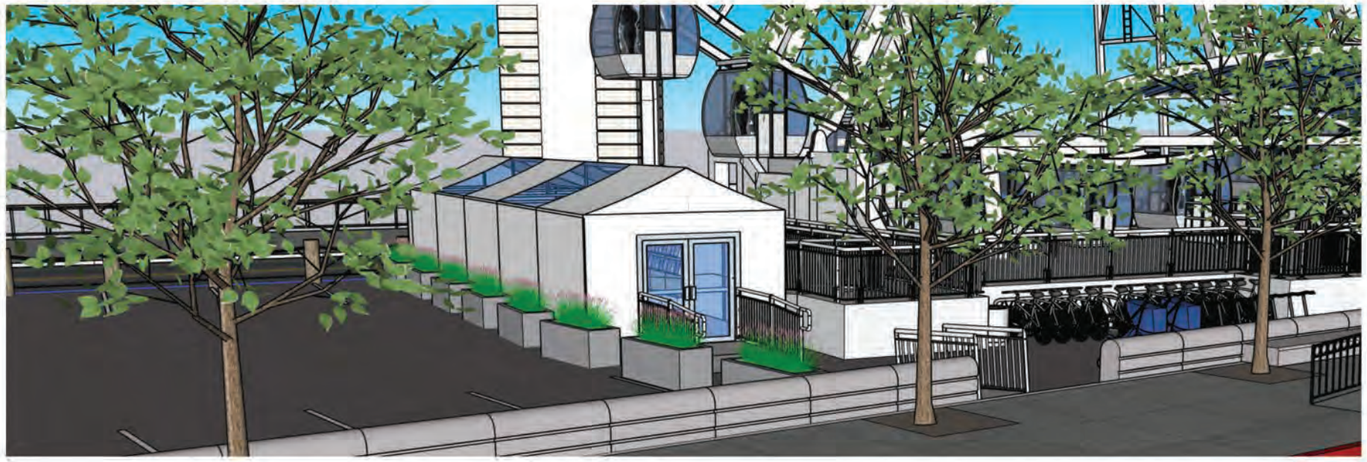
Drawing Description:
MONDIAL RIDES -
SKYSTAR USA WHEEL
DIMENSIONS

Drawn by: TB Checked by: CT

Sheet Number:

A2.3

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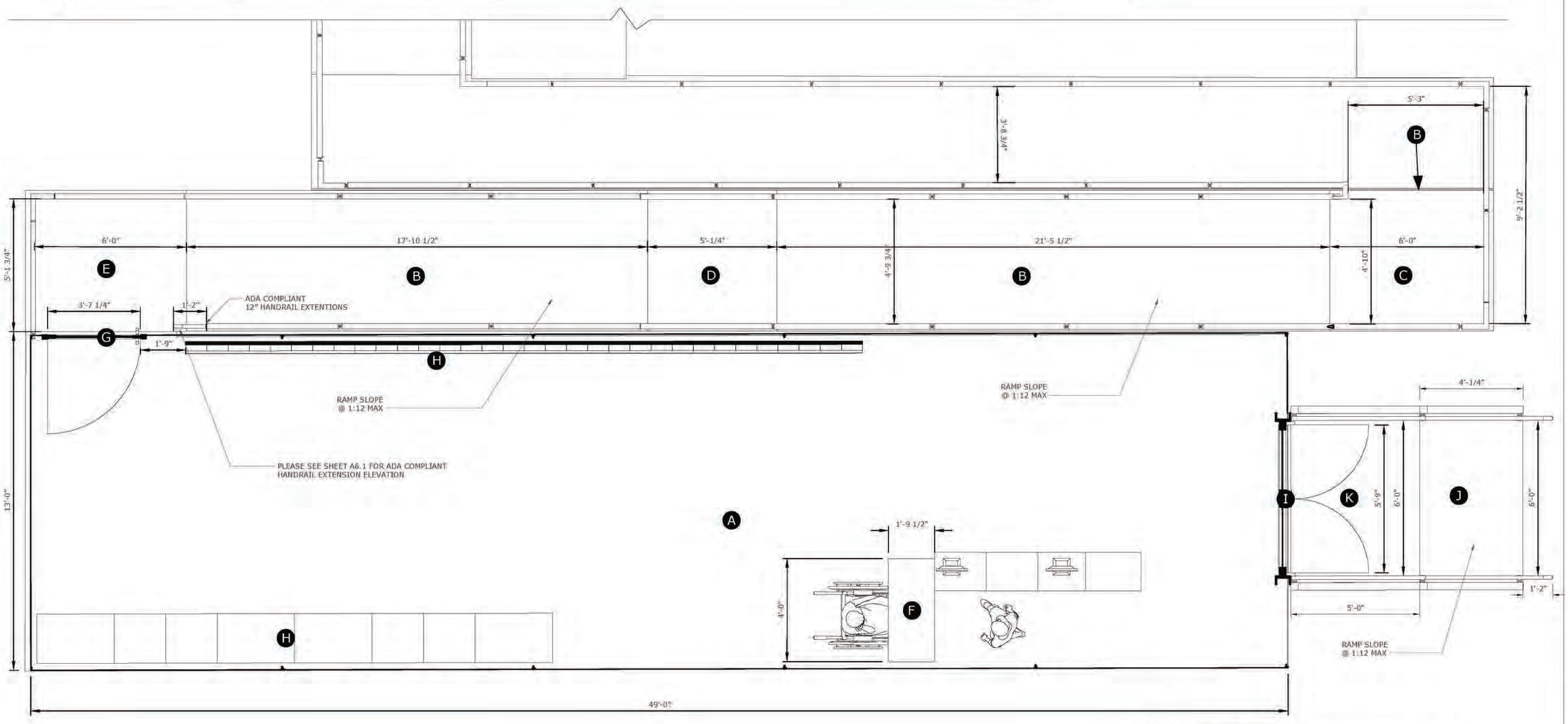


SKYSTAR RETAIL AND PHOTO PICKUP TENT

After guests leave the attraction they must exit through the Retail and Photo Pickup Tent. The Tent also provides access to the Wheel for Disabled guests being escorted to the gondolas by a SkyStar Guest Services Associate.

The Doors of the tent will remain open during Business hours.

- A — Retail and Photo Pickup Tent
- B — Ride Egress Ramp ADA Ingress/Egress
- C — Top Landing
- D — Intermediate Landing
- E — Lower Turning Landing
- F — ADA Accessible Retail Counter
- G — Tent Entry from Ride Egress
- H — Retail Shelving and Photo Pickup
- I — Exit and ADA Ingress/Egress
- J — Retail Tent ADA Ramp (1:12 Slope)
- K — Retail Tent ADA Landing



NOTE:
PREFABRICATED TENT STRUCTURE PART OF RIDE PACKAGE.
PLEASE SEE BRW ARCHITECTS ADA SHEETS FOR ACCESSIBILITY DRAWINGS

1	RETAIL AND PHOTO PICKUP TENT AND ACCESSIBILITY RAMP - PLAN VIEW
A3.0	*scale: 1/2" = 1'*

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Scale:
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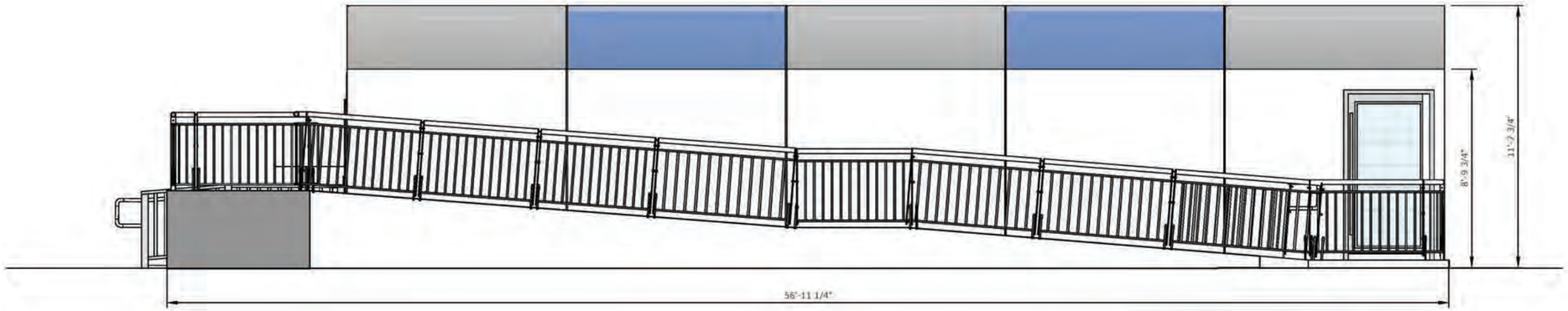
Drawing Description:
RETAIL AND PHOTO PICKUP TENT & ACCESSIBILITY RAMP PLAN VIEW

Drawn by: TB Checked by: CT

Sheet Number:

A3.0

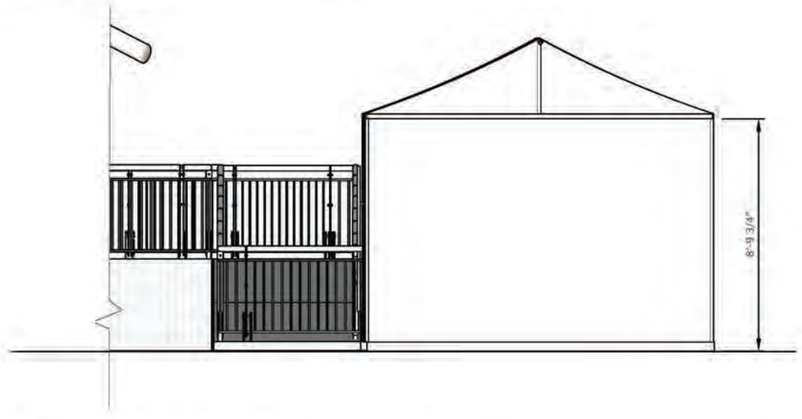
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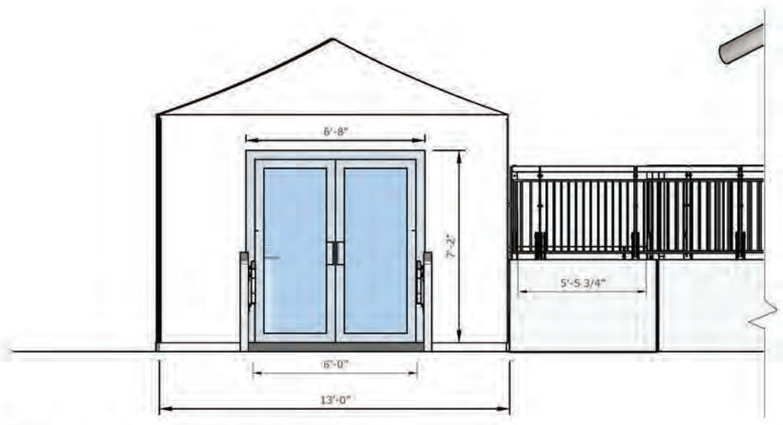
1	RETAIL AND PHOTO PICKUP TENT - WEST ELEVATION
A3.1	*scale: 3/8" = 1'*



2	RETAIL AND PHOTO PICKUP TENT - EAST ELEVATION
A3.1	*scale: 3/8" = 1'*



3	RETAIL AND PHOTO PICKUP TENT - SOUTH ELEVATION
A3.1	*scale: 3/8" = 1'*



4	RETAIL AND PHOTO PICKUP TENT - NORTH ELEVATION
A3.1	*scale: 3/8" = 1'*

NOTE:
PREFABRICATED TENT STRUCTURE PART OF RIDE PACKAGE.
PLEASE SEE BRW ARCHITECTS ADA SHEETS FOR ACCESSIBILITY DRAWINGS

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SKYSTAR FISHERMAN'S WHARF
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ST. LOUIS, MO 63131

Designer:

TODD BARBEE
BARBEE PLANNING | DESIGN
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SAN ANSELMO, CA 94960

Project:
SKYSTAR OBSERVATION WHEEL
SPECIAL EVENT ATTRACTION

Project Number:
SKYSTAR82023

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13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
1/2" = 1'

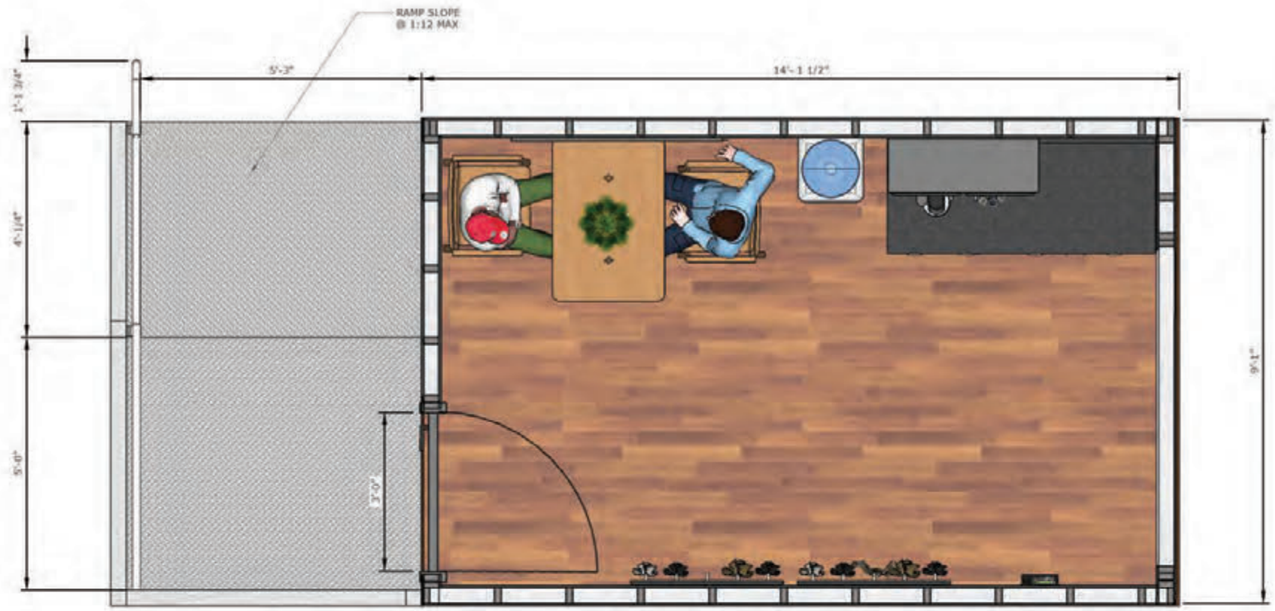
Drawing Description:
RETAIL AND PHOTO PICKUP TENT & ACCESSIBILITY RAMP ELEVATIONS

Drawn by: TB Checked by: CT

Sheet Number:

A3.1

DocuSign Envelope ID: FD24501E-7A8C-44BE-8553-6D8DEFDEBA2E



1 PREFABRICATED EMPLOYEE BREAK ROOM - FLOOR PLAN
A4.0 *scale: 1" = 1'*

NOTE:
PREFABRICATED EMPLOYEE BREAK ROOM PART OF RIDE PACKAGE. PLEASE SEE BRW ARCHITECTS ADA SHEETS FOR ACCESSIBILITY DRAWINGS



2 PREFABRICATED EMPLOYEE BREAK ROOM - INTERIOR ELEVATION WEST
A4.0 *scale: 1" = 1'*

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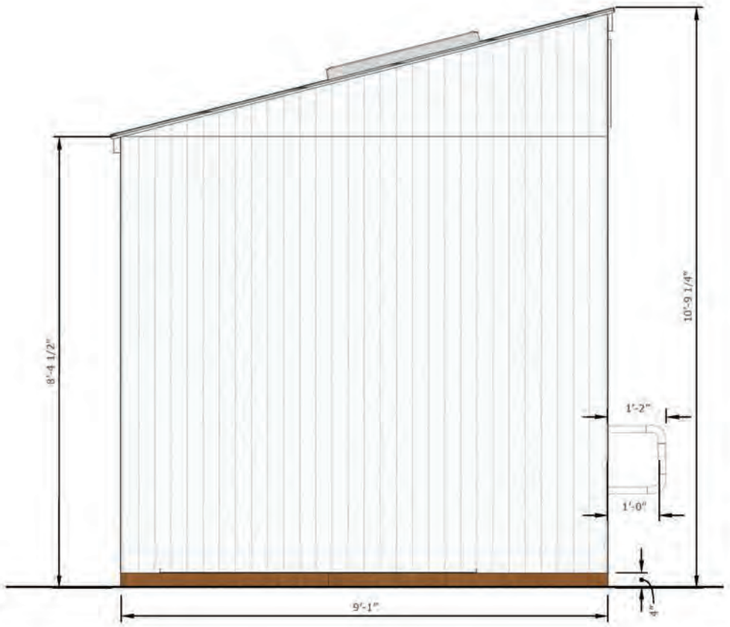
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1" = 1'

Drawing Description:
PREFABRICATED EMPLOYEE BREAK ROOM FLOOR PLAN / INTERIOR

Drawn by: TB Checked by: CT

Sheet Number:
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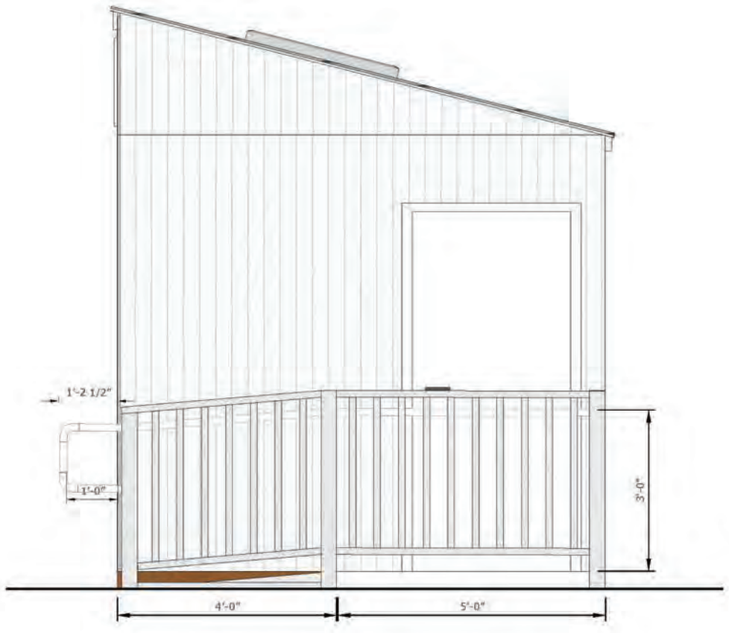
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1 A4.1 **PREFABRICATED EMPLOYEE BREAK ROOM - NORTH ELEVATION**
scale: 3/4" = 1'



2 A4.1 **PREFABRICATED EMPLOYEE BREAK ROOM - EAST ELEVATION**
scale: 3/4" = 1'



3 A4.1 **PREFABRICATED EMPLOYEE BREAK ROOM - SOUTH ELEVATION**
scale: 3/4" = 1'



4 A4.1 **PREFABRICATED EMPLOYEE BREAK ROOM - WEST ELEVATION**
scale: 3/4" = 1'

NOTE:
PREFABRICATED EMPLOYEE BREAK ROOM PART OF RIDE PACKAGE. PLEASE SEE BRW ARCHITECTS ADA SHEETS FOR ACCESSIBILITY DRAWINGS

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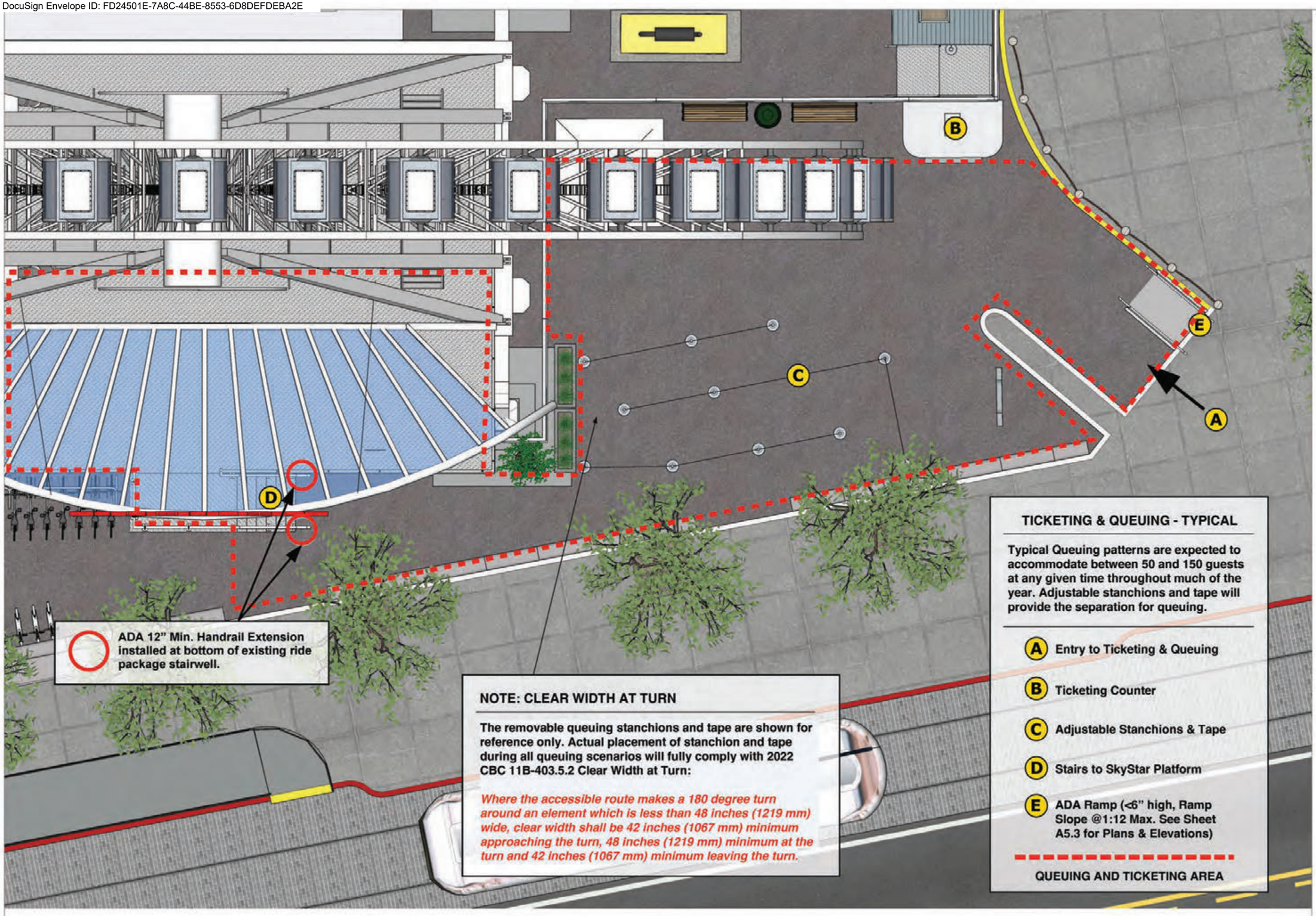
Scale:
3/4" = 1'

Drawing Description:
PREFABRICATED PORTABLE EMPLOYEE BREAK ROOM ELEVATIONS

Drawn by: TB Checked by: CT

Sheet Number:
A4.1

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ADA 12" Min. Handrail Extension installed at bottom of existing ride package stairwell.

NOTE: CLEAR WIDTH AT TURN

The removable queuing stanchions and tape are shown for reference only. Actual placement of stanchion and tape during all queuing scenarios will fully comply with 2022 CBC 11B-403.5.2 Clear Width at Turn:

Where the accessible route makes a 180 degree turn around an element which is less than 48 inches (1219 mm) wide, clear width shall be 42 inches (1067 mm) minimum approaching the turn, 48 inches (1219 mm) minimum at the turn and 42 inches (1067 mm) minimum leaving the turn.

TICKETING & QUEUING - TYPICAL

Typical Queuing patterns are expected to accommodate between 50 and 150 guests at any given time throughout much of the year. Adjustable stanchions and tape will provide the separation for queuing.

- **A** Entry to Ticketing & Queuing
- **B** Ticketing Counter
- **C** Adjustable Stanchions & Tape
- **D** Stairs to SkyStar Platform
- **E** ADA Ramp (<6" high, Ramp Slope @1:12 Max. See Sheet A5.3 for Plans & Elevations)

QUEUING AND TICKETING AREA

1 PUBLIC ACCESS, TICKETING & TYPICAL QUEUING - PLAN VIEW
A5.0 *scale: 1/4" = 1'*

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Scale:
1/4" = 1'

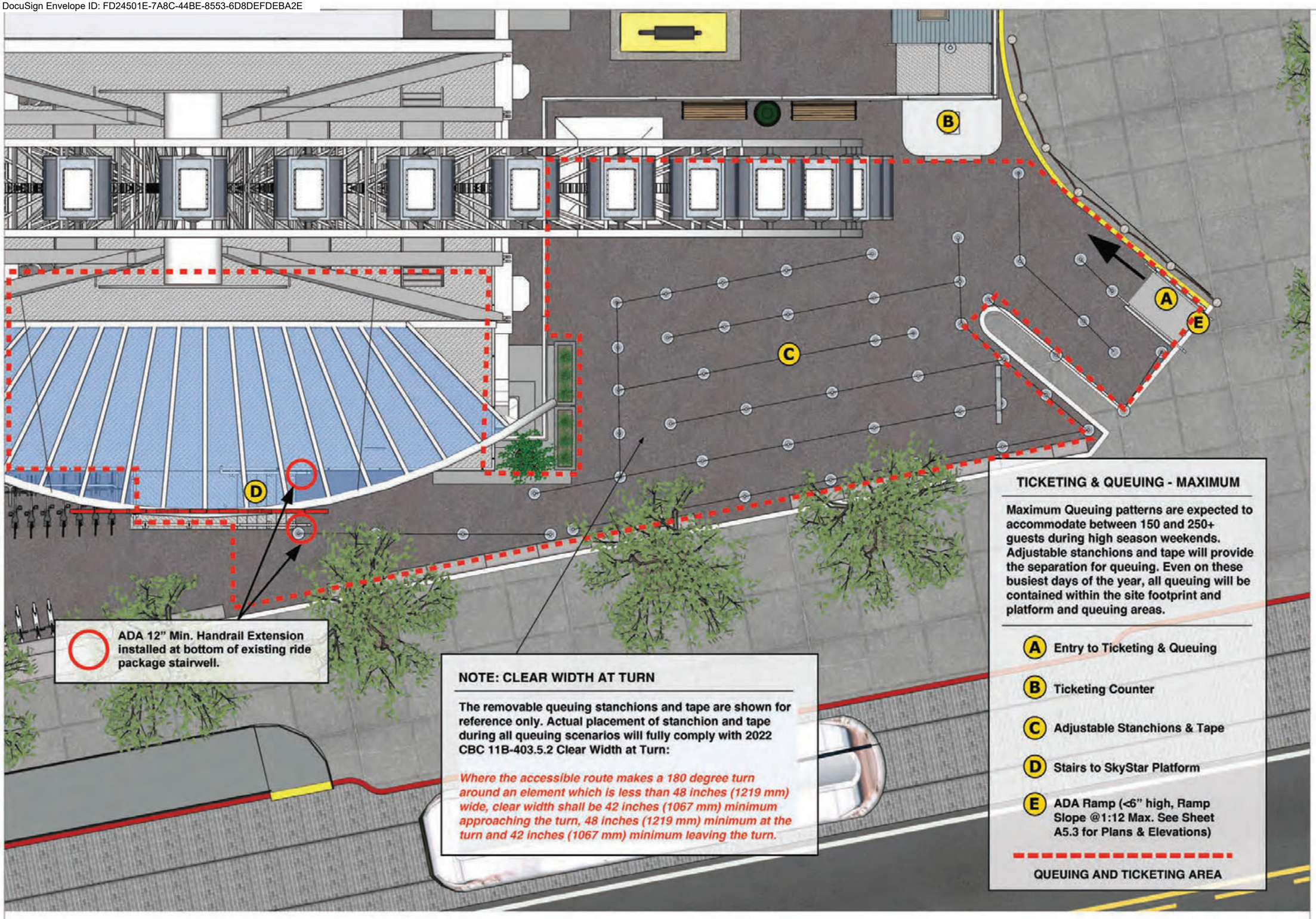
Drawing Description:
PUBLIC ACCESS, TICKETING & TYPICAL QUEUING

Drawn by: TB Checked by: CT

Sheet Number:

A5.0

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ADA 12" Min. Handrail Extension installed at bottom of existing ride package stairwell.

