

File No. 100081

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 2/17/10

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Gail Johnson

Date 2/12/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Approval to award a three-year lease for surface parking between the Port of San Francisco
2 and Central Parking System, Inc. (Lease No. L-14795) for Seawall Lots ("SWL") 301, and
3 SWL 314 located in the Northern Waterfront]

4 **Resolution approving a Port Commission Lease with Central Parking System, Inc. a**
5 **Tennessee Corporation in, for certain real property located at SWL 301 bounded by**
6 **Taylor Street, Jefferson Street, and Powell Street, and SWL 314 bounded by The**
7 **Embarcadero and Bay Street, and Kearny Street the City and County of San Francisco**
8 **for a term of 3 years.**

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

14 WHEREAS, On October 13, 2009 the Port Commission approved Resolution No. 09-
15 13, authorizing Port staff to offer through competitive bid a three-year lease for surface
16 parking for SWLs 301 and SWL 314. These SWL lots are located in the Northern Waterfront
17 (the "Bid Opportunity"); and,

18 WHEREAS, The submittal date for the Bid Opportunity was November 18, 2009 at
19 which time the bids were publicly opened and ranked in order of highest bid. The Port
20 received requests for thirty-eight (38) bid packages. Under the terms of the Bid Opportunity,
21 the Port determined that three (3) submitted bids met the minimum qualifications for
22 experience and financial standing; and

23 WHEREAS, Based on proposing the highest minimum monthly rent, Port staff selected
24 Central Parking System, Inc. as the successful bidder; and

1 WHEREAS, Under the proposed lease, the Port will receive rent equal to the greater
2 amount of the minimum monthly rent of \$160,916.00 or 66% of gross receipts net of the City
3 Parking Tax required by Article 9 of the San Francisco Business and Tax Regulations Code;
4 and

5 WHEREAS, The Port Commission, at its January 12, 2010 meeting pursuant to
6 Resolution No. 10-04 approved the award of a three-year lease to Central Parking System,
7 Inc. subject to the Board of Supervisors approval; and

8 WHEREAS, A copy of the form of lease is on file with the Clerk of the Board of
9 Supervisors in File No. 100081 and is hereby declared to be part of this Resolution as if fully
10 at forth herein (the "Lease"); and

11 WHEREAS, The proposed Lease will increase incremental revenue to the Port for base
12 rent by approximately \$1.27 annually or \$5 million for the three-year term. This represents a
13 177% increase over the existing leases. Port staff anticipates a corresponding increase in the
14 percentage rent paid to the Port that may increase the net return over the three-year term of
15 the lease to \$8 million; and

16 WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors
17 approval of leases having a term of ten (10) or more years or having anticipated revenue to
18 the City of One Million Dollars (\$1,000,000.00) or more; and

19 WHEREAS, This Lease is likely to meet the One Million Dollar (\$1,000,000.00)
20 threshold; now, therefore, be it

21 RESOLVED, That the Board of Supervisors approves the Lease; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
23 Director of the Port (the "Executive Director") to execute the Lease in a form approved by the
24 City Attorney and in substantially the form of the lease on file; and, be it

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

11 FURTHER RESOLVED, That the Board of Supervisors approves, and ratifies all prior
12 actions taken by the officials, employees and agents of the Port Commission, or the City with
13 respect to the Lease.

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CITY AND COUNTY



OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
FAX (415) 252-0461

February 11, 2010

TO: Budget and Finance Committee
FROM: Budget and Legislative Analyst
SUBJECT: February 17, 2010 Budget and Finance Committee Meeting

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Item 2
File 10-0081

Department:
Port

EXECUTIVE SUMMARY

Legislative Objectives

- Resolution approving a new three-year lease between the Port, as the lessor, and Central Parking System, Inc., as the lessee, to operate two parking lots on Port-owned property at Seawall Lots 301 and 314.

Fiscal Impact

- The proposed three-year lease agreement (March 1, 2010 through April 30, 2013) would provide the Port with minimum rent revenue totaling \$5,996,328, or approximately \$1,998,776 annually.

Key Points

- The parking lot at Seawall Lot 301 is currently operated under a sole-sourced management agreement with the Fisherman's Wharf Restaurant Association, which was awarded on November 22, 1994 without a specific termination date.
- The Controller's City Services Auditor recently issued an audit of parking operations at Seawall Lot 301 and identified \$591,486 in potential unreported revenue to the Port and management overcharges for operating expenses. The audit recommended (a) that the Port initiate a forensic audit to determine the full extent of unreported revenue to the Port and overcharges for operating expenses, and (b) that the management agreement with the Fisherman's Wharf Restaurant Association be competitively bid.
- The other parking lot at Seawall Lot 314 is currently operated under a two-year lease awarded on May 5, 2005 to Central Parking System, subsequent to a competitive bidding process, which expired on April 30, 2007. On October 13, 2009, the Port issued a RFP for a single parking operator to operate both parking lots on Seawall Lots 301 and 314.
- Based on the results of the RFP, the proposed resolution would award a three-year lease to Central Parking System to operate the two parking lots, and pay rent to the City equal to the greater of (a) 66% of gross monthly parking revenues, or (b) a minimum monthly rent of \$160,916, or \$1.57 per square foot. The proposed minimum monthly rent of \$160,916 represents an increase of \$105,479, or approximately 190 percent, over the current monthly rent at both parking lots totaling \$55,437, or \$0.54 per square foot.
- The proposed lease includes a holdover provision which would allow the lease to continue indefinitely after the original three year lease term expires, without further approval by the Board of Supervisors.

Recommendations

- Amend the proposed ordinance to require that at the end of the proposed three year lease, and by no later than May 15, 2013, the Port report back to the Board of Supervisors(a) as to the status of the Port's plans to competitively rebid the lease, or (b) if the Port does not rebid the lease, the justification for allowing the lease to continue on a month-to-month basis.
- Approve the proposed resolution, as amended.

BACKGROUND**Holdover