NOTE: CLEAR WIDTH AT TURN

The removable queuing stanchions and tape are shown for reference only. Actual placement of stanchion and tape during all queuing scenarios will fully comply with 2022 CBC 11B-403.5.2 Clear Width at Turn:

Where the accessible route makes a 180 degree turn around an element which is less than 48 inches (1219 mm) wide, clear width shall be 42 inches (1067 mm) minimum approaching the turn, 48 inches (1219 mm) minimum at the turn and 42 inches (1067 mm) minimum leaving the turn.

TICKETING & QUEUING - MAXIMUM

Maximum Queuing patterns are expected to accommodate between 150 and 250+ guests during high season weekends. Adjustable stanchions and tape will provide the separation for queuing. Even on these busiest days of the year, all queuing will be contained within the site footprint and platform and queuing areas.

- **A** Entry to Ticketing & Queuing
- **B** Ticketing Counter
- **C** Adjustable Stanchions & Tape
- **D** Stairs to SkyStar Platform
- **E** ADA Ramp (<6" high, Ramp Slope @1:12 Max. See Sheet A5.3 for Plans & Elevations)

QUEUING AND TICKETING AREA

1 PUBLIC ACCESS, TICKETING & MAXIMUM QUEUING - PLAN VIEW
A5.1 *scale: 1/4" = 1'*

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13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
1/4" = 1'

Drawing Description:
PUBLIC ACCESS, TICKETING & MAXIMUM QUEUING

Drawn by: TB Checked by: CT

Sheet Number:

A5.1

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ADA COMPLIANT DUAL BELT STANCHION



Dimensions

Post Height	40 in.
Belt Length	9 ft.

Details

Item	Stanchion, Retractable Belt Barrier
Application	Crowd Control
Finish	Black
Material	Steel Black
Color	Black Post, Black Belt
Belt Color	Black
Weight	24 lb.
For Use With	Retail, Museums, Government, Stadiums, Arenas, Municipalities, Casinos, Offices, Hotels, Restaurants, Bars, Nightclubs
Post Color	Black
Includes	(1) Montour Line Stanchion Dual Retractable Belt Barrier Black Post 9 ft. Black Belt
Indoor / Outdoor	Indoor / Outdoor

zoro℠

ADA compliant black dual belt stanchion with 9 ft. black retractable belts. Double retractable belt barrier stanchions, maintain safety and manage crowd control while maintaining ADA compliance.

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12	SCHEMATIC	10/24/2023
13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
1/4" = 1'

Drawing Description:
ADA COMPLIANT DUAL BELT STANCHION

Drawn by: TB Checked by: CT

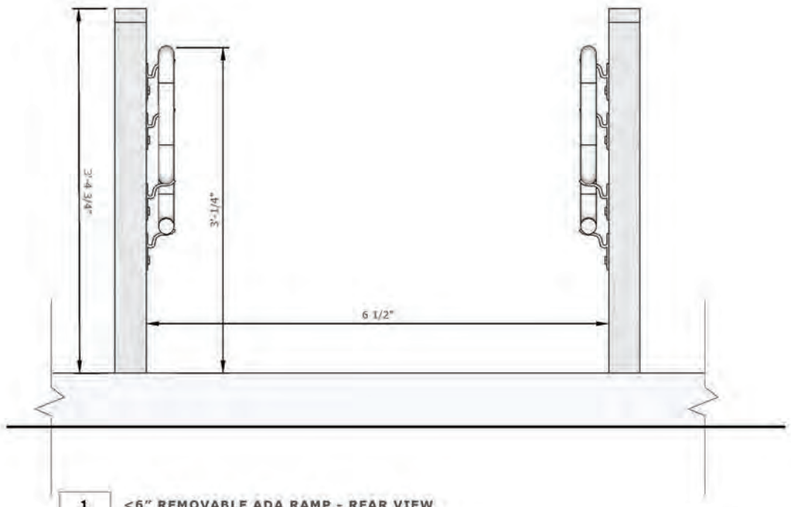
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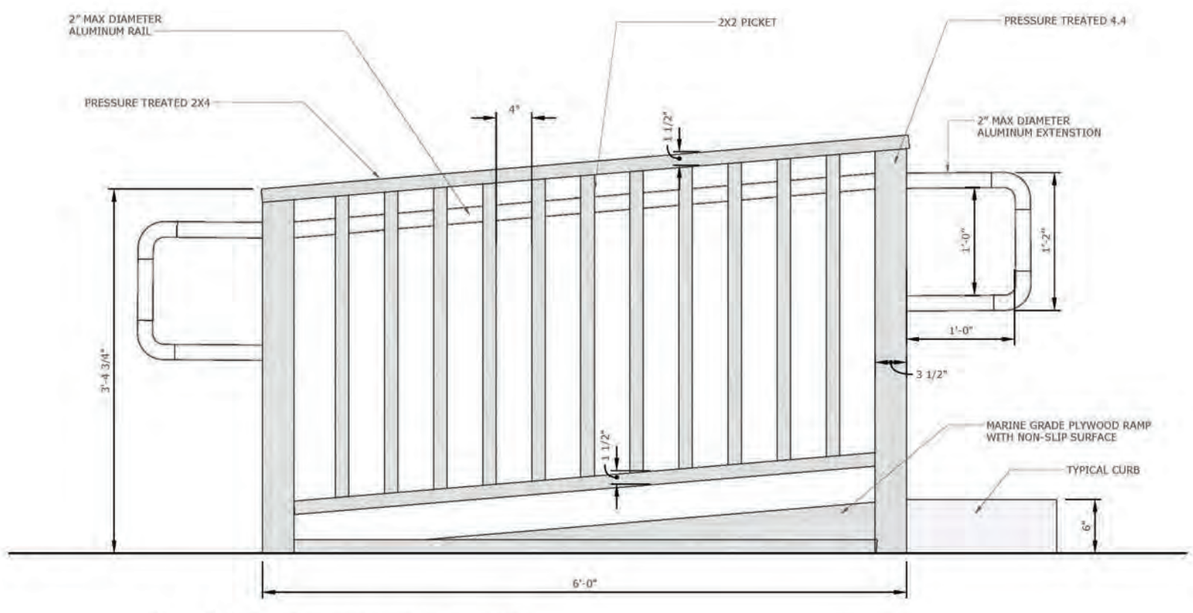
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GENERAL NOTES:

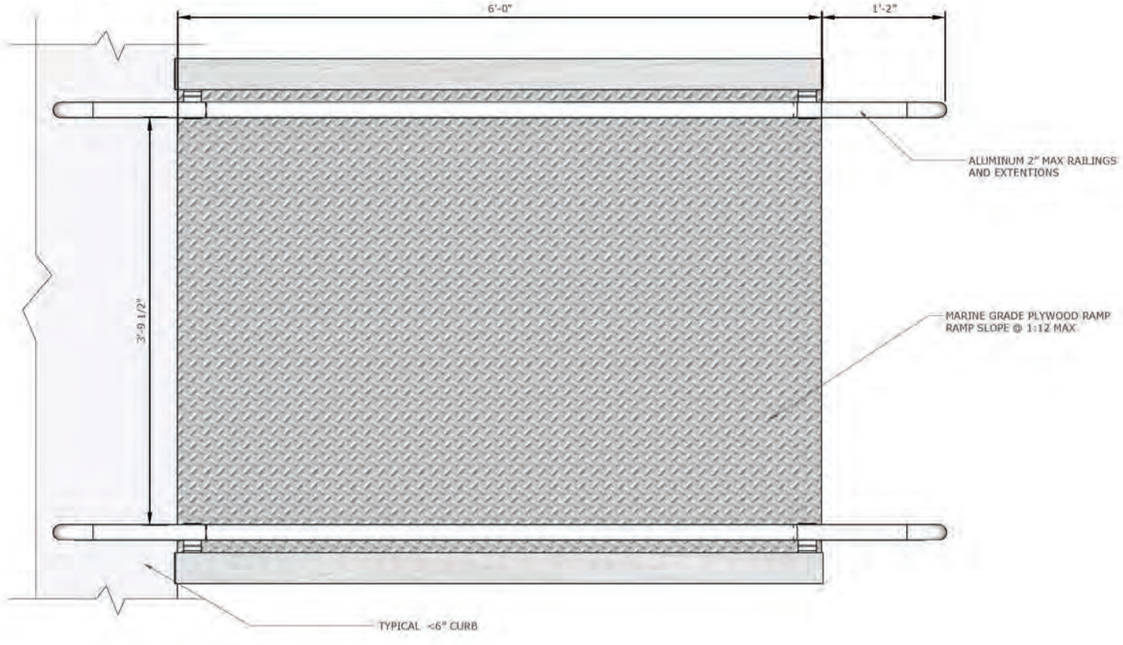
ADA Curb ramps constructed with pressure treated and marine grade lumber, attached with brass screws. Prime and paint white all exposed wood surfaces. ADA compliant railings are fabricated from aluminum and mounted to the 4x4 posts.



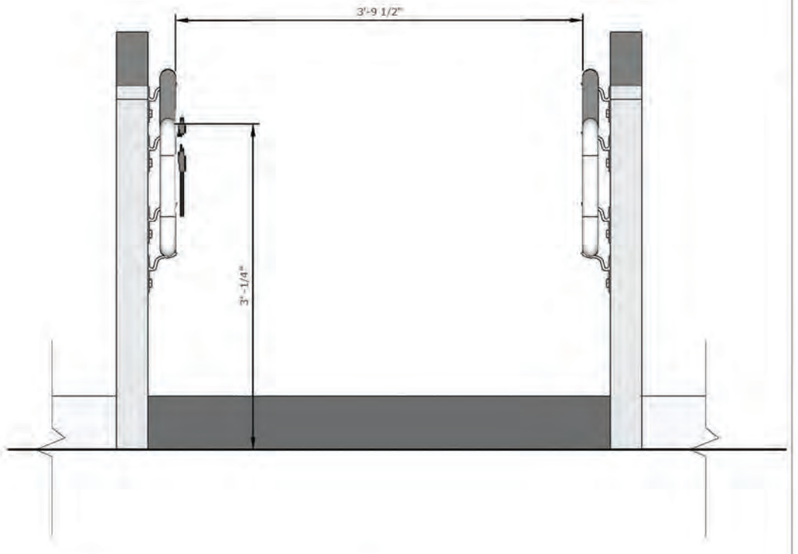
1 <6" REMOVABLE ADA RAMP - REAR VIEW
A4.1 *scale: 1 1/2" = 1'*



2 <6" REMOVABLE ADA RAMP - SIDE VIEW
A4.1 *scale: 1 1/2" = 1'*



3 <6" REMOVABLE ADA RAMP - FRONT VIEW
A4.1 *scale: 1 1/2" = 1'*



3 <6" REMOVABLE ADA RAMP - FRONT VIEW
A4.1 *scale: 1 1/2" = 1'*

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Scale:
3/4" = 1'

Drawing Description:
TYPICAL <6" REMOVABLE ADA CURB RAMP PLANS & ELEVATIONS

Drawn by: TB Checked by: CT

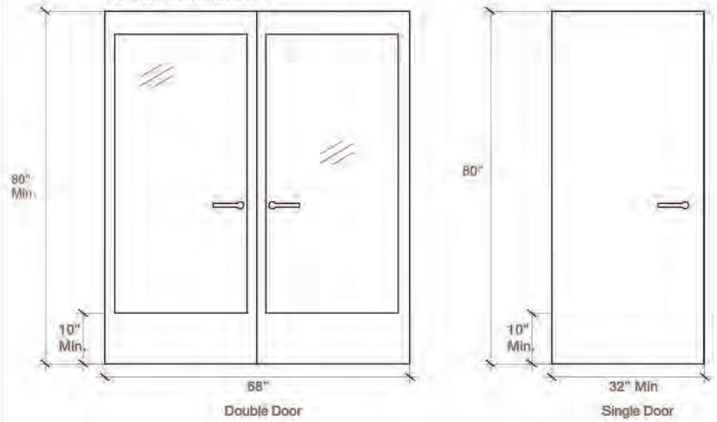
Sheet Number:

A5.3

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DOORS

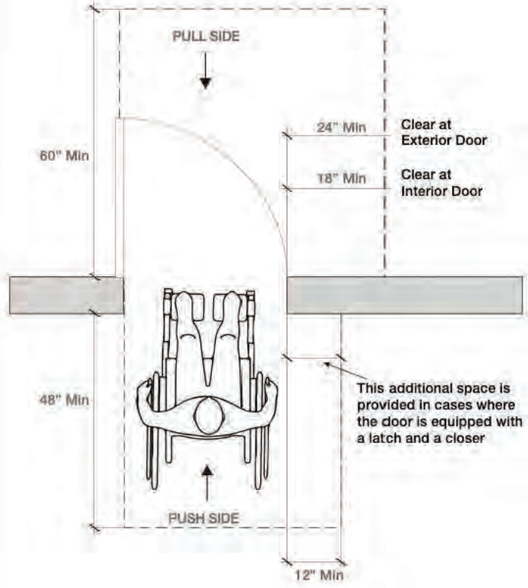
All hand-activated latching and locking doors along the path of travel are a minimum of 32" wide and 80" tall and provide a smooth uniterupted bottom rail or kick plate a minimum of 10" from bottom of door.



Maximum Door Closer Pressures
5.0 lbs .....Interior 8.5 lbs .....Exterior 15.0 lbs .....>Fire* *(up to 15lbf. max force necesary for door to close and latch)
The sweep period at the closer shall be adjusted so that from an open postiion of 70 degrees the door will take at least 3 seconds to move to a point 3" from the latch, measured to the leading edge of the door (ADAAG 4.13.10)

FRONT APPROACH

All doors comply with the ADA standards for Door Approaches

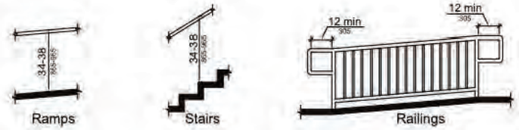


ACCESSIBLE COUNTERS, ROUTES AND MEANS OF INGRESS/EGRESS

The SkyStar Wheel attraction's ticketing and retail counters, routes and means of ingress and egress meet the 2022 San Francisco Building Code and Amendments, and the 2022 California Building Code and Amendments, and fully comply with ADA Standards and the United States Access Board Chapter 4: Accessible Routes and\Accessible Means of Egress.

RAMPS, STAIRS AND RAILINGS

All ramps, stairs and railings on site fully comply with ADA standards and the 2022 California Building Code. Please see drawings for details.



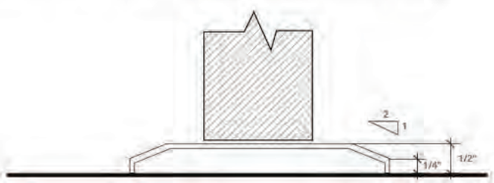
DOOR HANDLES

All hand-activated latching and locking doors along the path of travel are operable with a single effort by lever type hardware, panic bars, push-pull activating bars, handles, or other hardware designed to provide passage without requiring the abillity to grasp the door handle.



THRESHOLDS

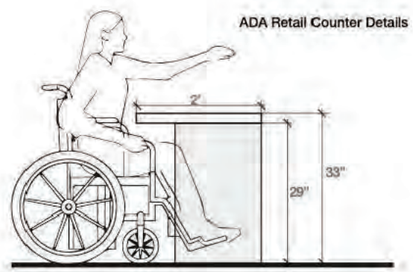
All threshold change in level are maximum1/4" to 1/2" and utilize a 1:2 bevel



RETAIL CHECKOUT AND PHOTO PICKUP COUNTER

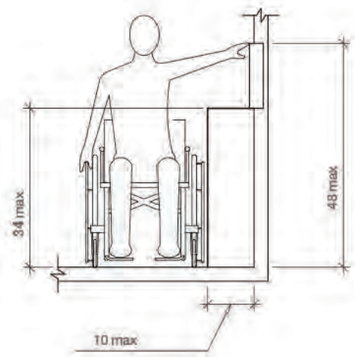
The accessible retail checkout counter is 48" wide, 24" deep, and less than 34" above the floor. A 30" by 48" space in front of the service counter is provided to accommodate a wheelchair or electric scooter. The counter provides 29" of uninterupted clearspace beneath the counter surface.

ADA Retail Counter Details



TICKET SALES COUNTER

The accessible ticket sales counter allows for a parallel approach and has a minimum 36" accesible counter space, maximum 34" counter height, a 14" depth, and a maximum 46" high side reach. Maximum reach depth is under 24". A 48"x30" clear floor space is provided.



NOTE:
PLEASE SEE BRW ARCHITECTS ADA SHEETS FOR ACCESSIBILITY DRAWINGS

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14	SCHEMATIC	10/30/2023

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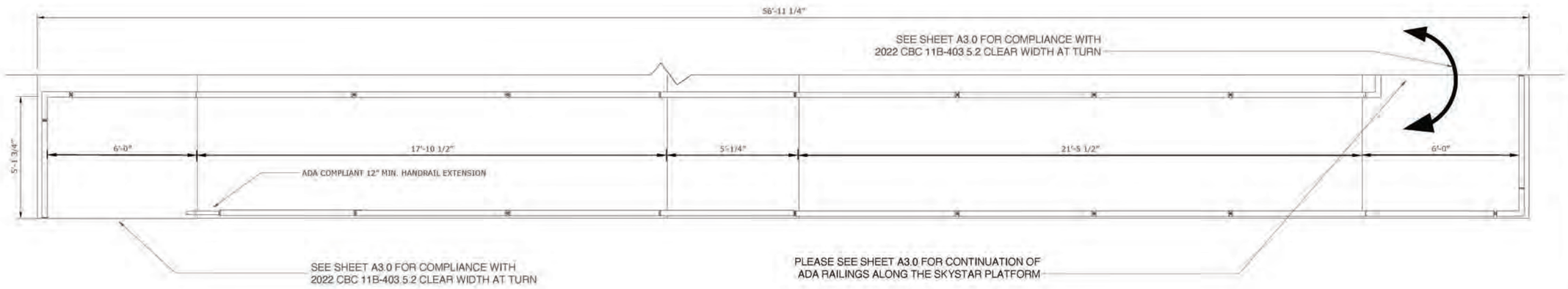
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ADA ACCESSIBILITY - GENERAL

Drawn by: TB Checked by: CT

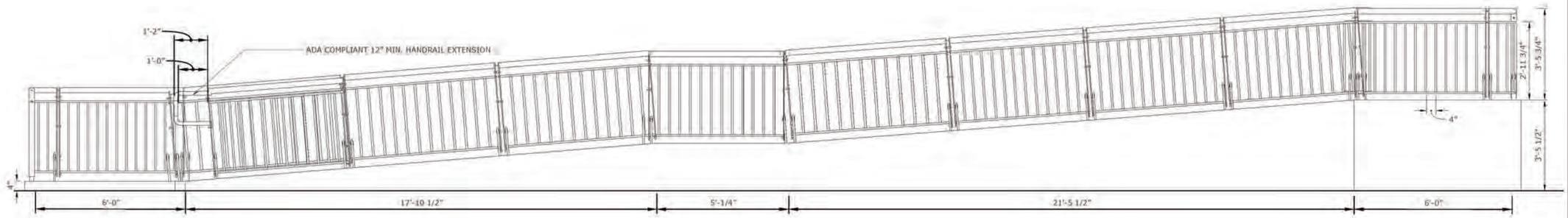
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A6.0

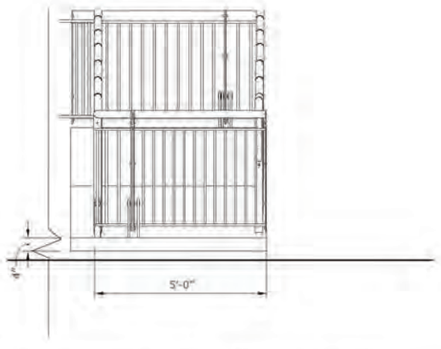
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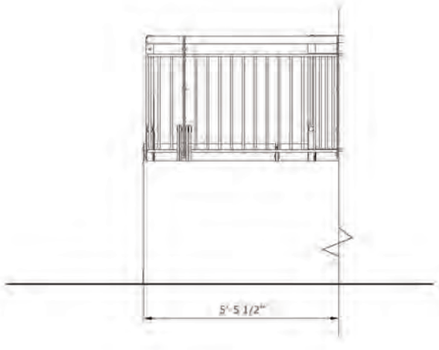
1	ADA ACCESSIBILITY RAMP - PLAN VIEW
A6.1	*scale: 1/2" = 1'*



2	ADA ACCESSIBILITY RAMP - EAST ELEVATION
A6.1	*scale: 1/2" = 1'*



3	ADA ACCESSIBILITY RAMP - SOUTH ELEVATION
A6.1	*scale: 1/2" = 1'*



4	ADA ACCESSIBILITY RAMP - NORTH ELEVATION
A6.1	*scale: 1/2" = 1'*

NOTE:

The SkyStar ADA compliant platform access ramp at no point exceeds more than 5 degrees of incline (1:12), nor does any portion of the ramp exceed 30 horizontal feet before a compliant landing occurs.

NOTE:
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14	SCHEMATIC	10/30/2023

Scale:
1/2" = 1'

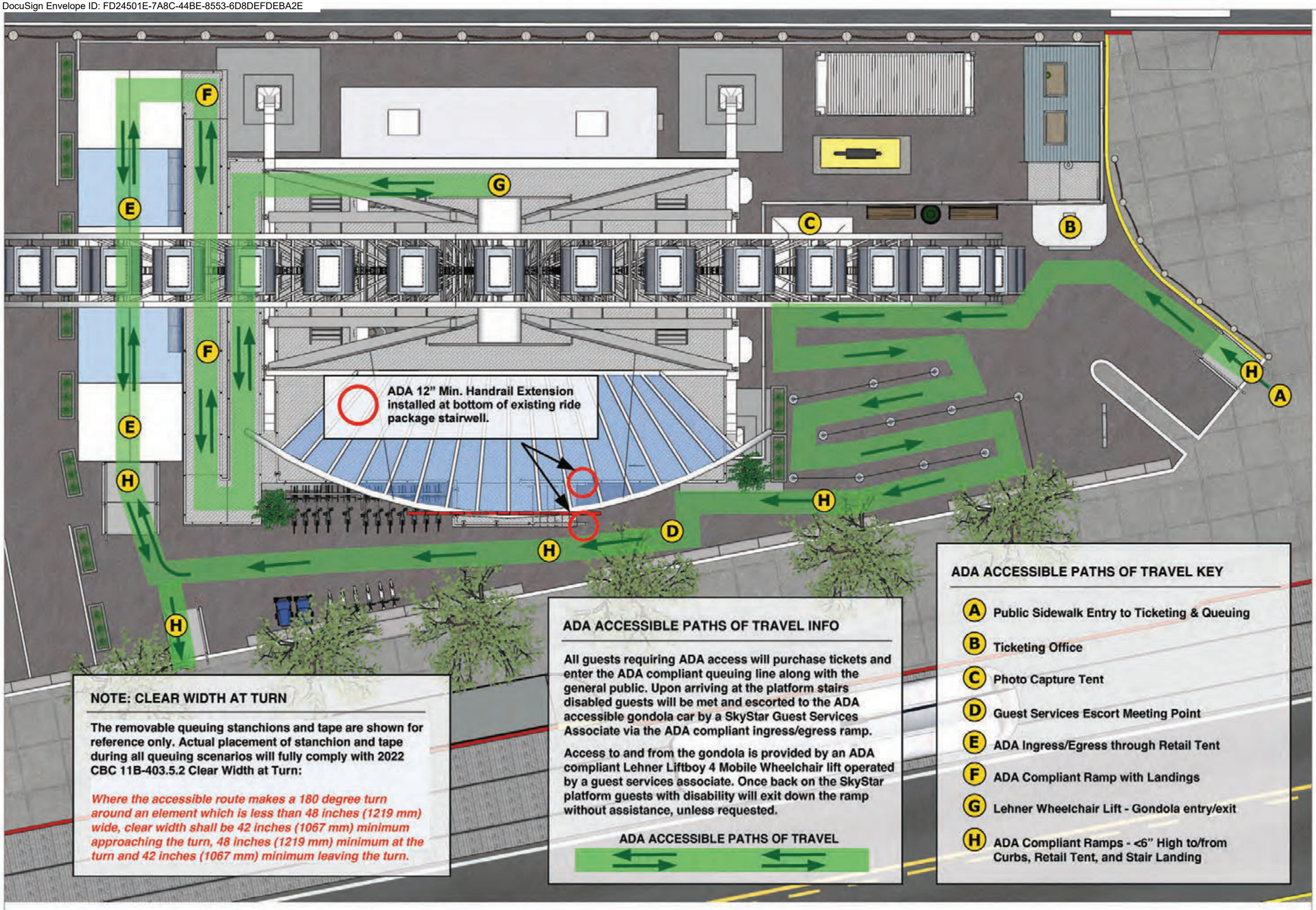
Drawing Description:
ADA ACCESSIBILITY RAMP
PLANS & ELEVATIONS

Drawn by: TB Checked by: CT

Sheet Number:

A6.1

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NOTE: CLEAR WIDTH AT TURN

The removable queuing stanchions and tape are shown for reference only. Actual placement of stanchion and tape during all queuing scenarios will fully comply with 2022 CBC 11B-403.5.2 Clear Width at Turn:

Where the accessible route makes a 180 degree turn around an element which is less than 48 inches (1219 mm) wide, clear width shall be 42 inches (1067 mm) minimum approaching the turn, 48 inches (1219 mm) minimum at the turn and 42 inches (1067 mm) minimum leaving the turn.

ADA ACCESSIBLE PATHS OF TRAVEL INFO

All guests requiring ADA access will purchase tickets and enter the ADA compliant queuing line along with the general public. Upon arriving at the platform stairs disabled guests will be met and escorted to the ADA accessible gondola car by a SkyStar Guest Services Associate via the ADA compliant ingress/egress ramp.

Access to and from the gondola is provided by an ADA compliant Lehner Liftboy 4 Mobile Wheelchair lift operated by a guest services associate. Once back on the SkyStar platform guests with disability will exit down the ramp without assistance, unless requested.

ADA ACCESSIBLE PATHS OF TRAVEL

ADA ACCESSIBLE PATHS OF TRAVEL KEY

- **A** Public Sidewalk Entry to Ticketing & Queuing
- **B** Ticketing Office
- **C** Photo Capture Tent
- **D** Guest Services Escort Meeting Point
- **E** ADA Ingress/Egress through Retail Tent
- **F** ADA Compliant Ramp with Landings
- **G** Lehner Wheelchair Lift - Gondola entry/exit
- **H** ADA Compliant Ramps - <6" High to/from Curbs, Retail Tent, and Stair Landing

1 ADA ACCESSIBILITY PATHS OF TRAVEL - PLAN VIEW
A6.2 *scale: 3/16" = 1'*

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Scale:
3/16" = 1'

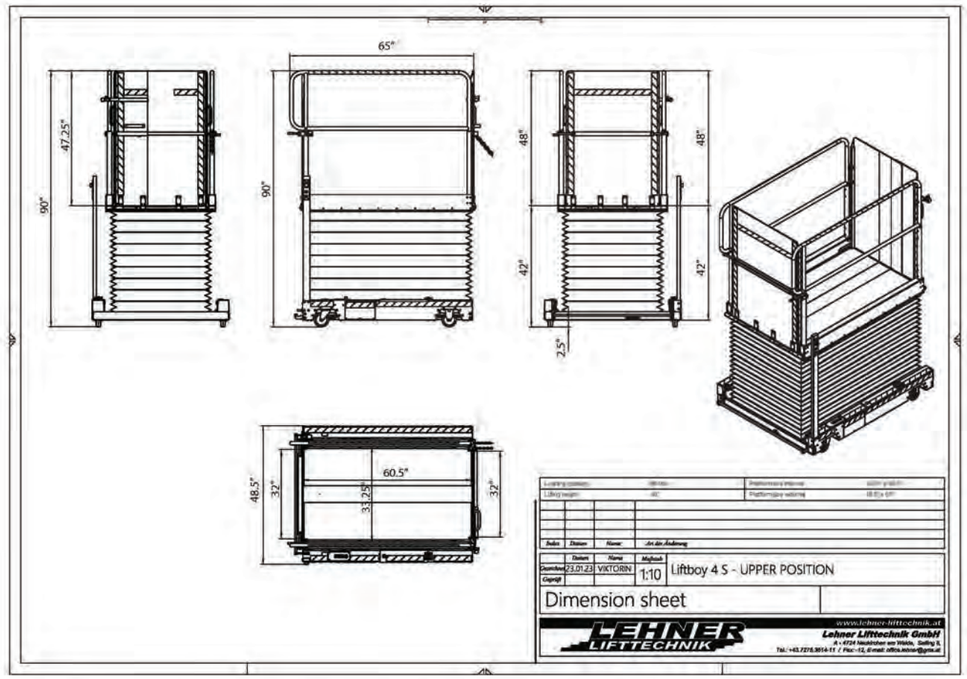
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ADA ACCESSIBILITY PATHS OF TRAVEL

Drawn by: TB Checked by: CT

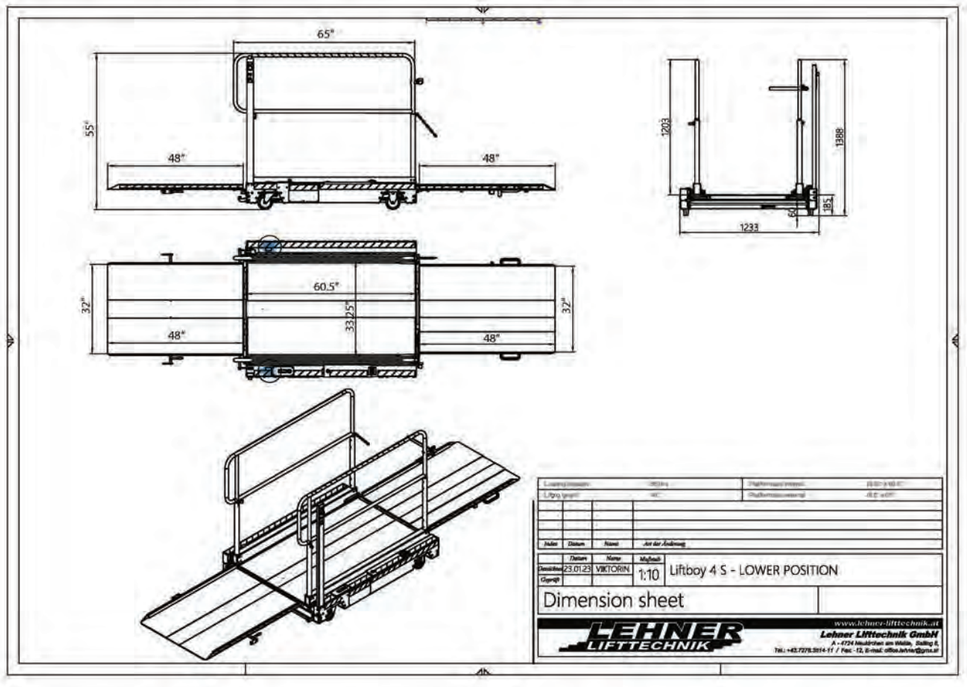
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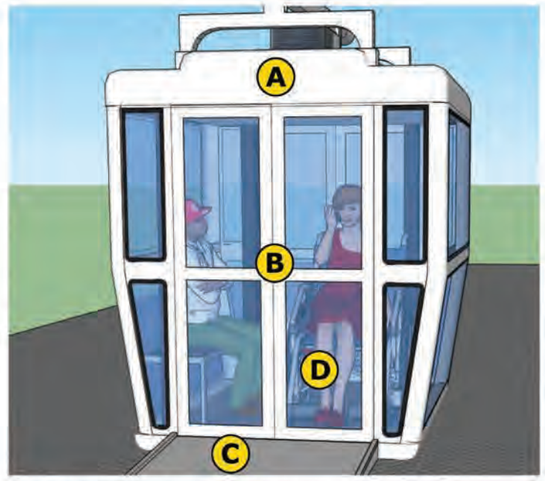
The motorized Lehner LiftBoy 4S portable Wheelchair lift makes Entering and Exiting the SkyStar Gondola very safe, and easy.



1	ADA GONDOLA ACCESSIBILITY & DETAILS
A6.3	*scale: N/A*

ADA ACCESSIBLE GONDOLA

- **A** ADA Accessible Gondola Car
- **B** ADA Compliant Automatic Ingress/Egress Gondola Doors
- **C** LiftBoy 4S - Wheelchair Lift See dimension sheet for details
- **D** Retractable Bench Seating Option to Accommodate Guests with Disability and Family Members



One Bench seat removed to accomodate guest with disability and family members.

LIFTBOY 4S OPERATING PROCEDURE

The ADA compliant Liftboy 4S portable wheelchair lift is moved in to place to the gondola by a SkyStar guest services employee in order to provide safe and easy access for ingress/egress to the gondola for disabled guests.

The Clear Floor Space Clear floor space of the LIftboy 4S complies with Section 11B-305, and clear ground space of a minimum of 30' x 48" complies with 11B-305.3.

The Liftboy 4S has low-energy power-operated doors gates complying with Section 11B-404.3.

While assistance is not needed for the disabled guest to operate the LIftboy 4S once a guest services employee has moved the lift in to place, staff will be standing by in the event the disabled guest requests assistance.

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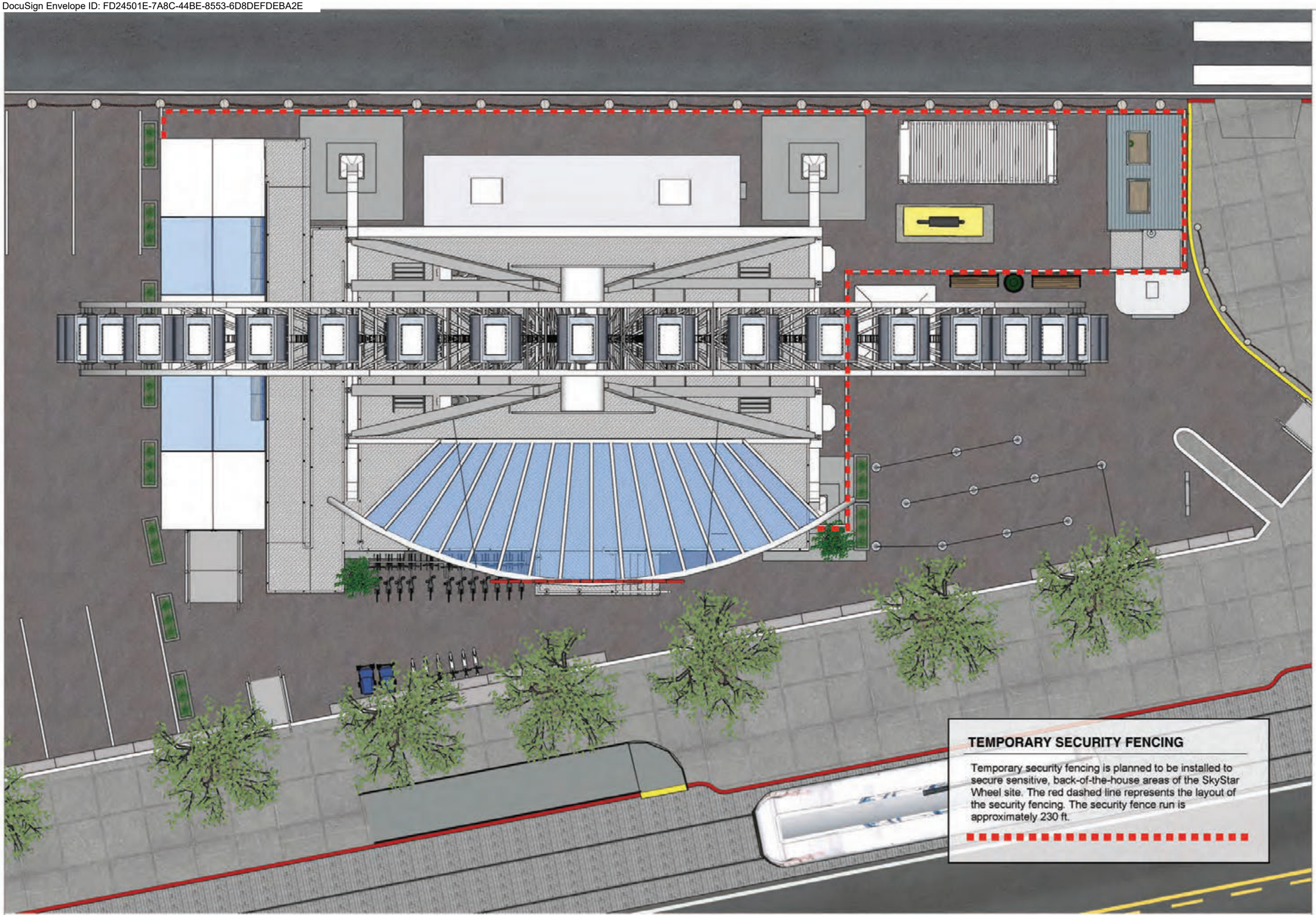
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ADA GONDOLA ACCESSIBILITY & DETAILS

Drawn by: TB Checked by: CT

Sheet Number:

A6.3

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1 TEMPORARY SECURITY FENCING - PLAN VIEW
A7.0 *scale: 3/16" = 1'*

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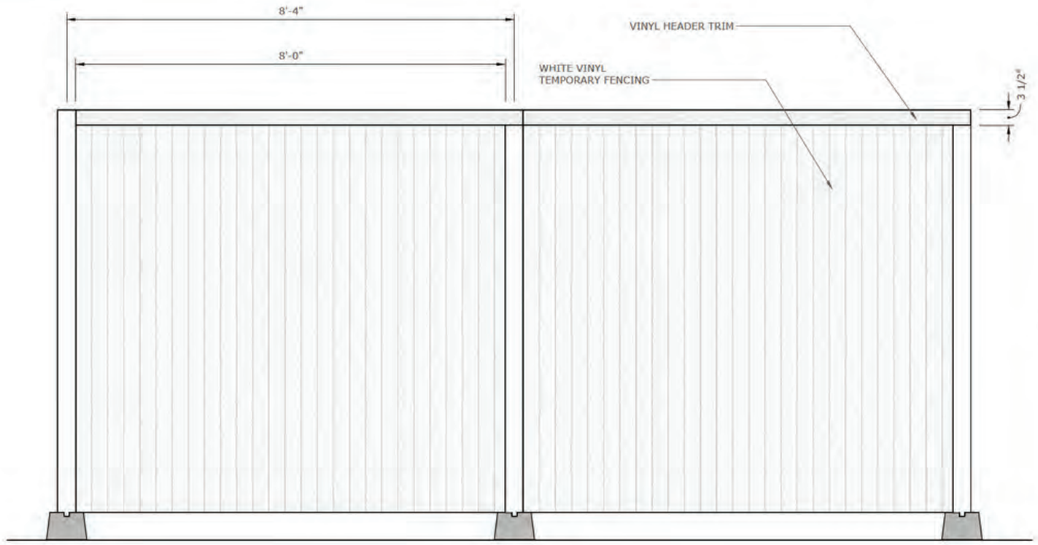
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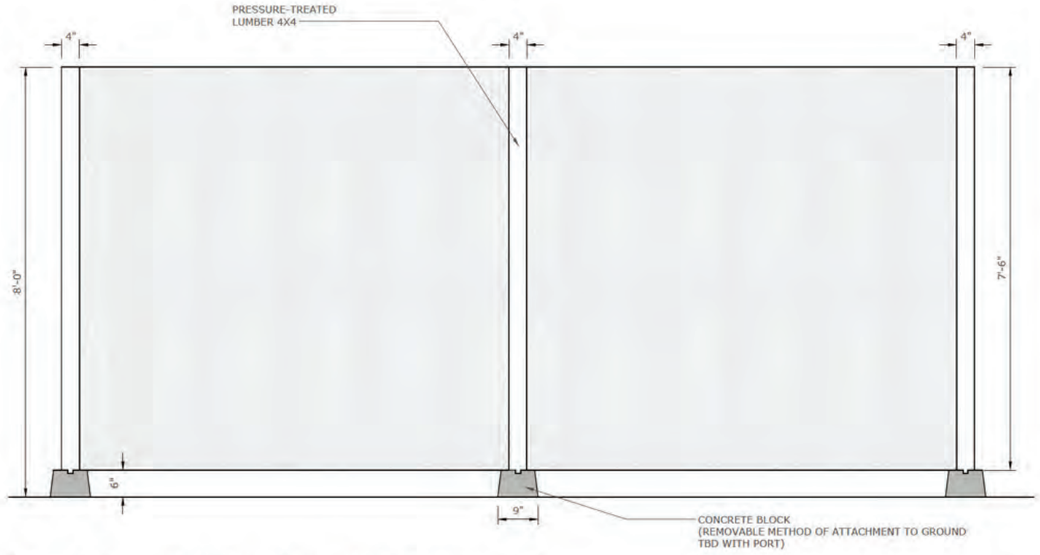
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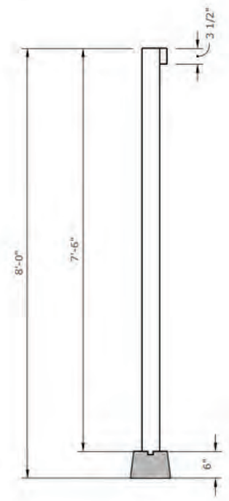
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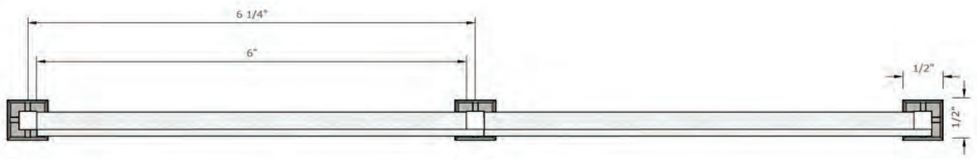
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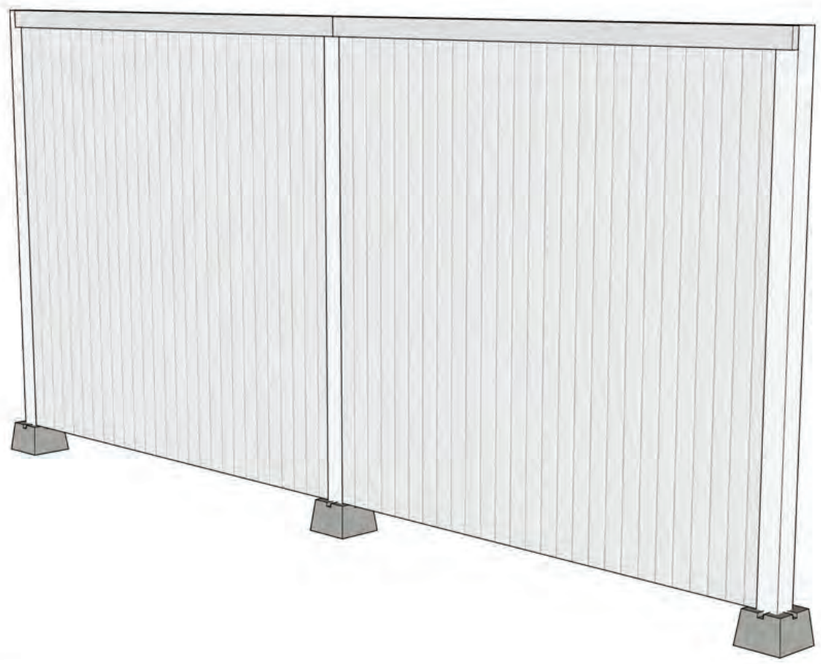
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3	TEMPORARY SECURITY FENCING - TYPICAL SIDE ELEVATION
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4	TEMPORARY SECURITY FENCING - TYPICAL PLAN VIEW
A7.1	*scale: 3/4" = 1'*



5	TEMPORARY SECURITY FENCING - OBLIQUE
A7.1	*scale: N/A*

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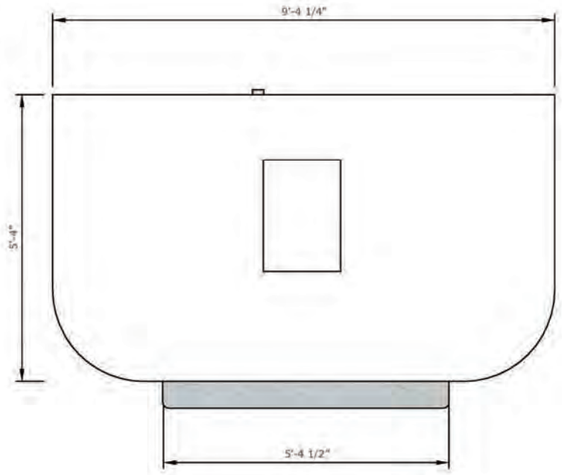
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TEMPORARY SECURITY FENCING PLANS & ELEVATIONS

Drawn by: TB Checked by: CT

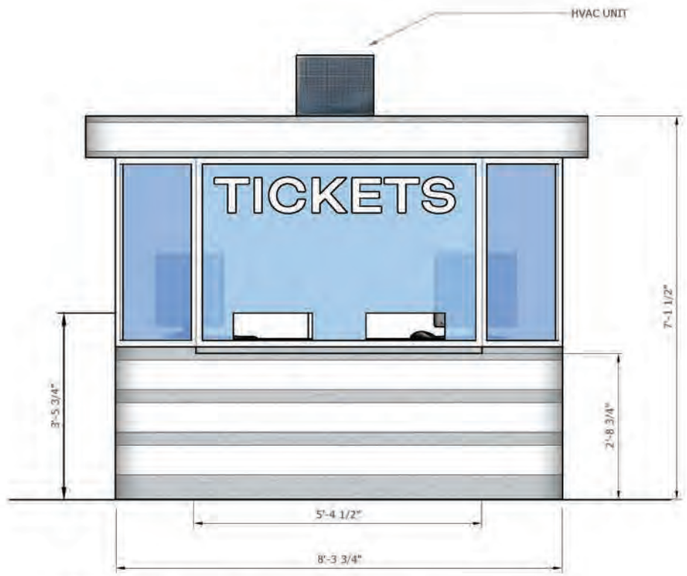
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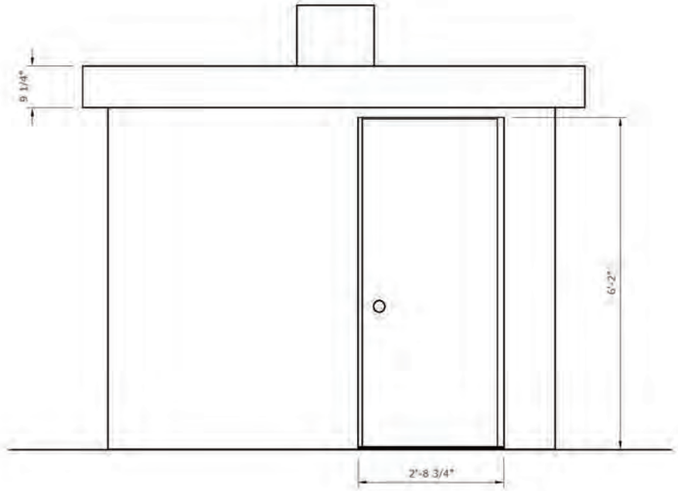
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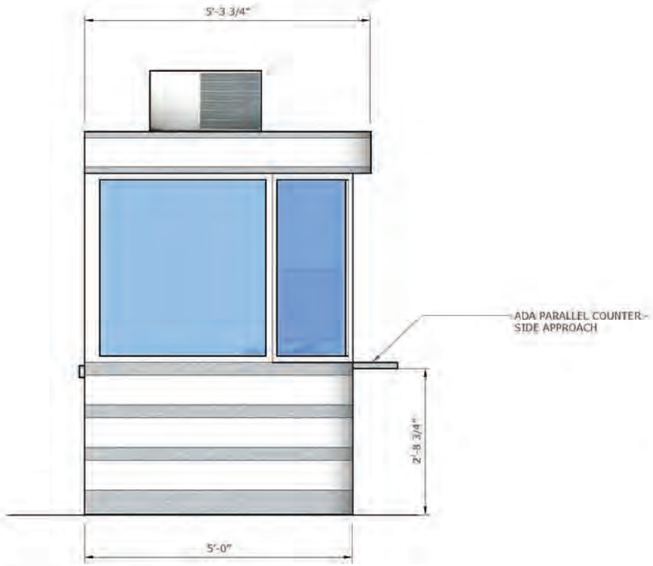
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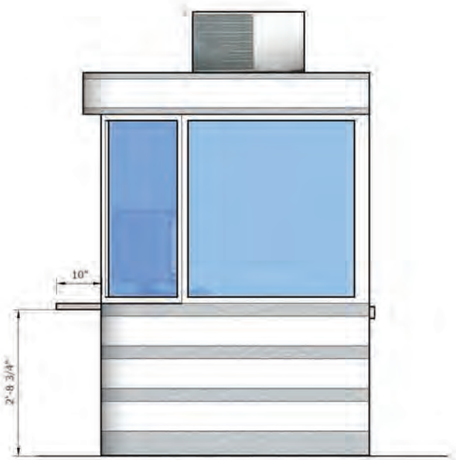
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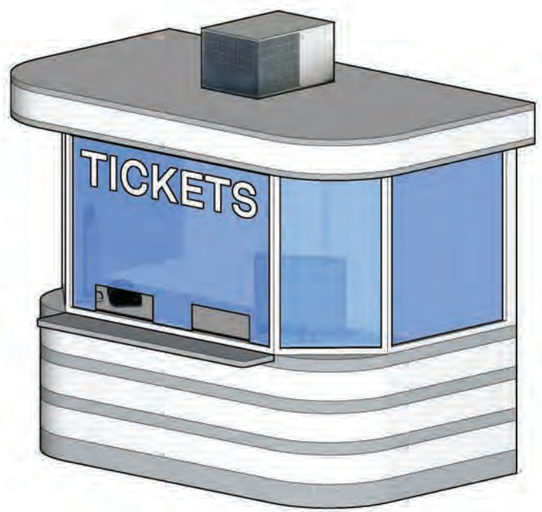
3	TICKET COUNTER - SOUTH ELEVATION
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4	TICKET COUNTER - EAST ELEVATION
A8.0	*scale: 3/4" = 1'*



5	TICKET COUNTER - WEST ELEVATION
A8.0	*scale: 3/4" = 1'*



6	TICKET COUNTER - OBLIQUE
A8.0	*scale: N/A*

NOTE:
PREFABRICATED TICKETING KIOSK PART OF RIDE PACKAGE.
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SAN ANSELMO, CA 94960

Project:
SKYSTAR OBSERVATION WHEEL
SPECIAL EVENT ATTRACTION
2860 TAYLOR STREET
SAN FRANCISCO, CA 94133

Project Number:
SKYSTAR82023

Rev.	Issue	Date
1	SCHEMATIC	08/18/2023
2	SCHEMATIC	08/23/2023
3	SCHEMATIC	08/24/2023
4	SCHEMATIC	08/26/2023
5	SCHEMATIC	08/27/2023
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10	SCHEMATIC	09/12/2023
11	SCHEMATIC	10/20/2023
12	SCHEMATIC	10/24/2023
13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
3/4" - 1'

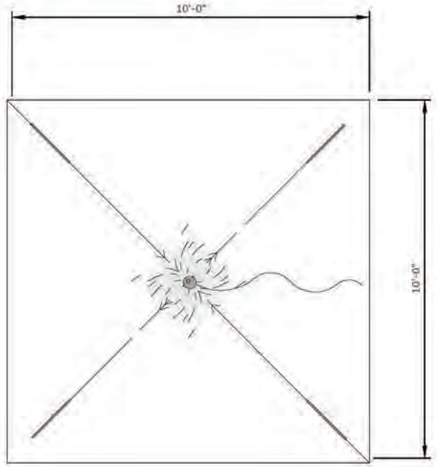
Drawing Description:
PORTABLE TICKET COUNTER
PLANS & ELEVATIONS

Drawn by: TB Checked by: CT

Sheet Number:

A8.0

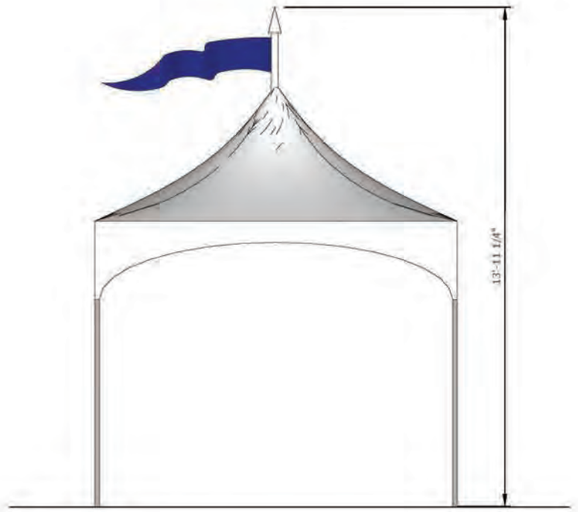
DocuSign Envelope ID: FD24501E-7A8C-44BE-8553-6D8DEFDEBA2E



1	PHOTO CAPTURE TENT - PLAN VIEW
A9.0	*scale: 1/2" = 1'*



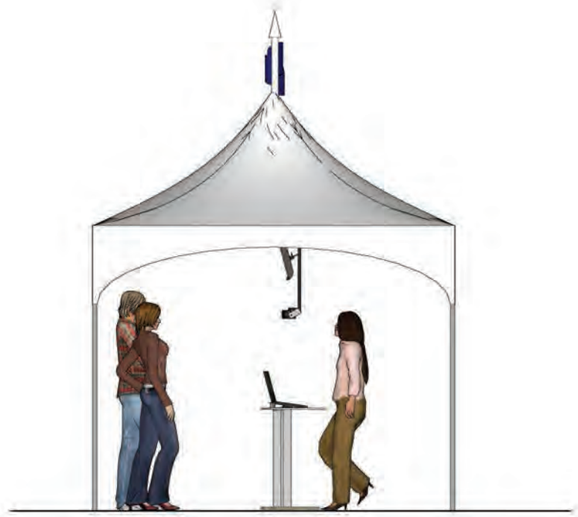
2	PHOTO CAPTURE TENT - NORTH ELEVATION
A9.0	*scale: 1/2" = 1'*



3	PHOTO CAPTURE TENT - SOUTH ELEVATION
A9.0	*scale: 1/2" = 1'*



4	PHOTO CAPTURE TENT - WEST ELEVATION
A9.0	*scale: 1/2" = 1'*



5	PHOTO CAPTURE TENT - EAST ELEVATION
A9.0	*scale: 1/2" = 1'*



1	PHOTO CAPTURE TENT - OBLIQUE
A9.0	*scale: N/A*

NOTE:
PREFABRICATED PHOTO CAPTURE TENT PART OF RIDE PACKAGE. PLEASE SEE BRW ARCHITECTS ADA SHEETS FOR ACCESSIBILITY DRAWINGS

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Client:
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SKYSTAR FISHERMAN'S WHARF
1610 DES PERES ROAD, SUITE 130
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Designer:
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12	SCHEMATIC	10/24/2023
13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
1/2" - 1'

Drawing Description:
PHOTO CAPTURE TENT PLANS & ELEVATIONS

Drawn by: TB Checked by: CT

Sheet Number:

A9.0

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SKY STAR SPECIAL EVENT PROPOSED SITE PLAN - DIRECTORY

- **A** SkyStar Observation Wheel — Plans and Elevations - Sheets A1.1 thru A2.2
- **B** Operations Office — Plans and Elevations - Sheets A1.1 thru A2.2
- **C** Retail & Photo Pickup Tent — Plans and Elevations - Sheets A3.0 thur A3.1
- **D** Employee Break Room — Plans and Elevations -Sheets A4.0 thru A4.1
- **E** Storage Container — Standard Shipping Container - 8'x8'x20'
- **F** Emergency Backup Generator — 4'x7'x12'
- **G** ADA Accessible Ramp — ADA Accessibility - Sheets A6.0 thru A6.2
- **H** Temporary Security Fencing — Plans and Elevations - Sheets A7.0 thru A7.1
- **I** Concrete Planter Box Barricades — Plans and Elevations - Sheet A7.0
- **J** Bike, Scooter and Stroller Parking — For use of visitors to SkyStar Wheel
- **K** Photo Capture Tent — Plans and Elevations - Sheet A9.0
- **L** Public Access - Queuing — Plans and Elevations - Sheets A5.0 thru A5.1
- **M** Ticketing Counter / Kiosk — Plans and Elevations - Sheet A8.0
- **N** <6" High Accessibility Ramps — Ramps leading to/from curbs. Retail Tent. etc.

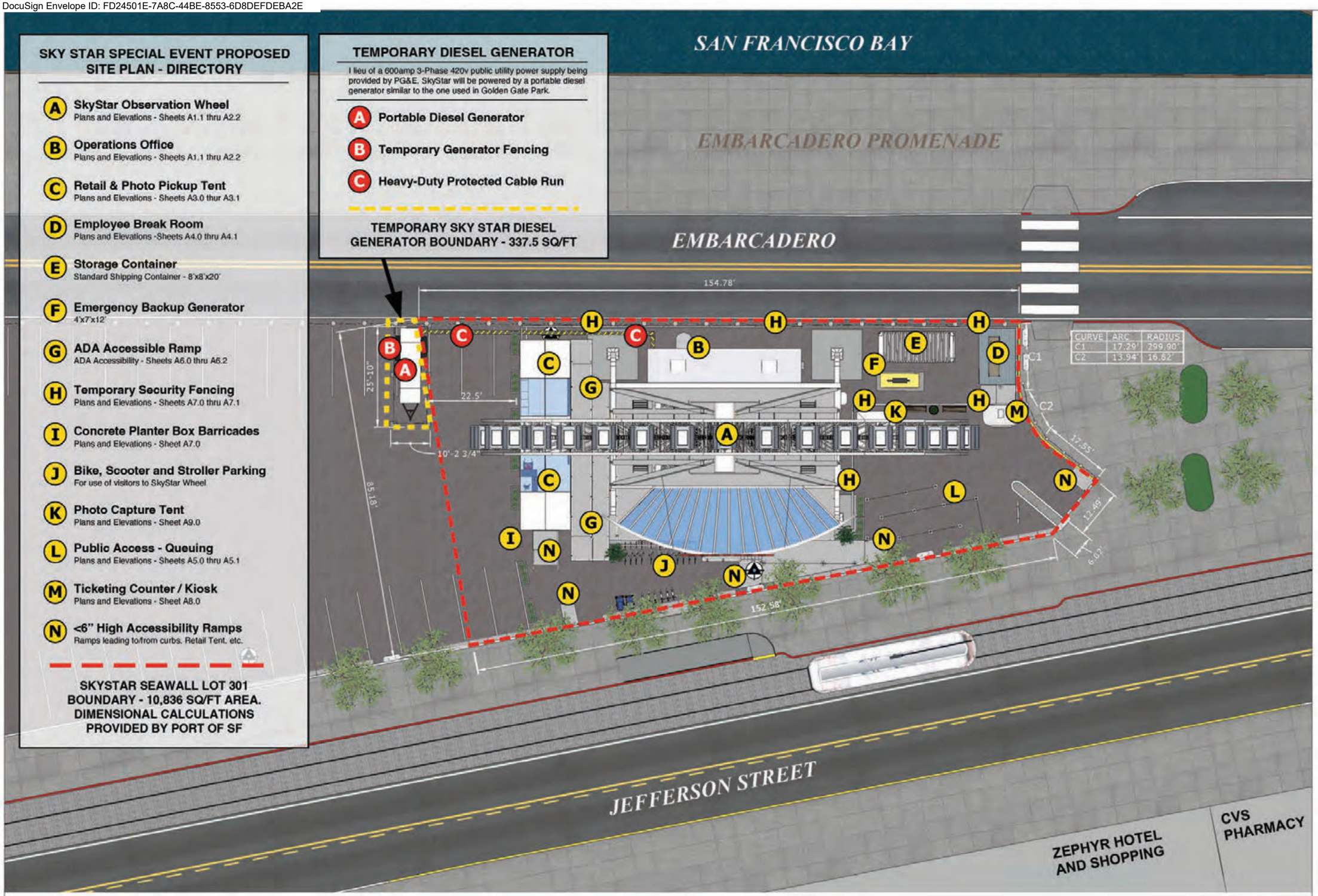
SKYSTAR SEAWALL LOT 301 BOUNDARY - 10,836 SQ/FT AREA. DIMENSIONAL CALCULATIONS PROVIDED BY PORT OF SF

TEMPORARY DIESEL GENERATOR

I lieu of a 600amp 3-Phase 420v public utility power supply being provided by PG&E. SkyStar will be powered by a portable diesel generator similar to the one used in Golden Gate Park.

- **A** Portable Diesel Generator
- **B** Temporary Generator Fencing
- **C** Heavy-Duty Protected Cable Run

TEMPORARY SKY STAR DIESEL GENERATOR BOUNDARY - 337.5 SQ/FT



1 SKYSTAR PORTABLE OBSERVATION WHEEL - SITE PLAN
A1.0 *scale: 1" = 11'*

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13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale: 1" = 11'

Drawing Description:
PROPOSED SKYSTAR PORTABLE WHEEL SITE PLAN DIRECTORY W/ TEMPORARY DIESEL GENERATOR

Drawn by: TB Checked by: CT

Sheet Number:
A10.0

DocuSign Envelope ID: FD24501E-7A8C-44BE-8553-6D8DEFDEBA2E

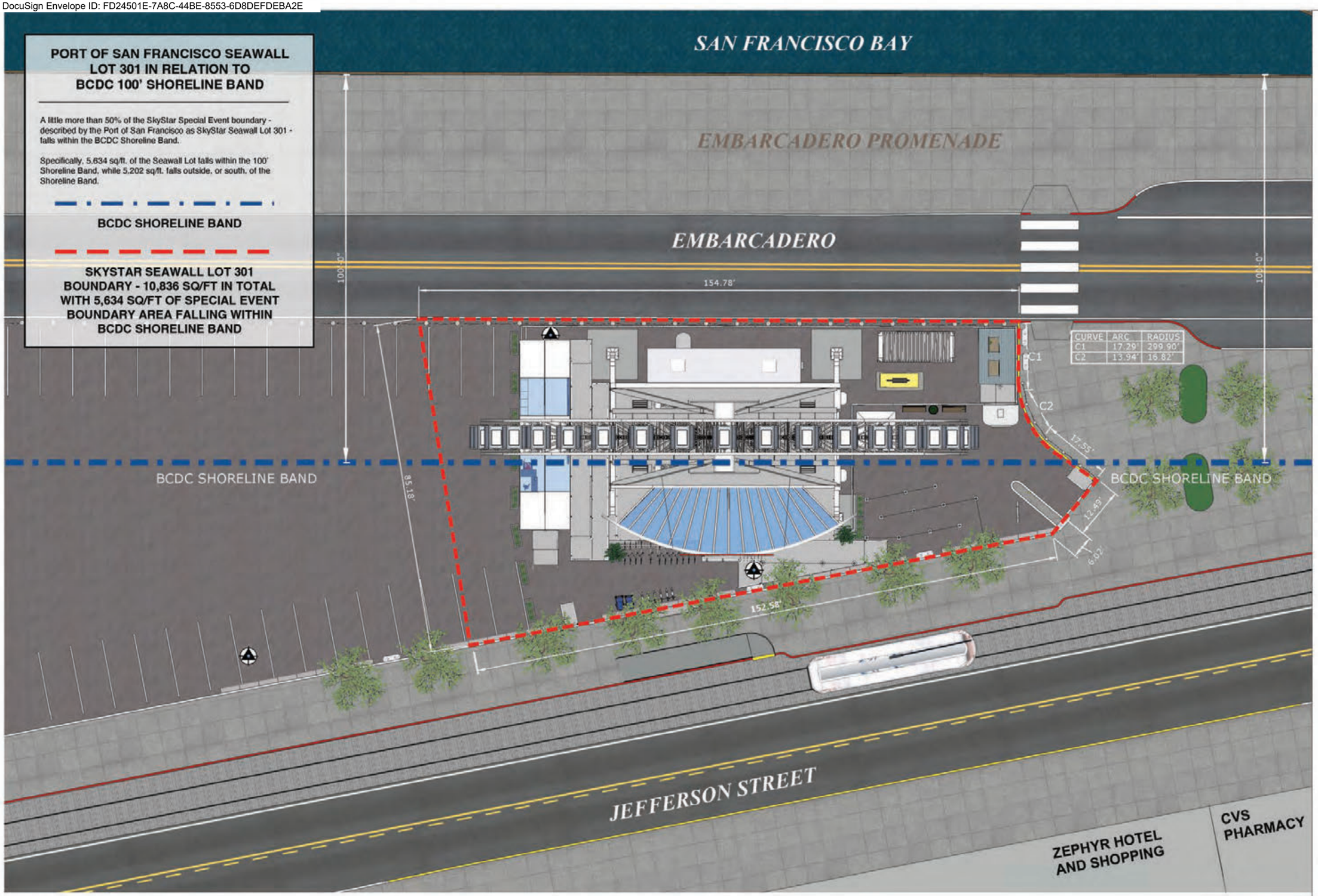
PORT OF SAN FRANCISCO SEAWALL LOT 301 IN RELATION TO BCDC 100' SHORELINE BAND

A little more than 50% of the SkyStar Special Event boundary - described by the Port of San Francisco as SkyStar Seawall Lot 301 - falls within the BCDC Shoreline Band.

Specifically, 5,634 sq/ft. of the Seawall Lot falls within the 100' Shoreline Band, while 5,202 sq/ft. falls outside, or south, of the Shoreline Band.

BCDC SHORELINE BAND

SKYSTAR SEAWALL LOT 301 BOUNDARY - 10,836 SQ/FT IN TOTAL WITH 5,634 SQ/FT OF SPECIAL EVENT BOUNDARY AREA FALLING WITHIN BCDC SHORELINE BAND



1 SKYSTAR PORTABLE OBSERVATION WHEEL - SITE PLAN
A1.0 *scale: 1" = 11'*

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13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
1" = 11'

Drawing Description:
BCDC SHORELINE BAND

Drawn by: TB Checked by: CT

Sheet Number:
A11.0

DocuSign Envelope ID: FD24501E-7A8C-44BE-8553-6D8DEFDEBA2E

GEOTECHNICAL/ENVIRONMENTAL EXPLORATORY BORING

DRILLING/BORING SITE

SKYSTAR SEAWALL LOT 301 BOUNDARY - 10,836 SQ/FT

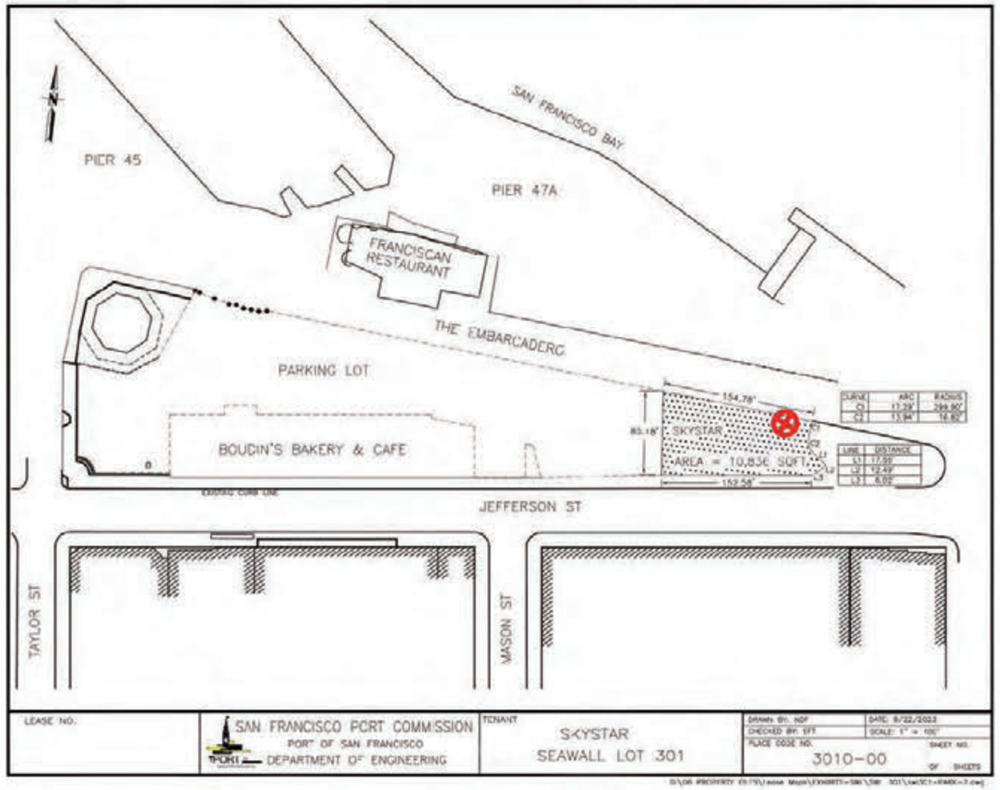
EMBARCADERO

28'-7"

43'-1 3/4"

92'-8"

JEFFERSON STREET



1 GEOTECHNICAL/ENVIRONMENTAL - DRILLING/BORING PLAN

A1.0 *scale: 1" = 7'*

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11	SCHEMATIC	10/20/2023
12	SCHEMATIC	10/24/2023
13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
1" = 7'

Drawing Description:
GEOTECHNICAL/ENVIRONMENTAL EXPLORATORY DRILLING/BORING

Drawn by: TB Checked by: CT

Sheet Number:

A12.0

DocuSign Envelope ID: FD24501E-7A8C-44BE-8553-6D8DEFDEBA2E



SKYSTAR IDENTIFYING SIGNAGE

SkyStar has a built in marquee sign that identifies the attraction, which is affixed to the awning structure over the Wheel platform. This sign is subtly illuminated at night.

We are also proposing two additional signs to be mounted to the center hub of the Wheel, and are suggesting using that sign space for the Fisherman's Wharf logo. Subtle uplighting is also proposed for these two signs, front and back.

- **A** SkyStar Marquee Sign
- **B** SkyStar Hub Signs, Front & Back

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13	SCHEMATIC	10/27/2023
14	SCHEMATIC	10/30/2023

Scale:
N/A

Drawing Description:
SKYSTAR IDENTIFYING SIGNAGE

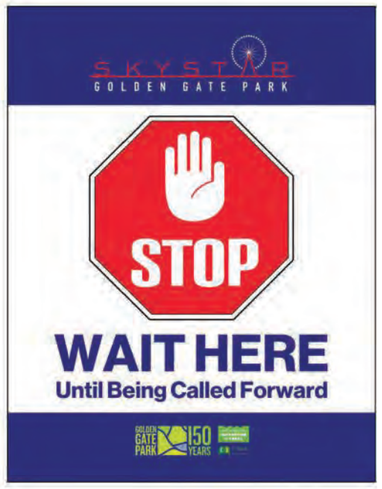
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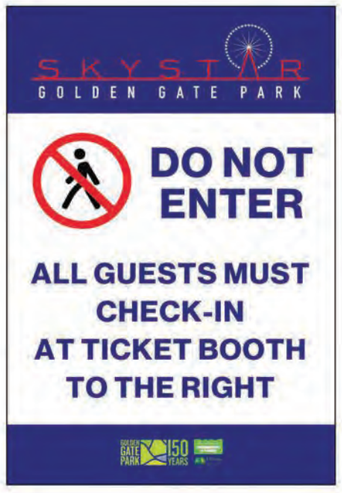
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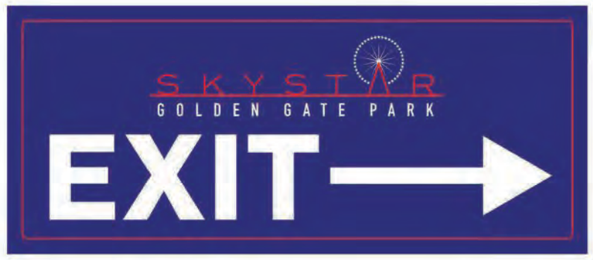












Examples of the many types of SkyStar signs found at the Golden Gate Park Operation.

SKYSTAR INFORMATION, WAYFINDING & EXIT SIGNAGE

In all of the locations SkyStar has visited, including Golden Gate Park, a comprehensive sign program is employed to help guests navigate safely and effectively.

From detailed ADA signage, to clearly marked exit signage, and everything in between, SkyStar understands the importance of a thoughtful and detailed sign program that makes the attraction easy to navigate and helpful to all guests that visit the attraction. And all of the signage is located within the footprint of the site.

The signs on this page are just a sampling of the many signs that are found throughout the attraction at its current home in Golden Gate Park. Once we have secured the Fisherman's Wharf location we will develop a very detailed sign program for the Port's review, that will call out sign the artwork, the dimensions, and the locations of every sign placement.

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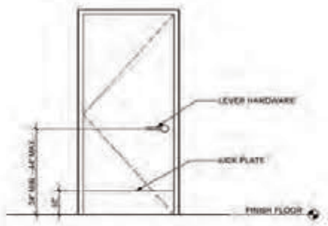
Drawing Description:
SKYSTAR IDENTIFYING SIGNAGE

Drawn by: TB Checked by: CT

Sheet Number:

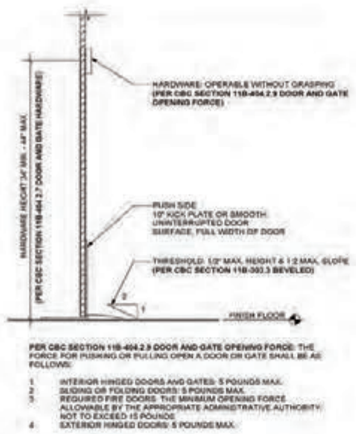
SP.1

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4 DOOR ELEVATION - KICK PLATE AND HARDWARE MOUNTING HEIGHT
1/2" = 1'-0"

REF. 1/A3.0, 1/A4.0

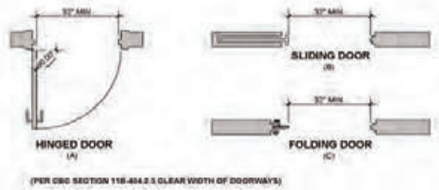


PER CBC SECTION 11B-404.2.9 DOOR AND GATE OPENING FORCE: THE FORCE FOR PUSHING OR PULLING OPEN A DOOR OR GATE SHALL BE AS FOLLOWS:

1 INTERIOR HINGED DOORS AND GATES: 5 POUNDS MAX.
2 SLIDING OR FOLDING DOORS: 5 POUNDS MAX.
3 REQUIRED FIRE DOORS: THE MINIMUM OPENING FORCE ALLOWABLE BY THE APPROPRIATE ADMINISTRATIVE AUTHORITY; NOT TO EXCEED 15 POUNDS
4 EXTERIOR HINGED DOORS: 5 POUNDS MAX.

3 DOOR SECTION - KICK PLATE AND HARDWARE MOUNTING HEIGHT
1/2" = 1'-0"

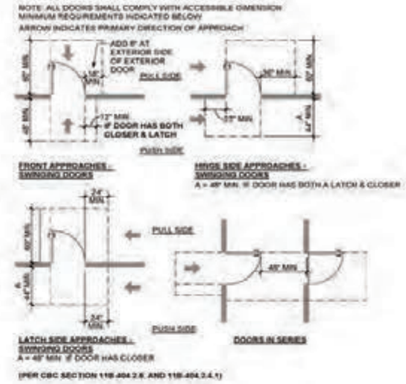
REF. 1/A3.0, 1/A4.0



(PER CBC SECTION 11B-404.2.3 CLEAR WIDTH OF DOORWAYS)

2 CLEAR WIDTH OF DOORWAYS
1/2" = 1'-0"

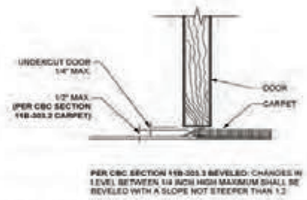
REF. 1/A3.0, 1/A4.0



(PER CBC SECTION 11B-404.2.6 AND 11B-404.2.4.1)

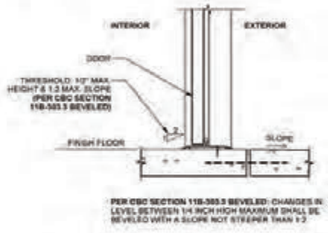
1 DOOR CLEARANCE REQUIREMENTS
3/16" = 1'-0"

REF. 1/A3.0, 1/A4.0



PER CBC SECTION 11B-303.3 BEVELED: CHANGES IN LEVEL BETWEEN 1/4 INCH HIGH MAXIMUM SHALL BE BEVELED WITH A SLOPE NOT STEEPER THAN 1:2

6 THRESHOLD AT INT. DOOR AT CARPET
3" = 1'-0"



PER CBC SECTION 11B-303.3 BEVELED: CHANGES IN LEVEL BETWEEN 1/4 INCH HIGH MAXIMUM SHALL BE BEVELED WITH A SLOPE NOT STEEPER THAN 1:2

5 THRESHOLD AT EXT. DOOR
1 1/2" = 1'-0"

REF. 1/A3.0 - RETAIL PHOTO PICKUP
1/A4.0 - EMPLOYEE BREAK ROOM

1. ACCESSIBLE PATH OF TRAVEL (I.E. RAMP) SERVING ALL PATHS OF TRAVEL TO BE ACCESSIBLE PER CBC SECTION 11B-206
2. THE PATH OF TRAVEL FROM THE PUBLIC WAY TO ACCESSIBLE ENTRANCES OF THE BUILDING (CBC SECTIONS 11B-206.2.1, 11B-206.2.2 AND 11B-206.2.3), AND TO THE ELEVATOR WITHIN THE BUILDING.
3. **PER CBC 11B-206.2.1 SITE ARRIVAL POINTS:** AT LEAST ONE ACCESSIBLE ROUTE SHALL BE PROVIDED WITHIN THE SITE FROM ACCESSIBLE PARKING SPACES AND ACCESSIBLE PASSENGER LOADING ZONES; PUBLIC STREETS AND SIDEWALKS; AND PUBLIC TRANSPORTATION STOPS TO THE ACCESSIBLE BUILDING OR FACILITY ENTRANCE THEY SERVE.
4. **PER CBC 11B-206.2.2 WITHIN A SITE:** AT LEAST ONE ACCESSIBLE ROUTE SHALL CONNECT ACCESSIBLE BUILDINGS, ACCESSIBLE FACILITIES, ACCESSIBLE ELEMENTS, AND ACCESSIBLE SPACES THAT ARE ON THE SAME SITE.
5. **PER CBC 11B-206.2.3 MULTI-STORY BUILDINGS AND FACILITIES:** AT LEAST ONE ACCESSIBLE ROUTE SHALL CONNECT EACH STORY AND MEZZANINE IN MULTI-STORY BUILDINGS AND FACILITIES.
6. **PER CBC 11B- 206.4 ENTRANCES:** ENTRANCES SHALL BE PROVIDED IN ACCORDANCE WITH SECTION 11B-206.4. ENTRANCE DOORS, DOORWAYS AND GATES SHALL COMPLY WITH SECTION 11B-404 AND SHALL BE ON AN ACCESSIBLE ROUTE COMPLYING WITH SECTION 11B-402.
7. **PER CBC 11B- 207** ACCESSIBLE MEANS OF EGRESS
8. **PER CBC 11B-207.1 GENERAL:** MEANS OF EGRESS SHALL COMPLY WITH CHAPTER 10, SECTION 1009 AND SECTION 11B-207 EXEPTIONS.
   1. *WHERE MEANS OF EGRESS ARE PERMITTED BY LOCAL BUILDING OR LIFE SAFETY CODES TO SHARE A COMMON PATH OF EGRESS TRAVEL, ACCESSIBLE MEANS OF EGRESS SHALL BE PERMITTED TO SHARE A COMMON PATH OF EGRESS TRAVEL.*
   2. *AREAS OF REFUGE SHALL NOT BE REQUIRED IN DETENTION AND CORRECTIONAL FACILITIES.*
   3. *ACCESSIBLE MEANS OF EGRESS ARE NOT REQUIRED TO BE PROVIDED IN EXISTING BUILDINGS.*
   4. *DOORS THAT PROVIDE ACCESS ONLY TO INTERIOR OR EXTERIOR STAIRWAYS SHALL NOT BE REQUIRED TO COMPLY WITH SECTION 11B-404.*
   5. *EXITS IN EXCESS OF THOSE REQUIRED BY CHAPTER 10, AND WHICH ARE MORE THAN 24 INCHES (610 MM) ABOVE GRADE SHALL NOT BE REQUIRED TO COMPLY WITH SECTION 11B-404 OR BE ON AN ACCESSIBLE ROUTE DIRECTIONAL SIGNS SHALL BE PROVIDED IN ACCORDANCE WITH CHAPTER 10, SECTION 1009.10.*
9. **PER CBC 11B-247.1.2.5 HAZARDOUS VEHICULAR AREAS:** IF A WALK CROSSES OR ADJOINTS A VEHICULAR WAY, AND THE WALKING SURFACES ARE NOT SEPARATED BY CURBS, RAILINGS OR OTHER ELEMENTS BETWEEN THE PEDESTRIAN AREAS AND VEHICULAR AREAS, THE BOUNDARY BETWEEN THE AREAS SHALL BE DEFINED BY A CONTINUOUS DETECTABLE WARNING COMPLYING WITH SECTIONS 11B-705.1.1 AND 11B-705.1.2.5.
10. **PER CBC 11B-302.1 GENERAL:** FLOOR AND GROUND SURFACES SHALL BE STABLE, FIRM, AND SLIP RESISTANT AND SHALL COMPLY WITH SECTION 11B-303
11. **PER CBC 11B-302.3 OPENINGS:** OPENINGS IN FLOOR OR GROUND SURFACES SHALL NOT ALLOW PASSAGE OF A SPHERE MORE THAN 1/2" INCH DIAMETER.
12. **PER CBC SECTION 11B-303.2 VERTICAL:** CHANGES IN LEVEL OF 1/4 INCH HIGH MAXIMUM SHALL BE PERMITTED TO BE VERTICAL AND WITHOUT EDGE TREATMENT
13. **PER CBC SECTION 11B-303.3 BEVELED:** CHANGES IN LEVEL BETWEEN 1/4 INCH HIGH AND 1/2 INCH HIGH SHALL BE BEVELED WITH A SLOPE NOT STEEPER THAN 1:2.
14. **PER CBC SECTION 11B-402.2 COMPONENTS:** ACCESSIBLE ROUTES SHALL CONSIST OF ONE OR MORE OF THE FOLLOWING COMPONENTS: WALKING SURFACES WITH A RUNNING SLOPE NOT STEEPER THAN 1:20, DOORWAYS, RAMPS, CURB RAMPS EXCLUDING THE FLARED SIDES, ELEVATORS, AND PLATFORM LIFTS. ALL COMPONENTS OF AN ACCESSIBLE ROUTE SHALL COMPLY WITH THE APPLICABLE REQUIREMENTS OF DIVISION 4.
15. **PER CBC SECTION 11B-403.3** CROSS SLOPE DOES NOT EXCEED 2% SLOPE IN THE DIRECTION OF TRAVEL TO BE LESS THAN 2%. UNLESS OTHERWISE INDICTED.
16. **PER CBC SECTION 11B-403.5.1:** ACCESSIBLE PATH OF TRAVEL SHALL BE MAINTAINED FREE OF OVERHANGING OBSTRUCTIONS TO 80" MINIMUM AND PROTRUDING OBJECTS GREATER THAN 4" PROJECTION FROM WALL AND ABOVE 27" AND LESS THAN 80"
17. **PER CBC SECTION 11B-406.1 GENERAL:** CURB RAMPS, BLENDED TRANSITIONS AND ISLANDS ON ACCESSIBLE ROUTES SHALL COMPLY WITH SECTION 11B-406. CURB RAMPS MAY BE PERPENDICULAR, PARALLEL, OR A COMBINATION OF PERPENDICULAR AND PARALLEL
18. PROVIDE AN ACCESSIBLE PATH OF TRAVEL FROM ACCESSIBLE PARKING SPACES TO BUILDING ENTRANCES WITH DETECTABLE WARNINGS SUCH AS TRUNCATED DOMES LOCATED PER CBC SECTION 11B-705.1.2 COMPLYING WITH CBC SECTION 11B-705.1.1.
19. ARCHITECT SHALL VERIFY THAT THERE ARE NO BARRIERS IN THE PATH OF TRAVEL.
20. THE DESIGN ENGINEER/ ARCHITECT SHALL VERIFY THAT ALL ACCESSIBLE PARKING AND PATH OF TRAVEL COMPLIES WITH ALL FEDERAL AND STATE ACCESSIBILITY REQUIREMENTS.
21. CONTRACTOR TO VERIFY THAT ALL BARRIERS IN THE PATH OF TRAVEL HAVE BEEN REMOVED OR WILL BE REMOVED UNDER THIS PROJECT, AND PATH OF TRAVEL COMPLIES WITH CBC SECTION 11B-402.

8 PATH OF TRAVEL NOTES
1/2" = 1'-0"

REF. 1/A6.2 - ACCESSIBLE PATH OF TRAVEL

1. OPENING SIZE IN THE SCHEDULE REFERS TO FINISHED OPENING OF THE DOOR FRAME
2. UNDERCUT AT DOORS SHALL BE 1/2" MAXIMUM UNLESS OTHERWISE NOTED. UNDERCUT AT 20 MINUTE DOORS 3/8". UNDERCUT AT NON-RATED TOILET DOORS 3/4".
3. ALL DOORS ARE TYPICAL 1-3/4" THICK UNLESS OTHERWISE NOTED IN THE DOOR SCHEDULE "NOTES" COLUMN.
4. **PER CBC SECTION 1010.1.9.1 HARDWARE:** DOOR HANDLES, PULLS, LATCHES, LOCKS AND OTHER OPERATING DEVICES ON DOORS REQUIRED TO BE ACCESSIBLE BY CHAPTER 11A OR 11B SHALL NOT REQUIRE TIGHT GRASPING, TIGHT PINCHING OR TWISTING OF THE WRIST TO OPERATE.
5. THE DOORS SHALL HAVE AN APPROVED LABEL OR LISTING MARK INDICATING THE FIRE PROTECTION RATING, WHICH IS PERMANENTLY AFFIXED AT THE FACTORY WHERE FABRICATION AND ASSEMBLY ARE DONE. PERIODIC INSPECTIONS SHALL BE MADE BY AN APPROVED INSPECTION AGENCY DURING FABRICATION AND ASSEMBLY. LABELS FOR FIRE DOORS USED TO PROTECT OPENINGS INTO EXIT ENCLOSURES SHALL INDICATE THAT THE TEMPERATURE RISE ON THE UNEXPOSED SURFACE DOES NOT EXCEED 450 DEGREES FAHRENHEIT ABOVE AMBIENT AT THE END OF 30 MINUTE OF THE FIRE EXPOSURE SPECIFIED IN THE UBC STANDING 7-2" TO SHOW COMPLIANCE WITH **CBC SEC 1005.3.** OVERSIZED FIRE DOORS MAY BE INSTALLED WHEN APPROVED BY THE BUILDING OFFICIAL. THE DOORS SHALL BE LABELED OR BE FURNISHED WITH CERTIFICATE OF INSPECTION FROM THE APPROVED AGENCY.
6. **PER CBC SECTION 1010.1.3 DOOR OPENING FORCE:**
   THE FORCE FOR PUSHING OR PULLING OPEN INTERIOR SWINGING EGRESS DOORS, OTHER THAN FIRE DOORS, SHALL NOT EXCEED 5 POUNDS. THESE FORCES DO NOT APPLY TO THE FORCE REQUIRED TO RETRACT LATCH BOLTS OR DISENGAGE OTHER DEVICES THAT HOLD THE DOOR IN A CLOSED POSITION.
7. **PER CBC SECTION 1010.1.3 DOOR LATCH RELEASE:**
   FOR OTHER SWINGING DOORS, AS WELL AS SLIDING AND FOLDING DOORS, THE DOOR LATCH SHALL RELEASE WHEN SUBJECTED TO A 15-POUND FORCE. THE DOOR SHALL BE SET IN MOTION WHEN SUBJECTED TO A 30-POUND FORCE. THE DOOR SHALL SWING TO A FULL-OPEN POSITION WHEN SUBJECTED TO A 15 POUND FORCE.
8. **PER CBC SECTION 1010.1.4.2 POWER-OPERATED DOORS:**
   WHERE MEANS OF EGRESS DOORS ARE OPERATED OR ASSISTED BY POWER, THE DESIGN SHALL BE SUCH THAT IN THE EVENT OF POWER FAILURE, THE DOOR IS CAPABLE OF BEING OPENED MANUALLY TO PERMIT MEANS OF EGRESS TRAVEL OR CLOSED WHERE NECESSARY TO SAFEGUARD MEANS OF EGRESS. THE FORCES REQUIRED TO OPEN THESE DOORS MANUALLY SHALL NOT EXCEED THOSE SPECIFIED IN SECTION 1010.1.3, EXCEPT THAT THE FORCE TO SET THE DOOR IN MOTION SHALL NOT EXCEED 50 POUNDS. THE DOOR SHALL BE CAPABLE OF SWINGING OPEN FROM ANY POSITION TO THE FULL WIDTH OF THE OPENING IN WHICH SUCH DOOR IS INSTALLED WHEN A FORCE IS APPLIED TO THE DOOR ON THE SIDE FROM WHICH EGRESS IS MADE.
9. **PER CBC SECTION 11B-404.2.3 CLEAR WIDTH:** DOOR OPENINGS SHALL PROVIDE A CLEAR WIDTH OF 32 INCHES MINIMUM. CLEAR OPENINGS OF DOORWAYS WITH SWINGING DOORS SHALL BE MEASURED BETWEEN THE FACE OF THE DOOR AND THE STOP, WITH THE DOOR OPEN 90 DEGREES. OPENINGS MORE THAN 24 INCHES DEEP SHALL PROVIDE A CLEAR OPENING OF 36 INCHES MINIMUM. THERE SHALL BE NO PROJECTIONS INTO THE REQUIRED CLEAR OPENING WIDTH LOWER THAN 34 INCHES ABOVE THE FINISH FLOOR OR GROUND. PROJECTIONS INTO THE CLEAR OPENING WIDTH BETWEEN 34 INCHES AND 80 INCHES ABOVE THE FINISH FLOOR OR GROUND SHALL NOT EXCEED 4 INCHES.
10. **PER CBC SECTION 11B-404.2.7 DOOR AND GATE HARDWARE:** HANDLES, PULLS LATCHES, LOCKS, AND OTHER OPERABLE PARTS ON DOORS AND GATES SHALL COMPLY WITH **CBC SECTION 11B-309.4.** OPERABLE PARTS OF SUCH HARDWARE SHALL BE 34 INCHES MINIMUM AND 44 INCHES MAXIMUM ABOVE THE FINISH FLOOR OR GROUND. WHERE SLIDING DOORS ARE IN THE FULLY OPEN POSITION, OPERATING HARDWARE SHALL BE EXPOSED AND USABLE FROM BOTH SIDES.
11. **PER CBC SECTION 11B-404.2.8.1 DOOR CLOSER AND GATE CLOSERS:** DOOR CLOSERS AND GATE CLOSERS SHALL BE ADJUSTED SO THAT FROM AN OPEN POSITION OF 90 DEGREES, THE TIME REQUIRED TO MOVE THE DOOR TO A POSITION OF 12 DEGREES FROM THE LATCH IS 5 DECONDS MINIMUM.
12. **PER CBC SECTION 11B-404.2.9 DOOR AND GATE OPENING FORCE:** THE FORCE FOR PUSHING OR PULLING OPEN A DOOR OR GATE OTHER THAN FIRE DOORS SHALL BE AS FOLLOWS:
    1. INTERIOR HINGED DOORS AND GATES: 5 POUNDS MAXIMUM.
    2. SLIDING OR FOLDING DOORS: 5 POUNDS MAXIMUM.
    3. REQUIRED FIRE DOORS: THE MINIMUM OPENING FORCE ALLOWABLE BY THE APPROPRIATE ADMINISTRATIVE AUTHORITY, NOT TO EXCEED 15 POUNDS.
    4 EXTERIOR HINGED DOORS: 5 POUNDS MAXIMUM.
13. **PER CBC SECTION 11B-404.2.10 DOOR AND GATE SURFACES:** SWINGING DOOR AND GATE SURFACES WITHIN 10 INCHES OF THE FINISH FLOOR OR GROUND MEASURED VERTICALLY SHALL HAVE A SMOOTH SURFACE ON THE PUSH SIDE EXTENDING THE FULL WIDTH OF THE DOOR OR GATE. PARTS CREATING HORIZONTAL OR VERTICAL JOINTS IN THESE SURFACES SHALL BE WITHIN 1/16 INCH OF THE SAME PLANE AS THE OTHER AND BE FREE OF SHARP OR ABRASIVE EDGES. CAVITIES CREATED BY ADDED KICK PLATES SHALL BE CAPPED.

7 DOOR AND GATE-EGRESS AND ACCESSIBLE NOTES
1/2" = 1'-0"

REF. 1/A3.0, 1/A4.0

FOR CONSTRUCTION

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10.19.23

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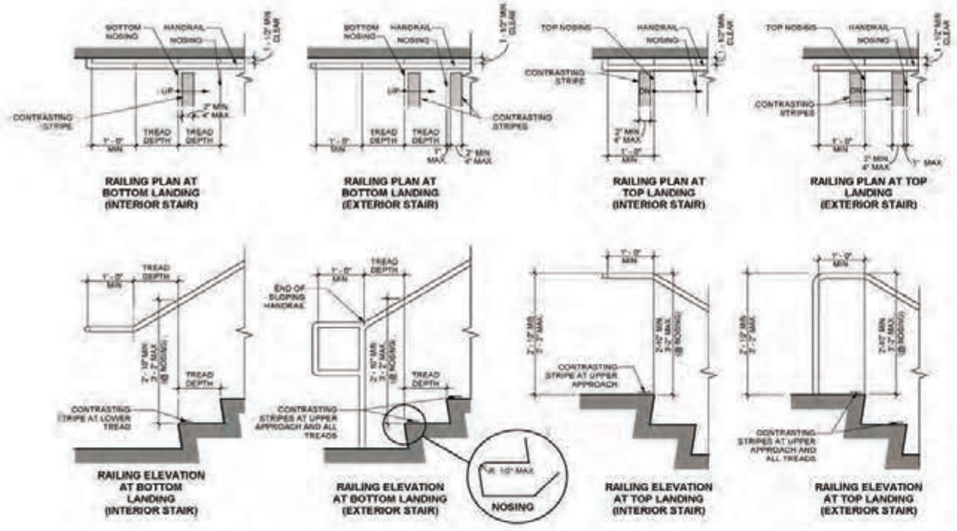
NO.	REVISION	DATE

DATE 2023.10.10
DRAWN BY Author
CHECKED BY October
BRW PROJECT NUMBER 223124

SKYSTAR WHEEL LLC.
OBSERVATION WHEEL SPECIAL EVENT ATTRACTION
2880 TAYLOR STREET
SAN FRANCISCO, CA 94133

ADA-1
DOORS ,THRESHOLDS & NOTES

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PER CBC 11B-404.2 TREADS AND RISER: ALL STEPS ON A FLIGHT OF STAIRS SHALL HAVE UNIFORM RISER HEIGHTS AND UNIFORM TREAD DEPTHS. RISERS SHALL BE 4 INCHES HIGH MINIMUM AND 7 INCHES HIGH MAXIMUM. TREADS SHALL BE 11 INCHES DEEP MINIMUM.

PER CBC SECTION 11B-504.4.1 CONTRASTING STRIPE: INTERIOR STAIRS SHALL HAVE THE UPPER APPROACH AND LOWER TREAD MARKED BY A STRIPE PROVIDING CLEAR VISUAL CONTRAST. EXTERIOR STAIRS SHALL HAVE THE UPPER APPROACH AND ALL TREADS MARKED BY A STRIPE PROVIDING CLEAR VISUAL CONTRAST.

PER CBC 11B-504.5 NOSINGS: THE RADIUS OF CURVATURE AT THE LEADING EDGE OF THE TREAD SHALL BE 1/2 IN MAXIMUM.

(EDITOR NOTE: WHERE RAILING HAS GREATER RADIUS THAN MINIMUM BEND RADIUS, OR RETURNS AT ANGLE OTHER THAN 90 DEGREES, MEASURE HANDRAIL EXTENSIONS TO THE STARTING POINT OF THE BEND IN LIEU OF AS SHOWN HERE.)

PER CBC SECTION 11B-505.10.3 BOTTOM EXTENSION AT STAIRS: AT THE BOTTOM OF A STAIR FLIGHT, A HORIZONTAL EXTENSION OF A HANDRAIL SHALL BE 12 INCHES LONG MINIMUM AND A HEIGHT EQUAL TO THAT OF THE SLOPING PORTION OF THE HANDRAIL AS MEASURED ABOVE THE STAIR NOSINGS.

PER CBC SECTION 1014.6 HANDRAIL EXTENSIONS: WHERE HANDRAILS ARE NOT CONTINUOUS BETWEEN FLIGHTS, THE HANDRAILS SHALL EXTEND HORIZONTALLY NOT LESS THAN 12 INCHES BEYOND THE TOP RISER AND CONTINUE TO SLOPE FOR THE DEPTH OF ONE TREAD BEYOND THE BOTTOM RISER.

PER CBC SECTION 11B-505.4 HEIGHT: TOP OF GRIPPING SURFACES OF HANDRAILS SHALL BE 34 INCHES MIN. AND 38 INCHES MAX. VERTICALLY ABOVE WALKING SURFACES, STAIR NOSINGS, AND RAMP SURFACES. HANDRAILS SHALL BE AT A CONSISTENT HEIGHT ABOVE WALKING SURFACES, STAIR NOSINGS, AND RAMP SURFACES.

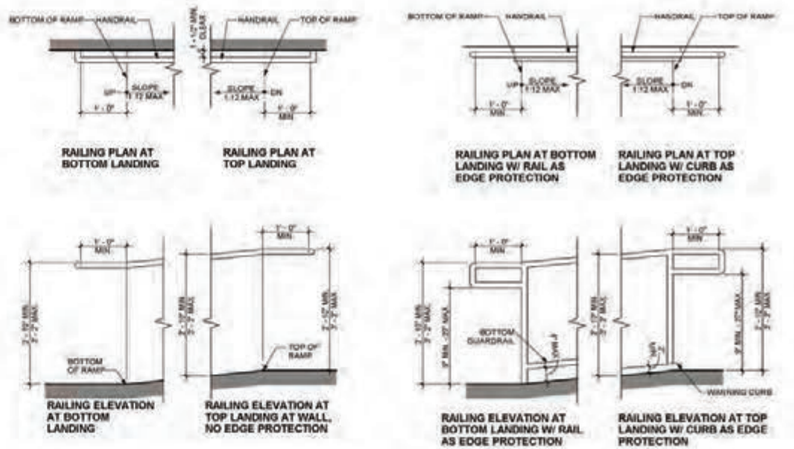
2 STAIR HANDRAIL/ NOSINGS AND CONTRASTING STRIPS
3/4" = 1'-0"

REF. 1/A2.0, 1A2.2 -- STAIRS TO MAIN ATTRACTION LANDING

1. **PER CBC 11B-302.1 GENERAL:** SURFACE IS STABLE, FIRM, AND SLIP RESISTANT.
2. **PER CBC 11B-504.2 TREADS AND RISERS:** ALL STEPS ON A FLIGHT OF STAIRS SHALL HAVE UNIFORM RISER HEIGHTS AND UNIFORM TREAD DEPTHS. RISERS SHALL BE 4 INCHES HIGH MINIMUM AND 7 INCHES HIGH MAXIMUM. TREADS SHALL BE 11 INCHES DEEP MINIMUM.
3. **PER CBC 11B-504.3 OPEN RISERS:** OPEN RISERS ARE NOT PERMITTED.
4. **PER CBC 11B-504.4 TREAD SURFACE:** STAIR TREADS SHALL COMPLY WITH **CBC SECTION 11B-302.** CHANGES IN LEVEL ARE NOT PERMITTED.
5. **PER CBC 11B-504.5 NOSINGS:** THE RADIUS OF CURVATURE AT THE LEADING EDGE OF THE TREAD SHALL BE 1/2 IN MAXIMUM. NOSINGS THAT PROJECT BEYOND RISERS SHALL HAVE THE UNDERSIDE OF THE LEADING EDGE CURVED OR BEVELED. RISERS SHALL BE PERMITTED TO SLOPE UNDER THE TREAD AT AN ANGLE OF 30 DEGREES MAXIMUM FROM VERTICAL. THE PERMITTED PROJECTION OF THE NOSING SHALL EXTEND 1 1/4 INCHES MAXIMUM FROM VERTICAL.
6. **PER CBC 11B-504.7 WET CONDITIONS:** STAIR TREADS AND LANDINGS SUBJECT TO WET CONDITIONS SHALL BE DESIGNED TO PREVENT THE ACCUMULATION OF WATER.
7. **PER CBC SECTION 1011.7.5 ENCLOSURES UNDER INTERIOR STAIRWAYS:** THE WALLS AND SOFFITS WITHIN ENCLOSED USABLE SPACES UNDER ENCLOSED AND UNENCLOSED STAIRWAYS SHALL BE PROTECTED BY 1-HOUR FIRE-RESISTANCE-RATED CONSTRUCTION OR THE FIRE-RESISTANCE RATING OF THE STAIRWAY ENCLOSURE, WHICHEVER IS GREATER. ACCESS TO THE ENCLOSED SPACE SHALL NOT BE DIRECTLY FROM WITHIN THE STAIRWAY ENCLOSURE.
8. **PER CBC SECTION 1011.11 HANDRAILS:** STAIRWAYS SHALL HAVE HANDRAILS ON EACH SIDE AND SHALL COMPLY WITH **SECTION 1014.** WHERE GLASS IS USED TO PROVIDE THE HANDRAIL, THE HANDRAIL SHALL COMPLY WITH **SECTION 2407.**
9. **PER CBC SECTION 1014.6 HANDRAIL EXTENSIONS:** WHERE HANDRAILS ARE NOT CONTINUOUS BETWEEN FLIGHTS, THE HANDRAILS SHALL EXTEND HORIZONTALLY NOT LESS THAN 12 INCHES BEYOND THE TOP RISER AND CONTINUE TO SLOPE FOR THE DEPTH OF ONE TREAD BEYOND THE BOTTOM RISER.
10. **PER CBC SECTION 11B-505.10.3 BOTTOM EXTENSION AT STAIRS:** AT THE BOTTOM OF A STAIR FLIGHT, A HORIZONTAL EXTENSION OF A HANDRAIL SHALL BE 12 INCHES LONG MINIMUM AND A HEIGHT EQUAL TO THAT OF THE SLOPING PORTION OF THE HANDRAIL AS MEASURED ABOVE THE STAIR NOSINGS.
11. **PER CBC SECTION 11B-504.4.1 CONTRASTING STRIPE:** INTERIOR STAIRS SHALL HAVE THE UPPER APPROACH AND LOWER TREAD MARKED BY A STRIPE PROVIDING CLEAR VISUAL CONTRAST. EXTERIOR STAIRS SHALL HAVE THE UPPER APPROACH AND ALL TREADS MARKED BY A STRIPE PROVIDING CLEAR VISUAL CONTRAST. THE STRIPE SHALL BE A MINIMUM OF 2 INCHES WIDE TO A MAXIMUM OF 4 INCHES WIDE PLACED PARALLEL TO, AND NOT MORE THAN 1 INCH FROM, THE NOSE OF THE STEP OR UPPER APPROACH.
12. **PER CBC SECTION 11B-505.4 HEIGHT:** TOP OF GRIPPING SURFACES OF HANDRAILS SHALL BE 34 INCHES MIN. AND 38 INCHES MAX. VERTICALLY ABOVE WALKING SURFACES, STAIR NOSINGS, AND RAMP SURFACES. HANDRAILS SHALL BE AT A CONSISTENT HEIGHT ABOVE WALKING SURFACES, STAIR NOSINGS, AND RAMP SURFACES.

3 STAIRS AND HANDRAILS NOTES
3/16" = 1'-0"

REF. 1/A3.0, A4.0, A4.1
REF. 1/A2.0 -- STAIRS TO MAIN ATTRACTION LANDING



PER CBC SECTION 11B-405.5 CLEAR WIDTH: THE CLEAR WIDTH OF A RAMP RUN SHALL BE 48 INCHES MIN.

PER CBC SECTION 11B-405.9.2 CURB OR BARRIER: A CURB, 2 INCHES HIGH MIN. OR BARRIER SHALL BE PROVIDED THAT PREVENTS THE PASSAGE OF A 4 INCH DIAMETER SPHERE, WHERE ANY PORTION OF THE SPHERE IS WITHIN 4 INCHES OF THE FINISH FLOOR OR GROUND SURFACE. TO PREVENT WHEEL ENTRAPMENT. THE CURB OR BARRIER SHALL PROVIDE A CONTINUOUS AND UNINTERRUPTED BARRIER ALONG THE LENGTH OF THE RAMP.

(EDITOR NOTE: WHERE RAILING HAS GREATER RADIUS THAN MINIMUM BEND RADIUS, OR RETURNS AT ANGLE OTHER THAN 90 DEGREES, MEASURE HANDRAIL EXTENSIONS TO THE STARTING POINT OF THE BEND IN LIEU OF AS SHOWN HERE.)

PER CBC SECTION 11B-505.10.1 TOP AND BOTTOM EXTENSION AT RAMPS: RAMP HANDRAILS SHALL EXTEND HORIZONTALLY ABOVE THE LANDING FOR 12 INCHES MINIMUM BEYOND THE TOP AND BOTTOM OF RAMP RUNS. EXTENSIONS SHALL RETURN TO A WALL, GUARD, OR THE LANDING SURFACE, OR SHALL BE CONTINUOUS TO THE HANDRAIL OF AN ADJACENT RAMP RUN.

PER 11B-303.5 WARNING CURB: ABRUPT CHANGE IN LEVEL EXCEEDING 4" IN A VERTICAL DIMENSION BETWEEN WALK, SIDEWALKS, OTHER PEDESTRIAN WAYS AND ADJACENT SURFACES OR FEATURES SHALL BE IDENTIFIED BY WARNING CURBS AT LEAST 6" ABOVE THE WALK OR SIDEWALK SURFACE.

EXCEPTION:
1. A WARNING CURB IS NOT REQUIRED BETWEEN A WALK OR SIDEWALK AND AN ADJACENT STREET OR DRIVEWAY.
2. A WARNING CURB IS NOT REQUIRED WHEN A GUARD OR HANDRAIL IS PROVIDED WITH A GUIDE RAIL CENTERED 2 INCHES MINIMUM AND 4 INCHES MAXIMUM ABOVE THE SURFACE OF THE WALK OR SIDEWALK.

1 RAMP HANDRAIL
3/4" = 1'-0"

REF. 1/A3.0, 1/A3.1, - MAIN RAMP
A4.0, A4.1 - EMPLOYEE BREAK ROOM

FOR CONSTRUCTION

LICENSED ARCHITECT — CHRISTOPHER FORD — C-17552 — STATE OF CALIFORNIA
10.19.23

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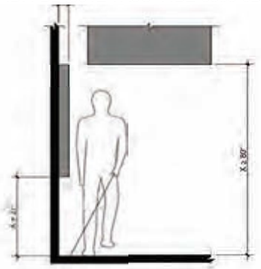
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BRW PROJECT NUMBER	223124

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NO.	REVISION	DATE

ADA-2
STAIRS, RAMPS, ALCOVES & NOTES

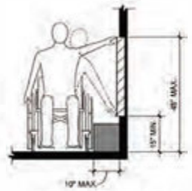
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PER CBC SECTION 11B-307.2 LIMITS OF PROTRUDING OBJECTS

5 LIMITS OF PROTRUDING OBJECTS
1/2" = 1'-0"

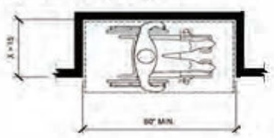
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PER CBC SECTION 11B-308.3.1 UNOBSTUCTED SIDE REACH

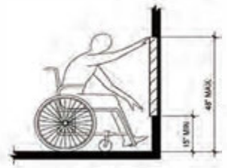
4 UNOBSTRUCTED SIDE REACH
1/2" = 1'-0"

REF 1/A3.0, 2/A3.1



PER CBC SECTION 11B-305.7.2 PARALLEL APPROACH ALCOVES SHALL BE 60 INCHES WIDE MIN. WHERE THE DEPTH EXCEEDS 15 INCHES

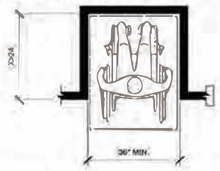
9 ALCOVE - PARALLEL APPROACH
1/2" = 1'-0"



PER CBC SECTION 11B-308.3.1 UNOBSTUCTED FORWARD REACH

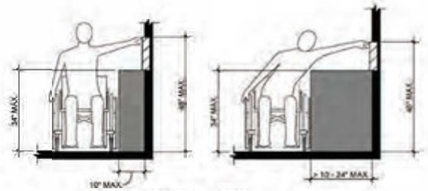
3 UNOBSTRUCTED FORWARD REACH
1/2" = 1'-0"

REF 1/A3.0, 2/A3.1



PER CBC SECTION 11B-305.7.1 FORWARD APPROACH, ALCOVE SHALL BE 36 INCHES WIDE MIN. WHERE THE DEPTH EXCEEDS 24 INCHES

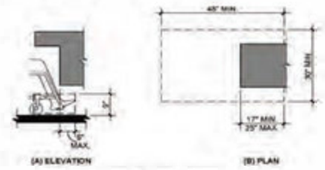
8 ALCOVE - FORWARD APPROACH
1/2" = 1'-0"



PER CBC SECTION 11B-308.3.2 OBSTUCTED HIGH SIDE REACH

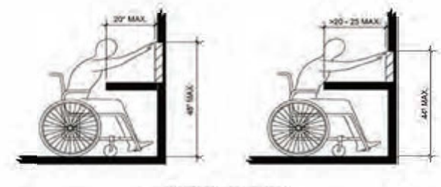
2 OBSTRUCTED HIGH SIDE REACH
1/2" = 1'-0"

REF. 1/A3.0, 2/A4.0



PER CBC SECTION 11B-306.2

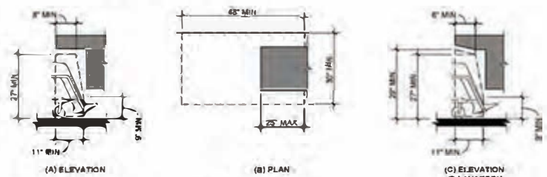
7 ACCESSIBLE TOE CLEARANCE
1/2" = 1'-0"



PER CBC SECTION 11B-308.2.2 OBSTUCTED HIGH FORWARD REACH

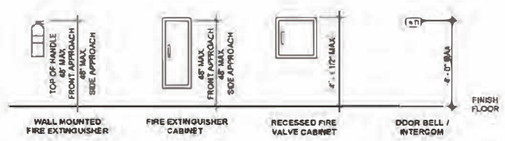
1 OBSTRUCTED HIGH FORWARD REACH
1/2" = 1'-0"

REF. 1/A3.0, 2/A4.0

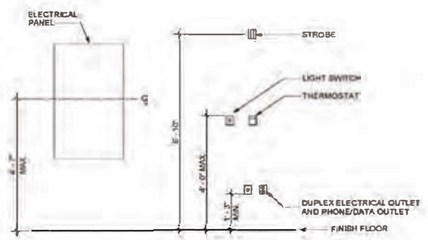


PER CBC SECTION 11B-306.3

6 ACCESSIBLE KNEE CLEARANCE
1/2" = 1'-0"



10 NON- RESTROOM MOUNTING HEIGHTS
3/8" = 1'-0"



11 ELECTRICAL PANEL/ DEVICE MOUNTING HEIGHTS
1/2" = 1'-0"

Initial : DS JBC
Port:

Tenant: DS TS

FOR CONSTRUCTION

LICENSED ARCHITECT CHRISTOPHER J. CARR C-17552 STATE OF CALIFORNIA
10.19.23

BROWN REYNOLDS WATFORD ARCHITECTS
1830 MONTGOMERY
SUITE 320
SAN FRANCISCO, CA 94111
415.788.2625
WWW.BRWARCH.COM
BRW

SKYSTAR WHEEL LLC.
OBSERVATION WHEEL SPECIAL EVENT ATTRACTION
2860 TAYLOR STREET
SAN FRANCISCO, CA 94133

NO.	REVISION	DATE

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DATE 2023.10.10
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CHECKED BY Checker
BRW PROJECT NUMBER 223124

ADA-3
ACCESSIBLE DESIGN REQUIREMENTS

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SCHEDULE 1

ASBESTOS NOTIFICATION AND INFORMATION NOTICE TO EMPLOYEES, OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS

[Attachment on following page(s)]

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NOTICE TO EMPLOYEES, OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS

ASBESTOS IN BUILDINGS

FOR PERIOD THROUGH: March 2014

It is the responsibility of the master tenant to provide this notice to any subtenant within their leasehold.

In January of 1989, Assembly Bill 3713 was signed into law and added to the California Health and Safety Code. This bill provides for written notice to employees concerning specific matters related to working in a building with asbestos containing construction materials. It applies to building built before 1979 where the owner knows that the building contains asbestos-containing materials; it does not require that a building be surveyed to determine the presence of asbestos.

WHAT IS ASBESTOS?

Asbestos is a naturally occurring group of fibrous minerals which have been used extensively in public buildings, apartment buildings and homes. Asbestos was incorporated into pipe insulation, acoustic plaster, acoustic tile, duct and furnace insulation, floor tiles, textiles and hundreds of other building materials. In most City buildings, asbestos is located in insulation on piping systems, acoustic plaster on ceilings, acoustic ceiling tiles, vinyl asbestos floor tiles, and structural fireproofing. Asbestos may be found in soils as well, especially if soil is non-native or commingled with municipal waste (land fill).

WHY IS ASBESTOS HAZARDOUS?

Asbestos is a concern because of the potential health risks associated with breathing asbestos fibers. It is important for you to know that most people with asbestos-related diseases were asbestos workers before 1972. These workers were repeatedly exposed to high levels of asbestos each working day with little or no protection. Asbestos workers today are required to follow specific work practices and wear appropriate protection to minimize exposure.

Significant exposure to asbestos fibers can lead to asbestosis and certain forms of cancer. Asbestosis is one of the many dust-related lung diseases. It is associated with chronic exposure to relatively high levels of asbestos and is characterized by the permanent deposition of asbestos fibers in the respiratory tract. The earliest and most prominent clinical finding, breathlessness upon exertion, rarely becomes apparent until at least a decade of exposure.

In addition to asbestosis, the association of asbestos and lung cancer has been well established over the past two decades. Scientists have studied insulation and shipyard workers who were exposed to HIGH AIRBORNE LEVELS of asbestos. These studies indicated that asbestos workers were about five times as likely to get lung cancer as non-asbestos workers who did not smoke. Asbestos workers who also smoke were found to be at much greater risk (about 50 times) of dying of lung cancer than non-smoking non-asbestos workers. Mesothelioma, a rare form of cancer of the chest or abdominal cavity, occurs among occupational groups exposed to certain types of asbestos.

ASBESTOS SAMPLING RESULTS

A variety of exposure standards and health action levels have been established for various purposes:

The Occupational Safety and Health Administration (OSHA) asbestos standards (Title 29 of the Code of Federal Regulations), which apply to employees who actually work with asbestos, mandate a permissible exposure limit (PEL) of 0.1 fibers per cubic centimeter of air (f/cc) determined as an 8 hour time weighted average (TWA) and an excursion limit of 1 f/cc as a 30 minute TWA. When employees are exposed at these levels, OSHA and Cal/OSHA (Title 8 of the California Code of Regulations) require medical monitoring and other control methods.

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The Environmental Protection Agency (EPA) has recommended a "clearance level" for asbestos of 0.01 f/cc, as measured by phase contrast microscopy (PCM). If measured by the transmission electron microscopy (TEM) method described in 40 CFR Part 763, the Asbestos Hazard Emergency Response Act (AHERA), the clearance level is either 0.02 structure/cc or 70 structures per square millimeter of filter (s/mm^2). This means that once an operation involving asbestos (such as removal) is complete, the area is "safe" for re-occupancy as long as the asbestos air concentrations are less than or equal to the "clearance level". These same levels have also been adopted in the California Education Code (Section 494200.7) as the school abatement clearance level.

The state of California has an additional requirement relating to disclosure of the presence of asbestos. Proposition 65, which as voted into law by the state citizens, basically requires posting of area where anyone is exposed to a carcinogen at a level where there is a significant risk of cancer. The California Health and Welfare Agency has established this level at 100 fibers of asbestos per day.

GENERAL PROCEDURES AND HANDLING RESTRICTIONS

As you can see, the concern is with asbestos fibers in the air. When asbestos materials are in good condition, it is unlikely that fibers will be released into the air, unless the asbestos materials are damaged or disturbed. Asbestos-containing materials must not be disturbed so that fibers do not get into the air. Do not cut into, drill into, nail, or pin anything onto, sand, move bump, rub against or otherwise disturb any asbestos containing materials. If you should discover any damaged asbestos-containing material, do not touch it; do not attempt to clean it up. Contact your supervisor or property manager immediately and report the situation.

City employees required to enter areas and perform work activities that might involve the disturbance of asbestos materials have been trained in the proper procedures to minimize exposure. Work that requires major disturbances of asbestos materials (such as removal) is performed under specifications which include work practice procedures, removal techniques, clean up and clearance air sampling.

If any construction, maintenance, or remodeling is conducted in an area of the building where there is the potential for employees to come in contact with, or release or disturb asbestos containing building materials, it is required that the area be posted with a clear and conspicuous warning sign. The warning sign must read:

"CAUTION. ASBESTOS
CANCER AND LUNG DISEASE HAZARD
DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT"

Much of this information may be new to you. If you have questions about asbestos, you may call the Department of Public Health Bureau of Environmental Health Management at 252-3800.

This written announcement fulfills the asbestos notification requirement of Division 20, Chapter 10.4, Section 25915 of the California Health and Safety Code (Assembly Bill 3713).

SITE SPECIFIC INFORMATION

At this time, the Port has not sampled for asbestos in your building. The following materials, if present in your building, are assumed to contain asbestos and should be treated as such:

Insulation on pipes and ducts; Fireproofing; Drywall and associated taping compound; Plaster; Texturing or acoustic materials on walls or ceilings; Stucco; ceiling tiles; floor tiles or sheet flooring; roofing; fire door core insulation; carpet, baseboard, flooring, and ceiling tile mastics; window glazing compound; ceramic tile grout and mastic. Asbestos may also be found in soil due to natural or man-made conditions.

These materials must not be drilled into, sanded, demolished or otherwise disturbed by unauthorized personnel. Prior to any renovation activities or other activities which may disturb asbestos, please contact your property manager.

The asbestos coordinator for this building is Tim Felton, who can be reached at 274-0582.

Initial : Port: DS DK

Tenant: DS TS

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SCHEDULE 2

HAZARDOUS MATERIAL DISCLOSURE

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Environmental Reports and Documents Regarding Hazardous Materials

SkyStar Wheel, LLC

January 25, 2024

Seawall Lot 301

Article 22A Compliance Soil Sampling and Site Dust Mitigation - Proposed Franceschi's Restaurant 498 Jefferson St, Korbmacher Engineering, Inc., July 13, 2005.

Asbestos Survey And Evaluation - Boudin Bakery - 160 Jefferson, ProTech Consulting and Engineering, August 18, 2003.

Data Gap Report, Pier 39 to Pier 45 Investigation Area, San Francisco., Haley & Aldrich, 7/6/2018.

Environmental Site Characterization - Boudin Bakery At The Wharf - 160 Jefferson Street, Treadwell & Rollo, April 15, 2003.

Green Environmental, Soil & Groundwater Characterization Survey - SWL301 1/2 , Muni F-Line Fisherman's Wharf Loop Project. (adjacent to SWL 301), UNKNOWN, September 3, 1997.

Lead Survey And Evaluation - Boudin Bakery - 160 Jefferson St, ProTech Consulting and Engineering, October 15, 2003.

Letter From SF DPH to Boudin Bakery: Closure Report, San Francisco Department of Public Health, November 29, 2005.

Quarterly Progress Report, Fourth Quarter 2002, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, 1/8/02.

Remedial Investigation Report, Pier 39 to Pier 45 Sediment Investigation, San Francisco, Haley & Aldrich, 12/21/2018.

Site Closure - Boudin Bakery At The Wharf - 160 Jefferson St, Treadwell & Rollo, November 18, 2005.

Site Health & Safety Plan, Muni Fisherman's Wharf Loop Project, Green Environment, Inc., September 3, 1997.

Site Mitigation Plan - Boudin Bakery At The Wharf - 160 Jefferson Street, Treadwell & Rollo, January 22, 2004.

Soil & Groundwater Characterization Survey, Muni F-Line, Fisherman's Wharf Loop, Green Environment, Inc., 9/3/97.

Upland Soil Investigation Report for Pier 39 to Pier 45 Shoreline Area, San Francisco, Haley & Aldrich, 12/22/2017.

Initial:
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Tenant: DS TS

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SCHEDULE 3

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program ("NFIP"), Federal Emergency Management Agency ("FEMA") issued the final flood insurance rate maps ("FIRMs") for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 ("Floodplain Management Program Ordinance") and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco ("City"), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as "Special Flood Hazard Areas" ("SFHAs"), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter "A" or "V" on the FIRMs. Port's structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission ("SFPUC") has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at https://www.sfwater.org/floodmaps. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC's Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City's Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

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San Francisco Floodplain Management Program website:
https://onesanfrancisco.orgisan-francisco-floodplain-management-program

Port Floodplain Management Program Website:
https://sfport.com/flood-plain-management-program

FEMA's NFIP website:
www.FloodSmart.gov.

Initial :	
Port:	DS DK
Tenant:	DS TS

49 South Van Ness Avenue, Su
San Francisco, CA 94103
628.652.7600
www.sfplanning.org

Addendum 2 to Environmental Impact Report

Date of Addendum:	October 30, 2023
Date of EIR Certification:	March 16, 2023
EIR Case No.	2019-023037ENV
EIR Title:	Waterfront Plan
Project Case No.	2023-009039ENV
Project Title	Relocation of Observation Wheel to Fisherman's Wharf
Project Address:	Seawall Lot 301
Project Sponsor:	David Beaupre, Port of San Francisco Pier 1, The Embarcadero San Francisco, CA 94111 (415) 215-5465
Lead Agency:	San Francisco Planning Department
Staff Contact:	Don Lewis – (628) 652-7543 don.lewis@sfgov.org

REMARKS

Background

A final environmental impact report (EIR) for the subject project, Case No. 2019-023037ENV, was certified on March 16, 2023.[1] The Port of San Francisco's Waterfront Plan analyzed in the EIR updates and amends the 1997 Waterfront Land Use Plan, which sets long-term goals and policies to guide the use, management, and improvement of 7.5 miles of properties owned and managed by the Port's jurisdiction, from Fisherman's Wharf to India Basin. The EIR analyzed the physical environmental impacts of the proposed goals, policies, and objectives of future waterfront improvements, and includes land use growth assumptions determined by the San Francisco Planning Department, and the resulting physical development that could occur under the Waterfront Plan. Land use objectives proposed by the Waterfront Plan are particular to each of the five waterfront subareas: Fisherman's Wharf, Northeast Waterfront, South Beach, Mission Bay and the Southern Waterfront. One of the Waterfront Plan goals is to host a diverse and rich array of commercial, entertainment, civic, cultural, open space, and recreational activities that complement a working waterfront, provide economic opportunity, and create waterfront destinations for all San Franciscans and visitors to enjoy. Overall, the land use objectives increase intensity of use, diversify uses, and enhance public access and transportation infrastructure throughout the waterfront.

[1] San Francisco Planning Department, *Waterfront Plan Final Environmental Impact Report*, Planning Department Case No. 2019- 023037ENV, State Clearinghouse No. 2020080458, certified March 16, 2023. Available online at: https://sfplanning.org/environmental-review-documents?title=Waterfront&field_environmental_review_categ_target_id=All&items_per_page=10, accessed September 25, 2023.

Proposed Modifications

The Port proposes to install and operate an illuminated observation wheel, along with temporary, portable support structures and facilities, in Fisherman's Wharf (to be relocated from Golden Gate Park) for a period of six months. For the analysis of potential environmental effects in this addendum, the period of operation is assumed to be three years.[2]

The subject property is Seawall Lot 301, a triangular-shaped lot located on San Francisco Port property that is bounded to the north by the Embarcadero, to the south by Jefferson Street, and to the west by Taylor Street. There are two buildings on the western side of Seawall Lot 301: the Boudin Bakery building at 160 Jefferson Street, and the Chowder Hut at 2890 Taylor Street. A surface parking lot occupies the east side of the property.

The wheel and other structures to support its operation would be placed at the east end of the parking lot.[3] The wheel would be installed on a base structure (approximately 58 feet by 43 feet) with a total height of 138 feet. The wheel would contain 36 fully-enclosed gondolas, with each gondola holding up to six people. The wheel is equipped with LED lights that change color.[4] The observation wheel would operate daily from 10:00 am to 10:00 pm with slight adjustments within these permitted hours for weather, weekends, and special events. The observation wheel would be installed prior to the start of the 2023 Asia-Pacific Economic Cooperation (APEC) conference in San Francisco.[5]

In addition to the observation wheel, the modified project would include the following temporary, portable structures and facilities: a retail and photo pickup tent; concrete planter box barricades; an operations office[6]; bicycle, scooter and stroller parking; a storage container; a portable diesel generator with temporary fencing[7]; an emergency back-up generator; a prefabricated employee break room; ticketing counter/kiosk; a photo capture tent; an ADA-accessible ramp; temporary security fencing; and a queuing area for approximately 250 people. All structures brought to the proposed lease area in service of the observation wheel would be portable and temporary in nature.

The proposed foundation for the wheel would be four 13-foot square concrete footings that would extend approximately two feet below the existing grade. The proposed shallow foundation would be temporary (up to six months).[8] The estimated volume of excavation is approximately 36 cubic yards; no grading is proposed.

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2 This addendum analyzes the operation of the wheel for a longer term (three years) in case the Port pursues a lease after the first six months.

3 The lease area would be approximately 10,836 square feet.

4 The wheel is not equipped with strobe lighting and the lighting system does not have a strobe function, nor is there intention to add strobe effects at any time during operation of the wheel.

5 The APEC conference starts on November 12, 2023.

6 The operations office is a 40-foot by 8-foot metal shipping container that would be located on the exit side of the platform of the ride. The office houses the ride control room and operator's booth.

7 The project electrical engineer is working with PG&E to determine if suitable public power is available. The proposed observation wheel would initially run on a diesel-powered generator and would switch to public power immediately if public power is available. The exact timeframe of when this would happen is unknown.

8 It is anticipated that changes to the foundation would be required for the operation of the wheel after six months.

The observation wheel approval is a six-month special event license which would be approved administratively by Port staff; no Port commission action is required.

Section 31.19(c)(1) of the San Francisco Administrative Code states that a modified project must be reevaluated and that, "If, on the basis of such reevaluation, the Environmental Review Officer determines, based on the requirements of CEQA, that no additional environmental review is necessary, this determination and the reasons therefor shall be noted in writing in the case record, and no further evaluation shall be required by this Chapter."

Analysis of Potential Environmental Effects

This addendum evaluates whether the environmental impacts of the modified project are addressed in the FEIR that was certified on March 16, 2023. As shown in the analysis below, the modified project, which is the subject of this addendum, would not result in new environmental impacts, substantially increase the severity of the previously identified environmental impacts, or require new mitigation measures. Additionally, no new information has emerged that would materially change the analyses or conclusions set forth in the FEIR. Therefore, as discussed in more detail below, the modified project would not change the analysis or conclusions reached in the FEIR.

Historical Resources

The FEIR determined that implementation of the Waterfront Plan would result in a less-than-significant impact with mitigation on historical resources.[9] The proposed observation wheel would be installed on the eastern portion of the lot where there is currently a surface parking lot. There are two buildings on the western side of Seawall Lot 301, the Boudin Bakery building at 160 Jefferson Street (constructed circa 1970), and the Chowder Hut at 2890 Taylor Street (constructed circa 1970). Both buildings on Seawall Lot 301 were identified in the survey, Port *of San Francisco Historic Resources Data Base*, completed by Architectural Resources Group in November 1996 but were not determined to be eligible as historic resources at that time. As such, there are no identified historic resources on the subject property.

Because the proposed wheel would be placed on the portion of Seawall Lot 301 that is currently a surface parking lot, the two existing buildings on the site would not be altered by the proposed project. There would be no demolition of identified or potential historic resources on the site. Additionally, because the proposed project is temporary and reversible, after three years the site would be returned to its original condition. Therefore, the proposed project would not have the potential to cause an impact to historic resources on the site.

The project site is located across the street from the Embarcadero Historic District.[10] The Embarcadero Historic District was listed in the National Register of Historic Places (and therefore the California Register of Historical Resources) in 2006. The district spans a three-mile stretch along the waterfront and consists of over 20 piers and remnants of piers, a bulkhead wharf in 21 sections, a seawall, the Ferry Building, the Agriculture Building, and a collection of smaller buildings.

[9] The FEIR included mitigation measures related to streetscape or street network improvements that would require moving an auxiliary water supply system hydrant, and best practices for using heavy-duty construction equipment and construction monitoring program.

[10] The proposed project would not be located within the boundaries of the Embarcadero Historic District.

The three components within the boundaries of the Embarcadero Historic District that are closest to the project site include the Bulkhead Wharf Section B, a 1,000-foot-long structure that stretches from the foot of Powell Street to the foot of Taylor Street; Pier 43 (Car Ferry Headhouse), a pier with a slip and headhouse located at the foot of Powell Street; and the Franciscan Restaurant, a two-story restaurant located west of Pier 43 at Pier 43 1/2. These three elements are just north of the project site across the Embarcadero. Bulkhead Wharf Section B and the Franciscan Restaurant are both non-contributors to the Embarcadero Historic District, while Pier 43 is a contributor.

The height of the observation wheel would not be fully compatible with the surrounding area and the Embarcadero Historic District. But because it would be installed across the street from the historic district on a parking lot that is not a contributor to the surrounding setting of the historic district, and because its placement is temporary and reversible, it does not have the potential to result in a significant impact on the Embarcadero Historic District. At the end of three years, the observation wheel and accessory structures would be removed, and the site would revert back to a surface parking lot and the setting would return to its previous condition.

Therefore, the proposed temporary installation of the observation wheel would not cause a substantial adverse change in the significance of any historic resources.

The construction and operation impacts associated with the modified project would not result in new environmental impacts or substantially increase the severity of the previously identified environmental impacts. In addition, the modified project would not require new mitigation measures, and none of the FEIR historical resources mitigation measures would apply.

Archeological and Tribal Cultural Resources

The FEIR determined that implementation of the Waterfront Plan would result in a less-than-significant impact with mitigation on archeological and tribal cultural resources.

The planning department conducted preliminary archeological review for the modified project and determined that the proposed installation of the observation wheel could expose and cause impacts on unknown archeological resources.[11] Based on the conclusions of the preliminary archeological review and the geotechnical report for the proposed temporary foundation[12], **FEIR Mitigation Measure M-CR-2a, Procedures for Accidental Discovery of Archeological Resources for Projects Involving Soil Disturbance** would apply to the modified project. If changes to the foundation are required for the operation of the wheel after six months, the planning department would identify which of the mitigation measures below would be required:

- **M-CR-2a, Procedures for Accidental Discovery of Archeological Resources for Projects Involving Soil Disturbance**
- **M-CR-2b, Archeological Monitoring Program**
- **M-CR-2c, Archeological Testing Program**
- **M-CR-2d, Treatment of Submerged and Deeply Buried Resources**

[11] San Francisco Planning Department, *Preliminary Archaeological Review*, Port Observation Wheel, October 30, 2023.

[12] Soil Engineering Construction, *Geotechnical Evaluation*, Skystar Observation Wheel, October 23, 2023.

Construction impacts associated with the modified project would not result in new environmental impacts or substantially increase the severity of the previously identified environmental impacts. In addition, the modified project would not require new mitigation measures.[13]

Aesthetics

The FEIR determined that implementation of the Waterfront Plan would result in a less than significant impact related to aesthetics. The approximately 117-acre Fisherman's Wharf subarea extends from the east end of Aquatic Park to the east side of Pier 39, an area of shoreline located roughly between Hyde and Kearny streets. Current land uses in the Fisherman's Wharf subarea include commercial and industrial fishing, maritime activities, and retail, restaurant, and entertainment uses, including many tourism-related businesses.

The proposed wheel would add a new vertical element to the project site, which would change the aesthetic character of the project site which is currently a parking lot. The change would be temporary and would not degrade the visual character or quality of public views of the project site or its surrounding area. The installation of the wheel would be located on the south side of The Embarcadero, and the promenade along the waterfront edge would continue to offer abundant views of the bay, Alcatraz Island, and historic ships and fishing operations.

The proposed wheel could modestly interrupt or alter some existing long-range views of the bay that are currently available in the surrounding area. Changes to private views would differ based on proximity to the project site, quality of the view currently experienced, and relative sensitivity of the viewer. Such views could be perceived as an undesirable consequence for affected residents who are used to the existing visual conditions. However, CEQA does not consider impacts to private views to be part of the environment. Thus, the proposed project's impact on private views would not be considered a potentially significant environmental impact.

Existing sources of evening light in the area surrounding the project site include streetlights on adjacent streets, exterior lights from nearby commercial structures, and sources of light from vehicles traveling along roadways. The proposed wheel would be located within Fisherman's Wharf, which is a popular tourist attraction and is not in an area used by local astronomers for night sky observing. Light from the wheel would not reach Ocean Beach or adjacent western coastal areas of San Francisco, which have a much lower outdoor lighting intensity than Fisherman's Wharf.[14]

While the lights from the observation wheel could be perceived as an annoyance to some and may encourage some to avoid the Fisherman's Wharf area, this would not be considered a significant impact under CEQA. The operation of the wheel would not create a new source of substantial light or glare which would adversely affect daytime or nighttime views in the area.

[13] The full text of FEIR archeological mitigation measures (pages 188-219) can be located here: M-Files Web (sfgov.org), accessed October 30, 2023.

[14] Lands End is the core of the city's dark sky zone and is used as a gathering area by local astronomers for night sky observing. This visitor use is promoted by and is a management emphasis under the National Park Service (NPS) Management Policy on Dark Skies.

Additionally, light from the wheel would not reach residential areas[15] and would not interfere with activities such as sleep. While the lights would be perceived as an annoyance to some and may encourage some to avoid the Fisherman's Wharf area, this would not be considered a significant impact under CEQA. The effects of evening lighting within the urban context of San Francisco, and within the tourist area of Fisherman's Wharf would not substantially impact people or properties in the project vicinity.

The construction and operation impacts associated with the modified project would not result in new environmental impacts or substantially increase the severity of the previously identified environmental impacts. In addition, the modified project would not require new mitigation measures.

Biological Resources

The FEIR determined that implementation of the Waterfront Plan would result in a less-than-significant impact with mitigation on biological resources.[16] Since the installation of the observation wheel would not involve the removal of trees or the loss of foraging habitat, or in-water construction[17], the project would not have any direct impacts on biological resources. To analyze the potential indirect impacts related to the operation of the wheel, the department reviewed biological assessments that were completed for past projects that share similar characteristics to the wheel.

The department reviewed the biological resources analysis from the Beach Chalet Soccer Fields Renovation EIR (Beach Chalet EIR).[18] This project involved the installation of ten 60' tall light poles that would operate most evenings until 10 pm. The Beach Chalet EIR provided a thorough discussion of the ways in which night lighting can induce bird strikes, as well as disorient and 'trap' migratory birds. The Beach Chalet EIR concluded that potential light impacts on migratory birds and nesting birds would be less than significant. The EIR also found that the Beach Chalet project would have less-than-significant impacts related to nighttime lighting on biological resources.

As part of the approval process for the Beach Chalet project, the California Coastal Commission requested the preparation and implementation of an avian monitoring plan to identify any potential adverse impacts to birds resulting from the use of night lighting by the Beach Chalet project. Following construction of the Beach Chalet project, 20 avian surveys were conducted in 2016 at the Beach Chalet athletic facility. The surveys found no evidence of avian stress or mortality, and the surveys indicated that the use of lights at the fields does not appear to be an avian navigation hazard since there was no evidence of behavior modification or mortality. The report concluded that the lights are minimally impacting to avian species.

The department also reviewed the biological assessment that was prepared for the Bay Bridge Lights project, which involved the installation of 25,000 LED lights moving in a wave-like and flickering pattern with a long-term nightly operation. While the observation wheel has substantially more LED lights than the Bay Bridge Lights project, the LED lights for both projects are not static.[19] The report stated that nocturnal migrants collide with towers and other structures that are illuminated with constant white light,

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15 The nearest residential use is approximately 420 feet from the proposed location of the observation wheel.

16 The FEIR included the following mitigation measures: worker environmental awareness program training; special-status plant species surveys; nesting bird protection measures; avoidance and minimization measures for bats; fish and marine mammal protection during pile driving; avoidance of pickleweed mat sensitive natural community; and avoidance of impacts on wetlands and waters.

17 The observation wheel would be installed approximately 100 feet from the bay and its subtidal habitat.

18 Beach Chalet Athletic Fields Renovation Draft EIR (sfplanning.s3.amazonaws.com), accessed October 5, 2023.

19 The observation wheel contains one million colored LED lights.

and that these birds also collide with illuminated windows on buildings during migration. This phenomenon is most pronounced in eastern and central North America and, with respect to towers, typically occurs when guy wires are used to secure the towers. Strobe lights and colored lights (especially green) substantially reduce the collision rates on migrants with illuminated structures. The report concluded that the movement patterns associated with the lighting scheme would not lead to the attraction and disorientation (and collision) of migrants that are associated with single source, constant white lighting. Given the amount of artificial light associated with development in the Bay Area, the report concluded that the installation of the lights would not add significantly to the overall lighting in the region and the impact would be less than significant.[20]

Operation of the observation wheel in Fisherman's Wharf would not significantly impede the use of migratory corridors. Migratory flights typically range as low as 300 feet to as high as 10,500 feet. The height of the observation wheel would be approximately 138 feet. Many bird collisions are induced by artificial nighttime lighting, particularly from large buildings. The tendency of birds to move toward lights at night when migrating, and their reluctance to leave the sphere of light influence for hours or days once encountered, has been well documented. It has been suggested that structures located at key points along migratory routes may present a greater hazard than those at other locations. The type of light used may affect its influence on the birds; for example, studies have indicated that blinking lights affect migrating birds substantially less than nonblinking lights.

The observation wheel would not appear as a point source of light from above and is not expected to appear as a distinct and isolated light source due to the proximity of other lighted areas in Fisherman's Wharf, surrounding roads, and nearby neighborhoods. Given the typical altitude at which migrating birds fly, and that studies that were reviewed in the Beach Chalet EIR suggest that night-flying birds are attracted to point-sources of light, it is unlikely that the lighting associated with the proposed project would interfere with a migratory corridor or provide a hazard for migratory birds through the phenomenon of light "entrapment."

Additionally, the operation of the wheel is unlikely to affect nesting birds. The project site, which is a paved parking lot, and the area immediately adjacent to the project site would not serve as potential nesting and roosting habitat for raptors and other birds. Furthermore, birds that typically nest in urban environments would be accustomed to existing light sources in Fisherman's Wharf, as well as from surrounding streets and neighborhoods, and would not be deterred by the observation wheel. Potential indirect impacts to nesting birds resulting from the operation of the wheel would be less than significant.

Furthermore, the San Francisco Recreation and Parks Department's Natural Resources Division has not observed any impacts to biological resources from the operation of the observation wheel in Golden Gate Park.[21]

The construction and operation impacts associated with the modified project would not result in new environmental impacts or substantially increase the severity of the previously identified environmental

[20] Caltrans found the Bay Lights project to be categorically exempt from environmental review under Class 1.

[21] Email communication from Stacy Bradley, Director of Capital and Planning, San Francisco Recreation and Parks Department, to Don Lewis, Planning Department, October 13, 2023.

impacts. In addition, the modified project would not require new mitigation measures, and none of the FEIR biological resources mitigation measures would apply.

Transportation and Circulation

The FEIR found a significant and unavoidable transportation impact related to cumulative construction-related transportation impacts, cumulative public transit delay, and commercial vehicle and/or passenger loading.[22]

The proposed project would relocate the observation wheel from Golden Gate Park to a temporary location at Fisherman's Wharf, requiring approximately three weeks of construction. Any changes to the transportation circulation network in the project site vicinity due to construction of the proposed project would be temporary and of limited duration and subject to SFMTA's San Francisco Regulations for Working in San Francisco Streets (also referred to as the Blue Book) and the construction-related requirements in the San Francisco Public Works Code. In addition to Blue Book and public works regulations, contractors are responsible for complying with the City, state, and federal codes, rules, and regulations, including the California Manual of Uniform Traffic Control Devices.

According to the wheel operator, the average ridership in Golden Gate Park was approximately 60 people per hour with a daily average of about 564 people (approximately 16,920 riders per month). Existing trips to the observation wheel would shift from Golden Gate Park to Fisherman's Wharf. The operator anticipates that ridership at Fisherman's Wharf could double, up to approximately 30,000 riders per month. Ridership would be distributed throughout the day with the peak time occurring on Saturdays from noon until 8:00 pm. Given this, the proposed project is not expected to generate a substantial number of net new trips to the project site during the weekday p.m. peak hour. Furthermore, given the site's location, it is expected that the majority of future users would be visitors to the Fisherman's Wharf area who are already in the project vicinity.

The proposed project would not create new curb cuts, change the existing streetscape, or include any other design features that could create hazardous conditions for people walking, bicycling, or driving or public transit operations, interfere with accessibility for people walking or bicycling, or result in inadequate emergency access in the project site vicinity. The Muni route that operates adjacent to the project site (F Market Wharves) uses a transit-only lane and would not experience additional delay due to new vehicle trips at the project site. Along the water side of The Embarcadero, passenger loading/unloading zones are provided at curbside locations between Powell and Taylor streets in the Fisherman's Wharf. Additional nearby loading zones are located on Mason Street and Powell Street. There is also a designated tour bus-only zone located on the north side of Beach Street between Powell Street and The Embarcadero, where tour buses can drop-off, pick up or wait for passengers. The proposed project's loading demand is unlikely to exceed the loading supply because, as stated above, there are conveniently located loading zones near the project site. In addition, people riding the observation wheel would likely already be in the Fisherman's Wharf area and thus would not be dropped off solely for the purpose of visiting the observation wheel. Even if the project's passenger loading demand were to exceed the loading supply, it would not disrupt circulation for transit, vehicles, and people walking and bicycling, and create potentially hazardous

[22] The FEIR included two transportation mitigation measures related to driveway and loading operations plans for projects that are more than 100,000 square feet and to reduce transit delay in the South Beach subarea.

conditions. This is because the streets adjacent to the project site have a low volume of vehicles and F Market Wharves operates in a transit-only lane.

Because the majority of new trips to the observation wheel would not be substantial and are expected to be generated by people already visiting Fisherman's Wharf and the project would not make any changes to the street network, impacts related to vehicle miles traveled induced automobile travel would be less than significant.

The construction and operation impacts associated with the modified project would not result in new environmental impacts or substantially increase the severity of the previously identified environmental impacts. In addition, the modified project would not require new mitigation measures, and none of the FEIR transportation and circulation mitigation measures would apply.

Air Quality

The FEIR determined that implementation of the Waterfront Plan would result in a significant and unavoidable impact related to criteria air pollutants, particulate matter (PM2.5), and toxic air contaminants on sensitive receptors.[23] The project site is located in an air pollutant exposure zone with the nearest residential use approximately 420 feet away. Since the proposed construction activities would be considered limited in scope and duration (approximately three weeks), the ambient health risk to sensitive receptors from construction air pollutants would not be considered substantial.

The proposed observation wheel would initially run on a diesel-powered generator and would switch to public power as soon as public power is available. The exact timeframe of when this would happen is unknown.[24] Because the project site is in the air pollutant exposure zone and it is unknown how long the proposed wheel would be powered by a diesel generator, the ambient health risk to sensitive receptors from toxic air contaminants is considered substantial. **FEIR Mitigation Measure M-AQ-4c: Best Available Control Technology for Projects with Diesel Generators and Fire Pumps** would apply to the modified project.

The construction and operation impacts associated with the modified project would not result in new environmental impacts or substantially increase the severity of the previously identified environmental impacts. In addition, the modified project would not require new mitigation measures. The full text of the FEIR mitigation measure is provided below.

> **Mitigation Measure M-AQ-4c: Best Available Control Technology for Projects with Diesel Generators and Fire Pumps.** The project applicant shall implement the following measures. These features shall be submitted to the Port Chief Harbor Engineer and Port Environmental Regulatory Compliance staff, in addition to an Environmental Planning Air Quality Specialist for review and approval, and shall be included on the project drawings submitted for the construction-related

[23] The FEIR included several mitigation measures related to the following: clean construction equipment, super-compliant VOC architectural coatings during construction, educate residential and commercial tenants concerning low-VOC, consumer products, reduce operational emissions, best available control technology for projects with diesel generators and fire pumps, electric vehicle charging, design land use buffers around active loading docks, reduce exposure to toxic air contaminants, and implement truck route plan.

[24] The project electrical engineer is working with PG&E to determine if suitable public power is available.

permit(s) or on other documentation submitted to the San Francisco Planning Department prior to the issuance of any building permits:

1. All diesel generators and fire pumps shall have engines that meet or exceed California Air Resources Board Tier 4 Final emission standards (California Code of Regulations title 13, section 2423).

2. Non-diesel-fueled emergency generator technology (e.g., battery technology) shall be installed if it is commercially available, subject to the review and approval of the City fire department for safety purposes, and is demonstrated to reduce criteria pollutant emissions.

3. Permanent stationary emergency diesel backup generators shall have an annual maintenance testing limit of 20 hours, subject to any further restrictions as may be imposed by Bay Area Air Quality Management District (air district) in its permitting process. Additional restrictions limiting the hours per year that generators may be tested may also be required, as determined necessary by the San Francisco Planning Department.

4. For each new diesel backup generator or fire pump permit submitted for a project, including any associated generator pads, engine specifications shall be submitted to the San Francisco Planning Department for review and approval prior to issuance of a permit for the generator or fire pump from the Port Chief Harbor Engineer. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators or fire pumps shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator or fire pump is located shall maintain records of the testing schedule for each diesel backup generator and fire pump for the life of that diesel backup generator and fire pump and provide this information for review to the planning department within three months of requesting such information.

Other Environmental Topics

The FEIR found that the implementation of the Waterfront Plan would have less-than-significant impacts with mitigation for the following topics: noise and vibration, hydrology and water quality (for in-water work), wind, and paleontological resources. None of the FEIR mitigation measures for these topics would apply to the modified project. The FEIR found that the implementation of the Waterfront Plan would have less-than-significant impacts related to land use and planning, population and housing, greenhouse gas emissions, shadow, recreation, utilities and service systems, public services, geology and soils (except for paleontological resources), hazards and hazardous materials, mineral resources, energy, agriculture and forest resources, and wildfire. No new mitigation measures would be required for the modified project. The modified project would not change the analysis or conclusions reached in the FEIR.

Conclusion

Based on the foregoing, it is concluded that the analyses conducted and the conclusions reached in the final EIR certified by the planning commission on March 16, 2023, remain valid and that no supplemental environmental review is required. The proposed revisions to the project would not cause new significant impacts not identified in the EIR, and no new mitigation measures would be necessary to reduce significant impacts. No changes have occurred with respect to circumstances surrounding the proposed project that would cause significant environmental impacts to which the project would contribute considerably, and

no new information has become available that shows that the project would cause significant environmental impacts. Therefore, no supplemental environmental review is required beyond this addendum.

I do hereby certify that the above determination as been made pursuant to State and Local requirements.

Lisa Gibson
Environmental Review Officer

October 30, 2023
Date of Determination

cc: San Francisco Port
Distribution List

San Francisco Planning

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MEMORANDUM TO FILE

Date:	June 11, 2024
To:	File
From:	Don Lewis, Senior Environmental Planner
Re:	Skystar Observation Wheel at Fisherman's Wharf 2023-009039ENV

Introduction

On October 30, 2023, the planning department issued Addendum 2 to the Waterfront Plan Final Environmental Impact Report for the installation and operation of an illuminated observation wheel, along with temporary, portable support structures and facilities, in Fisherman's Wharf (to be relocated from Golden Gate Park) for a period of six months. The existing foundation for the wheel includes four 13-foot square concrete footings that extend approximately two feet below the existing grade. The existing shallow foundation was temporary (up to six months). The addendum analyzed the operation of the wheel for a longer term (three years) and anticipated that changes to the foundation would be required for the operation of the wheel after six months.

Proposed Revisions to Addendum 2

As anticipated in Addendum 2, Skystar proposes to extend the operation of the wheel past six month which would require a new foundation. Skystar proposes to shift the wheel approximately 15 feet west and 2 feet south from its current location to avoid the existing foundation. Each leg of the wheel would be supported over a 24-inch diameter steel pipe pile (four piles total) that would extend approximately 55 feet below grade. Approximately 11 cubic yards of excavation would be required.

The planning department completed a cultural resource review for the revised foundation plan with a determination that **FEIR Mitigation Measure M-CR-2a, Procedures for Accidental Discovery of Archeological Resources for Projects Involving Soil Disturbance** would continue to apply to the revised project.

The revised project would not cause new significant impacts or result in a substantial increase in the severity of the impacts identified in the addendum, and no new or revised mitigation measures would be required.

Conclusion

San Francisco Administrative Code Section 31.19(c)(1) states that a revised project must be reevaluated and that, "If, on the basis of such reevaluation, the Environmental Review Officer determines, based on the requirements of CEQA, that no additional environmental review is necessary, this determination and the reasons therefore shall be noted in writing in the case record, and no further evaluation shall be required by this Chapter." Thus, for the reasons outlined above, this memorandum to file provides sufficient documentation that the revised project does not warrant additional environmental review.

MEMORANDUM

February 23, 2024

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Gail Gilman, Vice President
Hon. Willie Adams
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Informational presentation to consider and possible action to approve a resolution recommending the Board of Supervisors waive any applicable requirements of the Competitive Bidding Process with respect to a new 18-month lease with SkyStar Wheel, LLC and conditional approval of the proposed lease terms.

DIRECTOR'S RECOMMENDATION: Adopt the attached Resolution No. 24-15

EXECUTIVE SUMMARY

On October 31, 2023, Port entered a six-month special event license with SkyStar Wheel LLC, a Missouri limited liability company ("SkyStar"), License No. 17107 (the "License") for an Observation Wheel ("Wheel") on a portion of the parking lot at seawall lot (SWL) 301.

The License will expire on April 30, 2024, and Port staff seek to enter a new lease, L-17136, (the "Lease") with SkyStar for the same portion of the parking lot at SWL 301 for an additional 18 months. The Lease will require a waiver of the City's competitive bidding policy, however, all other terms and conditions, including rent equal to fair market value, conform to the Port Commission's approved FY 23/24 parameter terms and conditions (Port Resolution 23-36).

This staff report provides the rationale for the request to waive the competitive bidding procedures and provides the Port staff's recommendation on the next steps to seek Board of Supervisors approval for the sole source award of a lease, allowing Port staff to enter a Lease with SkyStar. The material changes to the terms of the proposed Lease are described in this report, with materials Lease terms presented in ***Attachment A***.

STRATEGIC OBJECTIVE

Advancement of a new Lease supports the following goals of the Port's Strategic Plan:

Economic Recovery:
Targeted Activation: The Wheel helps activate Fisherman's Wharf by creating a new attraction for visitors.

Economic Growth:
Property Portfolio: The proposed Lease will work to attract prospective tenants by bringing additional foot traffic to the area and securing revenue for the Port.

Equity:
Share Economic Prosperity. The Wheel draws visitors that are diverse in many ways and SkyStar plans to continue distributing 500 complimentary tickets per month to underserved community groups.

Engagement:
Stakeholder Awareness: Port staff advised the Fisherman's Wharf Advisory Committee ("FWAC"), representing the Port businesses in Fisherman's Wharf, that Port staff was seeking to enter a Lease which will allow the Wheel to remain for an additional 18 months, and received strong community support.

BACKGROUND

In July 2023, Port staff was approached about moving the Wheel from Golden Gate Park to Fisherman's Wharf. Port staff viewed this proposal as a way to activate the area and began negotiations with SkyStar.

Port staff and other stakeholders set a goal for the Wheel to be in place before November 13, 2023, which was the start of the Asia-Pacific Economic Cooperation ("APEC") Summit. To allow this use, Port and SkyStar entered a six-month special event license, which required SkyStar to comply with all regulatory and governmental approvals and undergo extensive permitting and engineering analysis. SkyStar obtained all required San Francisco Fire Department permits and received approvals from the Bay Conservation and Development Commission (BCDC), California Division of Occupational Safety Health (OSHA), and Amusement Ride & Tramway Unit.

Operations commenced on November 10, 2023, and SkyStar has reported the following performance results through January 2024:

Month	**Passengers**	**Sales**	**% Rent**	**Comp Tickets**	**Comments**
November 2023 (20 days)	14,083	$238,998	$11,949	0	Short month
December 2023	39,332	$650,960	$32,548	500 to CCDC	165% increase in riders over Dec-22
January 2024	28,108	$530,887	$26,545	500 to Boys and Girls Club of San Francisco	120% increase in riders over Jan-23

COMMUNITY ENGAGEMENT FEEDBACK

The Port's Waterfront Plan outlines a public engagement process that must occur before consideration of a waiver of the City's competitive bidding procedures by the Board of Supervisors. The terms of the proposed Lease were presented to the Fisherman's Wharf Advisory Committee ("FWAC") on January 10, 2024. The FWAC members and other participants in the meeting were strongly in favor of keeping the Wheel in place on SWL 301.

The following summarizes the comments Port staff heard from the FWAC about the Wheel and a proposed new Lease.

Comments:

- Rode the Wheel and had a great time with children, expressed the desire for the Wheel to stay for the foreseeable future.
- A nearby tenant supports the extension and noted an increase in traffic from local residents.
- "Thrilled" about SkyStar as an iconic visual that brightens up Fisherman's Wharf. Expressed support for the extension.
- Welcomed SkyStar and the energy it provides – particularly in the evenings.
- Argonaut Hotel expressed support for the Wheel and hopes to partner with SkyStar on marketing. The Wheel is seen as favorable by the local hotel community.
- A representative of the fishing community has no objection to the Wheel but expressed concern (standing concern) about how increased traffic affects the ability of fishers and processors to move products.

Wheel Lighting

Complaints were received from members of the public by Supervisor Peskin's office and the Port's Executive Director, Elaine Forbes, about the Wheel's multicolor and moving decorative lighting facing the City.

To address this concern, SkyStar agreed to only display white lights on the Wheel facing the City; however, SkyStar will be allowed to periodically show a different color to commemorate holidays, civic events, or local sports teams. Such colored lighting will be

restricted to the week leading up to the applicable event or holiday, and at no time will the lights facing the City show multiple colors simultaneously.

These restrictions will not apply to the lights facing away from the City. Port staff monitored the change and have confirmed the lights facing the City are white only at this time. See photos below:



Before



After

Contact was made with each person who contacted the Port's Executive Director about the lights and Port staff followed up to ensure that the new lighting plan ameliorated concerns. Most of the respondents agreed that the white lighting plan was better than the multicolor moving lights.

Next Steps

To insure compliance with the lighting plan, the Lease will document the light restrictions including the requirement for a single stable color (default is white) facing San Francisco and requirement that wheel lights are turned off no later than 10 PM.

The operation of the Wheel will follow San Francisco's Good Neighbor Policy including these primary conditions relative to lighting:

- Always having a staff member on-site aware of all Lease conditions.
- Providing a phone number to all interested neighbors for direct contact to a Tenant staff member who has authority over the premises and shall respond in a timely matter.

Neighbors can also submit complaints via 311 or contact Port staff directly. The Port's Property Manager for Fisherman's Wharf will be responsible for responding to these communications and enforcement of the Lease requirements.

The combination of the restrictions in the Lease and the requirements of the Good Neighbor Policy are good controls over the lights facing San Francisco. The multiple options for neighbors to provide comments will assure the neighbors that their concerns will be heard and acted on.

PORT STAFF ANALYSIS OF WAIVER OF COMPETITIVE BIDDING PROCESS

In a matter of a few months, the Wheel has become an iconic feature at Fisherman's Wharf, visible from both the City and across the bay. The plan to move the Wheel from Golden Gate Park to Fisherman's Wharf garnered favorable media coverage – indicating community support. The waiver of the competitive bidding procedures will allow the Port staff to enter a new Lease to ensure uninterrupted operation of the Wheel and provide a much-needed activation, bringing additional foot traffic to the area to help drive economic recovery to Fisherman's Wharf.

San Francisco Administrative Code Section 23.33 generally requires a competitive bidding procedure to lease City-owned property. However, there is a high barrier to entry into the Wheel market given the significant upfront costs and specific operating skills required.

One potential competitor is Koch Development ("Koch") which operates SkyWheels in Florida and South Carolina. Port staff believe it is unlikely that Koch would bid for a temporary location in San Francisco both due to its geography and its focus on building permanent SkyWheels within their own developments as opposed to stand-alone wheels. The last wheel Koch developed was in 2017 at a reported cost of $10 million.

Another alternative would be carnival-style ferris wheels. These wheels are not comparable to the SkyStar Wheel because they have inferior views (not as tall), feature open cabs exposed to the weather, and provide a less appealing experience.

After preliminary due diligence, Port staff identified no other likely competitors to SkyStar that would likely participate in a competitive bidding process.

Further, a competitive bidding process could not be completed before the License expires. This would result in a shutdown of operations by SkyStar and removal of the Wheel and all appurtenant equipment at expiration. This is not desirable because a gap in operations would result in the loss of a needed activation to the Fisherman's Wharf area, and associated Port revenue.

After three months of reported operating performance, indications are the Wheel is a positive addition to Fisherman's Wharf. According to SkyStar, ridership in December 2023 was 165% more than passenger ridership in December 2022 and 120% more in January 2024 than when the Wheel was in Golden Gate Park. Port staff desire to retain this attraction and revenue stream which a competitive bidding process would disrupt, even if only temporarily.

The Wheel helps meet Port activation and beautification goals and anecdotally creates more traffic for nearby businesses. The Wheel provides a desirable and previously missing activity for visitors to the Wharf. The Wheel offers sweeping views of the San Francisco bayfront, and the San Francisco skyline, and new visual attraction for everyone.

Based on the lack of meaningful competitors, Port's interest in maintaining operations and the pending License termination on April 30, 2024, Port staff seek a waiver of competitive bidding for the proposed short-term lease.

TERMS OF NEW PROPOSED LEASE

A new lease will continue to provide revenue and positive benefits to the Port and nearby businesses. The proposed terms and conditions of the Lease, including rent, conform to the Port Commission's approved FY 23/24 parameter terms (Port Resolution 23-36). The terms and conditions as presented in ***Attachment A*** are similar to those of the existing License. Anticipated Base Rent over the term of the Lease is $187K, with percentage rent estimated at an additional $530K. Material changes from the License include:

- 18-month term (May 1, 2024 to October 31, 2025)
- Monthly Base Rent of $10,185.84 to increase by 3% to $10,436.61 effective November 2024.
    - Under the proposed terms SkyStar will continue to be required to pay both base rent plus five percent (5%) of gross revenue as percentage rent:
        - In December 2023, there were 39,332 riders generating $650,960 in gross revenue and $32,548 in percentage rent to the Port (for total base and percentage rent of $42,734).
        - In January 2024, there were 28,108 riders generating $530,887 in gross revenue and $26,545 in percentage rent to the Port (for total base and percentage rent of $36,731).

    Most other Port restaurant/retail tenants pay percentage rent to the extent it exceeds base rent.
- Allows operator to increase ticket prices, with Port consent, anytime during the term of the proposed lease.
- Removal of the clause requiring two-for-one tickets for children on Tuesdays and Wednesdays.
- SkyStar would be encouraged, but not required, to maintain its distribution of 500 free tickets per month selected by SkyStar to benefit underserved communities.

The financial structure of the proposed lease is better than the terms of the Rec and Park lease because the proposed Lease includes a charge for base rent of $10,185.54/month and does not allow a deduction from Gross Revenue for generator operating costs.

Since the proposed Lease has strong local community support, is seen as a benefit to Fisherman's Wharf, and provides revenue, Port staff recommends the terms of the Lease to the Port Commissioners for its consideration and conditional approval.

PORT STAFF CONCLUSIONS - WAIVER OF COMPETITIVE SELECTION PROCESS AND PROPOSED TERMS OF THE LEASE

In consideration of the SkyStar lease, Port staff arrived at the following conclusions.

- Fisherman's Wharf needs urgent action and innovation to spur economic recovery. This urgency includes responding and pivoting to business climate, resolving the challenges for Fisherman's Wharf post-COVID that include business model viability, while tackling vacancies and street conditions. Port staff is working to improve the visitor experience through Port projects and activations - including the Lease for the Wheel.

- The proposed Lease terms as shown on ***Attachment A*** represent an incremental improvement from the terms in the License, add fee flexibility for the Tenant, are consistent with parameter rents for base rent, and secure additional revenue for the Port for the 18-month extension term.

- By waiving the competitive selection process and entering a Lease with SkyStar, the extended term will allow the benefits of the Wheel to continue, including attracting visitors to the Port for the benefit of new and old businesses, and continue to generate revenue for the Port.

- In closing, Port staff recommends that the Port Commission adopt the attached Resolution to approve the waiver of the competitive bidding process and the terms of the proposed Lease that will maintain the positive momentum of the Wheel at Fisherman's Wharf and has determined that initiating a competitive bidding process is impractical due to the limited competitors and tight timeframe and unlikely to generate a competing investment interest prior to April 30, 2024, when the SkyStars' temporary license expires for that portion of SWL 301.

PROPOSED NEXT STEPS & RECOMMENDATION

Port staff recommend that the Port Commission adopt the attached Resolution approving waiver of the competitive bidding process, and directing staff to seek Board of Supervisors approval as required by the City's competitive solicitation procedures.

Prepared by:	Don Kavanagh, Senior Property Manager Real Estate and Development
Through:	Kimberley Beal, Assistant Deputy Director Real Estate and Development
For:	Scott Landsittel, Deputy Director Real Estate and Development

Attachment A: SkyStar Wheel – Lease L-17136 - Proposed Basic Lease Terms
Attachment B: Good Neighbor Policy

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 24-15

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, At its meeting on April 11, 2023, after a public planning process that maximized public participation in discussions about existing waterfront activities, regulations, challenges, public desires, and needs to incorporate diverse viewpoints and perspectives to develop policy recommendations, the Port Commission adopted an updated Waterfront Plan (the "Waterfront Plan"); and

WHEREAS, The Waterfront Plan includes a stakeholder engagement process for waiver of competitive bidding requirements in advance of the submission of such proposals to the Board of Supervisors for consideration of a waiver of the City's competitive solicitation policy; and

WHEREAS, In July 2023, the Port was notified of the opportunity to move the SkyStar Wheel (the "Wheel") from Golden Gate Park to Fisherman's Wharf; and

WHEREAS, Addendum 2 to the Environmental Impact Report (Planning Department Project Case No. 2023-009039ENV) dated October 30, 2023 ("Addendum 2"), analyzed the relocation to and operation of the Wheel in Fisherman's Wharf based on the Waterfront Plan Final Environmental Impact Report (Planning Department Case No. 2019-023037ENV) that was certified on March 16, 2023 ("FEIR"), and identified the following mitigation measures to be potentially applicable to relocation and operation of the Wheel, M-CR-2a, Procedures for Accidental Discovery of Archeological Resources for Projects Involving Soil Disturbance, M-CR-2b, Archeological Monitoring Program, M-CR-2c, Archeological Testing Program, M-CR-2d, Treatment of Submerged and Deeply Buried Resources, and Mitigation Measure M-AQ-4c: Best Available Control Technology for Projects with Diesel Generators and Fire Pumps (each as further described in the FEIR and collectively, the "Mitigation Measures") under the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.); and

WHEREAS, On November 1, 2023, the Port and SkyStar Wheel, LLC, a Missouri limited liability company ("SkyStar"), entered a six-month License for a portion of SWL 301; and

WHEREAS, SkyStar approached Port requesting an 18-month lease (the "Lease") for the portion of SWL 301 upon expiration of the License; and

WHEREAS, The Lease allows a temporary continuation of the existing use of the site, with the same maximum intensity of use, and is therefore within the scope of the project evaluated in Addendum 2; and

WHEREAS Port staff offered an opportunity for stakeholder feedback at the Fisherman's Wharf Advisory Committee on January 10, 2024, meeting and received favorable feedback on SkyStar's request; and

WHEREAS, Port staff reported the stakeholder engagement feedback at the February 27, 2024, Port Commission meeting; and

WHEREAS, Port staff determined that initiating a competitive bidding process is unlikely to generate a competing investment interest prior to April 30, 2024, when the SkyStar temporary license expires for that portion of SWL 301; and,

WHEREAS, Port staff recognize the urgency of providing support to the recovery of Fisherman's Wharf, which has been beset by the pandemic and associated economic downturn, resulting in the closure of many longstanding Port tenants; and

WHEREAS, The Lease provides the opportunity to continue to build economic momentum from the Port's current investments in the recovery of the Fisherman's Wharf portfolio, and now, therefore, be it

RESOLVED, That the Port Commission adopts the findings and conclusions in Addendum 2 and adopts the Mitigation Measures identified in the FEIR and Addendum 2 as conditions of this approval action; and be it further

RESOLVED, In consideration of the results of the stakeholder outreach summarized above and in the staff report accompanying this Resolution, the Port Commission recommends that Port staff, in consultation with the City Attorney's Office, seek the Board of Supervisors approval to waive any applicable requirements of the City's policy regarding competitive bidding for a lease for an observation wheel on a portion of SWL 301; and be it further

RESOLVED, Upon approval of the waiver by the Port Commission and Board of Supervisors, Port staff shall proceed to execute a lease with substantially the same terms as, and under the authority set forth in, the staff report accompanying this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 27, 2024.

DocuSigned by:

Jenica Liu

Secretary

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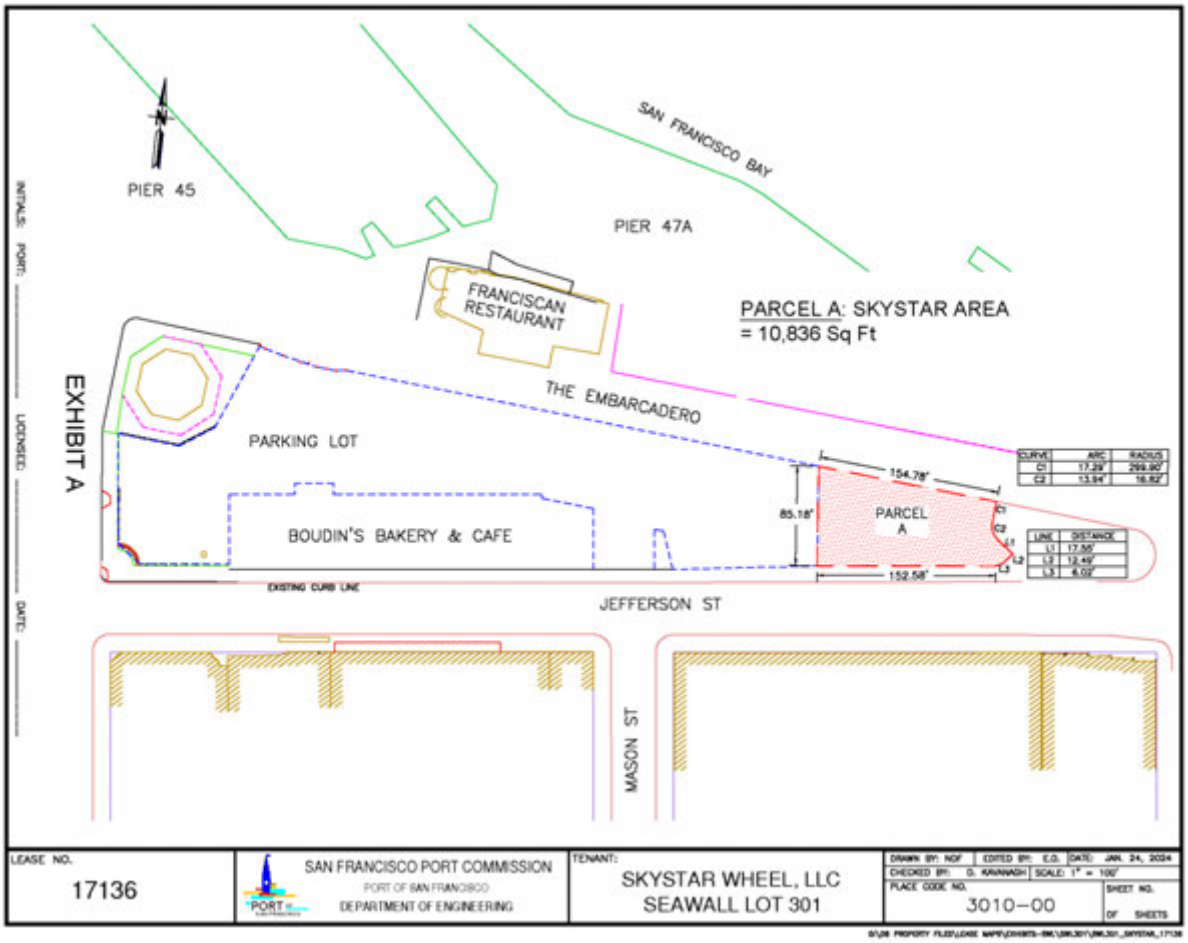
ATTACHMENT A

PROPOSED BASIC LEASE TERMS

Lease Number:	**L-17136**
Tenant:	**SkyStar Wheel, LLC** a Missouri limited liability company
Premises:	Approximately 10,836 square feet at the east end of SWL 301, more commonly known as the Triangle Parking Lot in the City and County of San Francisco, State of California, as further depicted in ***Exhibit A***, attached hereto and made a part hereof, together with any and all improvements and alterations thereto.
Length of Term:	Eighteen (18) months.
Commencement Date:	May 1, 2024
Expiration Date:	October 31, 2025.
Rent - Base Rent and Percentage Rent	The monthly Rent shall be the sum of the Base Rent plus Percentage Rent. *Base Rent*: Ten Thousand One Hundred Eighty-Five Dollars and Eighty-Four Cents ($10,185.84) per month. *Percentage Rent*: In addition to the Base Rent, Tenant agrees to pay Percentage Rent equal to five percent (5%) of Gross Revenues
Base Rent Increase:	The Base Rent will be increased by 3% effective November 1, 2024
Permitted Activity:	Permitted Activities shall remain unchanged except in Subsection I., Admission Fees, as follows: Tenant may increase Admission Fees throughout the term of the proposed Lease. The requirement to provide two-for-one tickets for Children (under the age of 12) on Tuesdays and Wednesdays is eliminated due to lack of use.
Wheel Lighting:	Tenant agrees that the decorative lights on the Wheel facing the landside of the premises (facing San Francisco) will be aligned to show only one stable color at a time during the term of this Lease. The default color shall be white, but Tenant will be allowed to periodically show a different color to commemorate holidays, civic events, or local sports teams. Such colored lighting will be

	restricted to the week leading up to the applicable event or holiday, and at no time will the lights facing San Francisco show multiple colors at the same time or movement. These restrictions will not apply to the lights facing away from San Francisco. All Wheel lighting must be turned off no later than 10 PM, daily. Tenant is to comply with the provisions of the Good Neighbor Policy, ***Attachment B***, including providing neighbors with contact information of a staff member who is onsite has authority to resolve complaints. The Port reserves the right to change the Wheel Lighting plan in its sole discretion.
Regulatory Permits:	To the extent required, as a condition precedent to the effectiveness of this Lease, the Tenant shall, at its sole cost and expense obtain and submit to the Port for review, the following permits and approvals issued by governmental agencies prior to commencing any operation or opening the SkyStar Wheel to the public. Upon the Tenant's failure to submit to the Port the following permits and approvals as specified above, the Port may, at its sole discretion and without notice to or approval from the Tenant, terminate this Lease: **A.** Port of San Francisco Building Permit; (i) Civil Plan (ii) Project Plans (iii) Structural Engineering Report (iv) Soils Geotechnical Report (v) Special Inspection Report (vi) DOSH Letter **B.** San Francisco Fire Department Permits; **C.** California Environmental Quality Act (CEQA) Application for Environmental Review from City Planning; **D** Bay Conservation and Development Commission (BCDC) approval; and **E.** Any other permit or approval deemed necessary by the Port, any City Agency, and/or other governmental authority.

Site Plan
Lease Exhibit A



Attachment B
Good Neighbor Policy

GOOD NEIGHBOR POLICY

1. Licensee shall work closely with nearby neighborhood organizations to ensure ongoing communications regarding its operation and their impact on the surrounding area.

2. All garbage receptacles shall be enclosed, and no garbage shall be put on the sidewalk for collection, except as permitted by Article 5.1 of the Public Works Code.

3. Licensee or its agents shall provide adequate transit options. Patrons shall be encouraged to walk or take public transportation. Licensee shall provide an area for bicycle parking. For those that drive, adequate signage shall be well-lit and prominently displayed to advertise the availability of parking resources for Special Event patrons to mitigate the demand on city streets and parking in the neighborhood.

4. Licensee may illuminate the Wheel and the Platform per Exhibit B. Under no circumstances can the lighting on the Wheel extend past operating hours (i.e., 10:00PM). Minimal LED lighting for safety and security purposes on ground level of the Platform may remain on.

5. Licensee or its agents shall take all reasonable measures to ensure the sidewalks adjacent to the License Area are not blocked or unnecessarily affected by patrons or Special Event staff due to the operations of the License Area and shall provide security whenever patrons gather in the area or on the License Area.

6. Licensee or its agents shall implement other conditions and/or management practices necessary to ensure that management and/or patrons of the License Area maintain the quiet, safety and cleanliness of the License Area and the vicinity of the use, and do not block driveways of neighboring residents or businesses.

7. Absolutely no sound from the License Area shall be audible inside any surrounding residences or businesses in violation of San Francisco Police Code Section 2900.

8. Licensee or its agents shall provide adequate ventilation within the structures such that doors and/or windows are not left open for such purposes resulting in noise emission from the License Area.

9. Licensee shall inform event patrons to leave the License Area and neighborhood in a quiet, peaceful, and orderly fashion and urge patrons not to litter or block driveways in the neighborhood by placing adequate signage out during events.

10. Licensee or its agents shall provide a phone number to all interested neighbors that will be answered at all times by a manager or other responsible person who has the authority to adjust volume and respond to other complaints whenever entertainment is provided to allow for police and emergency personnel or other City personnel to contact that person concerning any incidents

Initial :
Port: _____

Tenant: _____

MEMORANDUM

August 8, 2025

TO: MEMBERS, PORT COMMISSION
Hon. Gail Gilman, President
Hon. Stephen Engblom, Vice President
Hon. Willie Adams
Hon. Steven Lee
Hon. Ken McNeely

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of an 18-month renewal, with one 18-month extension option, of SkyStar Wheel, LLC Lease at SWL 301 (proposed Lease No. L-17322) including a resolution recommending the Board of Supervisors waive any applicable requirements of the competitive bidding process with respect to this renewal.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 25-49

EXECUTIVE SUMMARY

On May 1, 2024, Port entered an 18-month lease, Lease No. L-17136, with SkyStar Wheel LLC, a Missouri limited liability company ("SkyStar"), for an observation wheel ("Wheel") on a portion of the parking lot at Seawall Lot 301 ("SWL 301"). The Port Commission and Board of Supervisors both waived the competitive bidding requirements for Lease No. L-17136.

Lease No. L-17136 expires on October 31, 2025, and Port staff seek to enter a renewal lease, L-17322, (the "Renewal Lease") with SkyStar for 18 months with one option for SkyStar to extend the Lease for an additional 18 months. Even though Lease No. L-17136 was authorized under a competitive bidding waiver, authority did not explicitly extend to a renewal. Because the Renewal Lease requires approval by the Board of Supervisors

under Charter Section 9.118, a subsequent waiver of competitive bidding is also recommended.

Under the proposed terms of the Renewal Lease, the base rent increases from $10,491 to $11,000 per month plus annual increases, and the percentage rent increases from 5% to 8%. Based on revenues under Lease No. L-17136, Port anticipates the Renewal Lease will produce revenues in excess of $1 million if Tenant exercises its extension option. Port engineering recommends increasing the security deposit to $100,000 to have funds available if the foundation is not adequately removed. The Port may terminate the Lease on 90-day notice if needed for the Fisherman's Wharf Revitalization project. Other terms and conditions in Lease No. L-17136 will generally remain in the Renewal Lease.

Fisherman's Wharf Revitalized, LLC, holds an exclusive negotiating agreement ("ENA") with the Port for the redevelopment of SWL 301 and Sheds A and C at Pier 45. The ENA limits the term of SkyStar's use of SWL 301 and requires SkyStar vacate by December 31, 2025. Port staff are working with Fisherman's Wharf Revitalized to waive the December 31, 2025 deadline. Without that waiver, the Port would violate the ENA by approving the Renewal Lease.

This staff report provides the rationale for the Renewal Lease and for the request to waive the competitive bidding procedures and provides the Port staff's recommendation on the next steps to seek Board of Supervisors approval and execute the Renewal Lease No. L-17322 with SkyStar.

STRATEGIC OBJECTIVE

Advancement of the Lease supports the following goals of the Port's Strategic Plan:

Economic Recovery:
Targeted Activation: The Wheel helps maintain a significant draw to Fisherman's Wharf as it is popular with tourists and locals.

Economic Growth:
Property Portfolio: The Renewal Lease continues to provide revenue to the Port and support tenants by bringing more foot traffic to the area.

Engagement:
Stakeholder Awareness: Port staff advised the Fisherman's Wharf Advisory Committee ("FWAC"), representing the Port businesses in Fisherman's Wharf, that Port staff was seeking to renew this Lease which will allow the Wheel to remain for an additional 18 months. The FWAC supported the original 18-month lease.

BACKGROUND

In July 2023, Port staff worked to move the Wheel from Golden Gate Park to Fisherman's Wharf. Port staff favorably viewed this proposal because it was perceived as a favorable activation for the area.

Operations commenced on November 10, 2023 under a special event license that expired six months later. Port staff and SkyStar negotiated an 18-month lease, L-17136, to keep the Wheel in operation into October 2025.

Lease No. L-17136 was presented at the January 2024 Fisherman's Wharf Advisory Committee ("FWAC") meeting and FWAC members and other participants in the meeting favored keeping the Wheel in place on SWL 301, which support remains unchanged.

Lease No. L-17136 required that SkyStar construct a more robust foundation for the Wheel. State regulations set different safety standards for temporary amusement rides and the 18-month term under Lease No. L-17136 did not qualify as temporary for Cal/OSHA and building permit purposes. SkyStar upgraded the foundation at a cost of nearly $2 million. SkyStar completed the work at the end of June 2024 and received permits to reopen to the public.

SkyStar at Fisherman's Wharf is more popular than when it was at Golden Gate Park: ridership at least doubled year-over-year.

PORT STAFF ANALYSIS REGARDING BOARD APPROVAL

The Wheel has become an iconic feature at Fisherman's Wharf, visible from both the City and across the bay.

San Francisco Administrative Code Sections 2.6-1 and 23.33 generally require a competitive bidding procedure to lease City-owned property. However, there is a high barrier to entry into the observation wheel market given the significant upfront costs and specific operating skills required. SkyStar is a major supplier and operator of wheels in the United States with only a few competitors.

After conducting due diligence in anticipation of Lease No. L-17136, Port staff identified no other likely competitors to SkyStar that would participate in a competitive bidding process and this finding stands for the Renewal Lease. According to the operator, the fabrication of a new wheel takes at least 2 years at a cost of approximately $15 million. Pursuing a competitive bidding process now would likely result in a gap in operations, resulting in the loss of needed activation for the Fisherman's Wharf area and associated Port revenue.

After 17 months of reported operating performance, the Wheel has proven to be a positive addition to Fisherman's Wharf. It has served 517,000 riders, produced $8.9 million in gross revenue, and paid $639,000 to the Port for base and percentage rent, equating to approximately $37,500 per month. Although actual Port revenues vary with the tourist season, the Port estimates slightly greater revenues based on higher base and percentage rents under the Renewal Lease. If SkyStar exercises the tenant option and operates for 36 months, Port estimates revenues of approximately $1.3 million, requiring Port Commission and Board of Supervisors approval.

The Wheel meets Port activation and beautification goals and creates more foot traffic for nearby businesses. The Wheel provides a desirable and previously missing activity for visitors to the Wharf. The Wheel offers sweeping views of the San Francisco bayfront and an iconic image in the San Francisco skyline.

Based on the Port's interest in maintaining operations and the pending Lease No. L-17136 termination on October 31, 2025, Port staff seek a waiver of competitive bidding for the proposed Renewal Lease and approve the Renewal Lease with potential revenue exceeding $1 million.

TERMS OF PROPOSED RENEWAL LEASE

The main financial terms of the Renewal Lease No. L-17322 include:

- New, 18-month term commencing on November 1, 2025 and expiring on April 30, 2027.

- Plus, one 18-month Tenant option to renew that would extend the term to October 31, 2028.

- Port has the right to terminate the Lease on 90-days' notice, for the limited purpose of accommodating Fisherman's Wharf Revitalized's redevelopment plans under the ENA, if Port determines the termination is necessary.

- If Tenant does not vacate at the termination or expiration of the Lease, Port staff revised the standard holdover provision in the lease from 200% of base rent per month (an unauthorized holdover) to 200% of base **plus** percentage[1] rent for the first month of holdover and to 500% every month thereafter.

- New Monthly Base Rent of $11,000 to increase to $11,550 effective November 2026.

    - The proposed Base Rent ($1.02 psf/mo) exceeds the Port Commission's approved, minimum parameter rent for Improved Land and Sidewalk of $0.94 psf/mo, which was initially adopted for fiscal year 2023-2024 (Port Resolution 23-36).

- The percentage rent increases from 5.00% to 8.00% of gross revenue.

    - Under the proposed Renewal Lease, SkyStar will continue to pay both Base Rent and Percentage Rent based on revenue. Most other Port restaurant/retail tenants pay percentage rent only to the extent that percentage or participation rent exceeds the base rent.

[1] Percentage rent will be calculated by averaging the trailing 12 months of percentage rent.

- Security deposit to increase to $100,000 to help ensure Port can address any lingering physical issues after lease expiration and SkyStar vacates the site.

See Lease No. L-17322, lodged with the Port Commission secretary, for complete terms and conditions.

PORT STAFF CONCLUSIONS - WAIVER OF COMPETITIVE SELECTION PROCESS AND PROPOSED TERMS OF THE LEASE

For the renewal of the SkyStar Lease, Port staff arrived at the following conclusions.

- The Port should maintain operation of the Wheel to support the ongoing economic recovery Fisherman's Wharf. The Wheel improves the visitor experience at Fisherman's Wharf and helps position other Port projects and activations for success.

- The proposed Lease No. L-17322 terms represent a significant improvement from the terms in the lease that expires in October 2025, are better than base rent parameter minimums, and secure additional revenue for the Port for the 18-month extension term.

- Based on past payments under the prior lease, the Port anticipates revenues in excess of $1 million assuming SkyStar exercises the tenant's option to extend the Renewal Lease term.

- By waiving the competitive bidding process and entering a renewal with SkyStar, the extended term will allow the benefits of the Wheel to continue to accrue unabated and continue to generate revenue for the Port.

- In closing, Port staff recommend that the Port Commission adopt the attached Resolution to approve the waiver of the competitive bidding process and the terms of the proposed Renewal Lease that will maintain the positive momentum of the Wheel at Fisherman's Wharf.

- Port staff has determined that initiating a competitive bidding process is impractical, if not impossible, due to the tight timeframe that is unlikely to generate a competing interest that can open by October 31, 2025, when the SkyStar lease expires.

PROPOSED NEXT STEPS & RECOMMENDATION

Port staff recommend that the Port Commission adopt the attached Resolution for a continuing waiver of the competitive bidding process and approve the Renewal Lease No. L-17322 with potential revenue exceeding $1 million, subject to Board of Supervisors approvals, and direct staff to seek Board approvals for the continuing waiver of the competitive bidding process and for a lease with potential revenue exceeding $1 million, both necessary to execute the Renewal Lease.

Prepared by:	Don Kavanagh, Senior Property Manager Real Estate and Development
For:	Scott Landsittel, Deputy Director Real Estate and Development

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 25-49

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, At its meeting on April 11, 2023, after a public planning process that maximized public participation in discussions about existing waterfront activities, regulations, challenges, public desires, and needs to incorporate diverse viewpoints and perspectives to develop policy recommendations, the Port Commission adopted an updated Waterfront Plan (the "Waterfront Plan"); and

WHEREAS, The Waterfront Plan includes a stakeholder engagement process for waiver of competitive bidding requirements in advance of the submission of such proposals to the Board of Supervisors for consideration of a waiver of the City's competitive bidding policies; and

WHEREAS, In July 2023, the Port was notified of the opportunity to move the SkyStar Wheel (the "Wheel") from Golden Gate Park to Fisherman's Wharf; and

WHEREAS, On November 1, 2023, the Port and SkyStar Wheel, LLC, a Missouri limited liability company ("SkyStar"), entered License Number 17107 for a portion of SWL 301 for a six-month term; and

WHEREAS, Before the expiration of the License 17107 on April 30, 2024, SkyStar and the Port negotiated an 18-month lease ("Lease 17136"), that commenced on May 1, 2024 and will expire on October 31, 2025; and

WHEREAS, Port staff sought stakeholder feedback and explored the potential to competitively bid the site for an observation wheel prior to executing Lease 17136 and concluded that a competitive process was unlikely to result in more than one proposal; and

WHEREAS, The Port Commission approved Resolution 24-15 on February 27, 2024, adopting findings under the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.) and approving Lease 17136 subject to any necessary approvals by the Board of Supervisors ("Board") such as a waiver of the City's competitive bidding policies; and

WHEREAS, The Board adopted Resolution 194-24, which was enacted on May 1, 2024 and waived competitive bidding procedures for Lease 17136; and

WHEREAS, Port staff has concluded that the favorable stakeholder feedback received at the Fisherman's Wharf Advisory Committee on January 10, 2024, remains relevant; and

WHEREAS, Port staff and SkyStar have negotiated a Renewal Lease ("Lease No. 17322"), to allow SkyStar to continue Wheel operations at the site for an initial 18-month term, with an option for SkyStar to extend the term for an additional 18 months, including base and percentage rent increases and other terms and conditions as described in the staff report accompanying this Resolution; and

WHEREAS, The Renewal Lease No. 17322 allows a temporary continuation of the existing use of the site, with the same maximum intensity of use, and is therefore within the scope of the project evaluated by the Planning Department and for which the Port Commission adopted findings under CEQA in Port Commission Resolution 24-15; and

WHEREAS, WHEREAS, On March 16, 2023, the Planning Commission certified the Final Environmental Impact Report (Planning Case No. 2019-023037ENV) ("FEIR") for The Port of San Francisco's Waterfront Plan (the "Project"); and

WHEREAS, On October 30, 2023, the Planning Department issued Addendum 2 (Planning Case No. 2023-009039ENV) ("Addendum 2") to the FEIR, which analyzed the environmental impacts of the relocation to and operation of the Wheel in Fisherman's Wharf for a period of up to three years, and identified the following mitigation measures to be potentially applicable to relocation and operation of the Wheel: M-CR-2a, Procedures for Accidental Discovery of Archeological Resources for Projects Involving Soil Disturbance; M-CR-2b, Archeological Monitoring Program; M-CR-2c, Archeological Testing Program; M-CR-2d, Treatment of Submerged and Deeply Buried Resources; and Mitigation Measure M-AQ-4c, Best Available Control Technology for Projects with Diesel Generators and Fire Pumps (each as further described in the FEIR and collectively, the "Mitigation Measures"); and

WHEREAS, On June 11, 2024, the Planning Department issued a Memorandum to File (Planning Case No. 2023-009039ENV) ("Memorandum to File") pursuant to the requirements of the California Environmental Quality Act and Chapter 31 of the San Francisco Administrative Code, analyzing an extension of the operation of the Wheel beyond the initial period analyzed in Addendum 2, including the construction of a new foundation shifting the Wheel approximately 15 feet west and 2 feet south from its then-current location, and determined that the modifications to the Project would not cause new significant impacts or result in a substantial increase in the severity of the impacts identified in Addendum 2, and that no new or revised mitigation measures would be required; and

WHEREAS, San Francisco Administrative Code Section 31.19(c)(1) provides that the Planning Department must reevaluate a modified project and that, "[i]f, on the basis of such reevaluation, the Environmental Review Officer determines, based on the requirements of CEQA, that no additional environmental review is necessary, this determination and the reasons therefore shall be noted in writing in the case record, and no further evaluation shall be required by this Chapter"; and

WHEREAS, Port staff desires to renew the SkyStar Lease as an appropriate interim use of the site that generates revenue for the Port, creates foot traffic that helps activate the Fisherman's Wharf area, maintains economic momentum from the Port's current investments in the recovery of the Fisherman's Wharf portfolio, and supports the goals of the Port's Fisherman's Wharf Forward project; now, therefore be it

RESOLVED, That the Port Commission adopts the findings and conclusions in Addendum 2 and the Memorandum to File, and adopts the Mitigation Measures identified in the FEIR and Addendum 2 as conditions of this approval action; and be it further

RESOLVED, That in consideration of the financial performance of the Wheel, and the results of the stakeholder outreach summarized above and in the staff report accompanying this Resolution, the Port Commission recommends that Port staff, in consultation with the City Attorney's Office, seek Board approvals to renew the lease for an observation wheel on a portion of SWL 301, with potential revenue exceeding $1 million in accordance with Charter Section 9.118 and a continuing waiver of the City's competitive bidding policies and; and be it further

RESOLVED, That upon approvals by the Board, Port staff is authorized and instructed to execute a renewal lease with SkyStar including substantially the same terms and conditions as those described in the staff report accompanying this Resolution for Lease No. 17322.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 12, 2025.

DocuSigned by:
Jenica Lin
Secretary
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FILE NO. 240258 RESOLUTION NO. 194-24

[Lease Agreement Exemption - SkyStar Wheel, LLC]

Resolution exempting from the competitive bidding policy set forth in Administrative Code, Section 2.6-1, the potential lease on a portion of the east end of Sea Wall Lot (SWL) 301, with SkyStar Wheel, LLC, for the continued operation of an observation wheel; and adopting environmental findings under the California Environmental Quality Act.

WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter, Section B3.581, give the Port Commission 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, The Port Commission at its meeting on April 11, 2023, after a public planning process that maximized public participation in public discussions about existing waterfront activities, regulations, challenges, public desires, and needs to incorporate diverse viewpoints and perspectives to develop policy recommendations, adopted an updated Waterfront Plan (the "Waterfront Plan"); and

WHEREAS, The Waterfront Plan included a stakeholder engagement process for waiver of competitive bidding requirements in advance of the submission of such proposals to the Board of Supervisors for consideration of a waiver of the City's competitive bidding policy; and

WHEREAS, In July 2023, the Port was notified of the opportunity to move the SkyStar Wheel (the "Wheel") from Golden Gate Park to Fisherman's Wharf; and

WHEREAS, On November 1, 2023, the Port and SkyStar Wheel, LLC, a Missouri limited liability company ("SkyStar"), entered a six-month License for a portion of SWL 301; and

WHEREAS, SkyStar, approached the Port requesting an 18-month lease (the "Lease") for the portion of SWL 301 upon expiration of the License; and

WHEREAS, The Lease allows a temporary continuation of the existing use of the site, with the same maximum intensity of use, and is therefore within the scope of the project evaluated in Addendum 2; and

WHEREAS, Port staff offered an opportunity for stakeholder feedback at the Fisherman's Wharf Advisory Committee meeting on January 10, 2024, and received favorable feedback on SkyStar's request; and

WHEREAS, Port staff reported the stakeholder engagement feedback at the February 27, 2024, Port Commission meeting; and

WHEREAS, Port staff determined that initiating a competitive bidding process is unlikely to generate a competing investment interest prior to April 30, 2024, when the SkyStar Wheel temporary license expires; and

WHEREAS, Port staff recognize the urgency of providing support to the recovery of Fisherman's Wharf, which has been beset by the pandemic and associated economic downturn, resulting in the closure of many longstanding Port tenants; and

WHEREAS, At its meeting on February 27, 2024, the Port Commission through Resolution No. 24-15 authorized the Port Executive Director or her designee to seek Board of Supervisors authorization to waive the competitive bidding policy set forth in Administrative Code Section 2.6-1 for the potential lease of a portion of SWL 301 to SkyStar; and

WHEREAS, A waiver of the competitive bidding policy will ensure uninterrupted operation of the Wheel and provide a much-needed activation, bringing additional foot traffic to the area to help drive economic recovery to Fisherman's Wharf; and

WHEREAS, According to SkyStar, after three months of reported operating performance, Wheel ridership in December 2023, was 165% more than passenger ridership in December 2022, and 120% more in January 2024, than when the Wheel was in Golden Gate Park; and

WHEREAS, In accordance with the Waterfront Plan stakeholder engagement process for wavier of competitive bidding requirements, based on the lack of meaningful competitors, the Port's interest in maintaining operations and the pending license termination on April 30, 2024, the time and expense in pursuing a competitive process would be impractical and not in either the Port's or public interest; and

WHEREAS, In Resolution No. 24-15, the Port Commission adopted findings, conclusions, and certain mitigation measures (collectively, the "Environmental Findings") under the California Environmental Quality Act (California Public Resources Code, Sections 21000 et seq.,); now, therefore, be it

RESOLVED, The Board of Supervisors adopts the Environmental Findings in Port Commission Resolution 24-15 as its own; and, be it

FURTHER RESOLVED, The Board of Supervisors finds: 1) that competitive bidding procedures would be impractical or impossible due to a likely lack of competition for a short term opportunity to continue operations; 2) the timely and successful execution of the proposed short term lease would help attract visitation to the Port for the benefit of new and old businesses alike; 3) the urgency of providing support to the recovery of Fisherman's Wharf and maintaining uninterrupted operations; and 4) for these reasons, it would be in the public

interest to waive competitive bidding procedures so the Port may enter into a lease with SkyStar Wheel LLC to; and, be it

FURTHER RESOLVED, That the Board of Supervisors waives application of the competitive bidding procedures in Administrative Code, Section 2.6-1 to a short term lease, should the Port Commission and SkyStar Wheel, LLC, agree upon mutually acceptable terms of a lease for a portion of SWL 301, provided, however, that any lease or other agreement shall remain subject to Charter, Section 9.118.

City and County of San Francisco
Tails
Resolution

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

File Number: 240258 **Date Passed:** April 30, 2024

Resolution exempting from the competitive bidding policy set forth in Administrative Code, Section 2.6-1, the potential lease on a portion of the east end of Sea Wall Lot (SWL) 301, with SkyStar Wheel, LLC, for the continued operation of an observation wheel; and adopting environmental findings under the California Environmental Quality Act.

April 03, 2024 Budget and Finance Committee - CONTINUED TO CALL OF THE CHAIR

April 24, 2024 Budget and Finance Committee - RECOMMENDED

April 30, 2024 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 240258

I hereby certify that the foregoing Resolution was ADOPTED on 4/30/2024 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

5/1/24
Date Approved

President, District 8
BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. 554-6968
Fax No. 554-5163
TDD/TTY No. 544-5227

RAFAEL MANDELMAN

PRESIDENTIAL ACTION

Date: 10/24/25

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

☐ Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____ _____ (Primary Sponsor)

Title.

_____

☐ Transferring (Board Rule No 3.3)

File No. _____ _____ (Primary Sponsor)

Title.

_____

From: _____ Committee

To: _____ Committee

☒ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: Chen Replacing Supervisor: _____

For: 10/29/25 (Date) Budget & Finance (Committee) Meeting

Start Time: _____ End Time: _____

Temporary Assignment: ○ Partial ◉ Full Meeting

Rafael Mandelman, President
Board of Supervisors

Docusign Envelope ID: BC9CC111-6FCC-4AD9-AD02-B2015CF7C75C

Incomplete - Pending Signature

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 251017

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4
(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of $100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: https://sfethics.org/compliance/city-officers/contract-approval-city-officers

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (*for amendment only*)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Legislative Clerks Division	415-554-5184
FULL DEPARTMENT NAME	**EMAIL**
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Don Kavanagh	415-274-0501
FULL DEPARTMENT NAME	**DEPARTMENT CONTACT EMAIL**
PRT Port of San Francisco	don.kavanagh@sfport.com

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5. CONTRACTOR	
NAME OF CONTRACTOR SkyStar Wheel, LLC	**TELEPHONE NUMBER** 314-308-2783
STREET ADDRESS (including City, State and Zip Code) 12412 Powerscourt Drive, Suite 110, St Louis, MO 63131	**EMAIL** todd@skystarwheel.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	**ORIGINAL BID/RFP NUMBER**	**FILE NUMBER (*If applicable*)** 251017
DESCRIPTION OF AMOUNT OF CONTRACT $1,800,000		
NATURE OF THE CONTRACT *(Please describe)* The SkyStar Wheel is currently operating at Fisherman's Wharf under a license that expires October 31, 2025. Port is planning an 18-month extension of the term with one 18-month extension option through a new lease. Estimated revenue under the full 36-month term is approximately $1.8 million. A new lease like this typically requires competitive bidding process but there are no meaningful competitors to SkyStar Wheel and if a new wheel was ordered it would cost approximately $15 million and take two years. Therefore, Port staff recommended, and Port Commission approved waving he competitive bidding process and authorized Port staff to present the waiver to the Board of Supervisors for consideration and approval.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
☐	**THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM**
☒	**A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES** Board of Supervisors
☐	**THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS**

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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Schneider	Todd	CEO
2	Mers	Al	Shareholder
3	Clear	Bill	Shareholder
4	Cumming	Jim	Shareholder
5	Vandiver	Megan	Shareholder
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9. AFFILIATES AND SUBCONTRACTORS			
List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.			
#	**LAST NAME/ENTITY/SUBCONTRACTOR**	**FIRST NAME**	**TYPE**
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#	**LAST NAME/ENTITY/SUBCONTRACTOR**	**FIRST NAME**	**TYPE**
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☐	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

10. VERIFICATION	
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete. **I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**	
SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK BOS Clerk of the Board	**DATE SIGNED**

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- [ ] 2. Request for next printed agenda (For Adoption Without Committee Reference)
  (Routine, non-controversial and/or commendatory matters only)
- [ ] 3. Request for Hearing on a subject matter at Committee
- [ ] 4. Request for Letter beginning with "Supervisor _____ inquires…"
- [ ] 5. City Attorney Request
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget and Legislative Analyst Request (attached written Motion)
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Sauter

Subject:

[SkyStar Wheel, LLC – Lease Agreement Extension]

Long Title or text listed:

Resolution exempting from the competitive bidding policy set forth in Administrative Code Sections 2.6-1 and 23.33, approving Port Lease 17322 for the continued operation of an observation wheel at seawall lot (SWL) 301 between the Port of San Francisco and SkyStar Wheel, LLC for a period of 18 months with one 18-month extension option; and adopting environmental findings under the California Environmental Quality Act.

Signature of Sponsoring Supervisor: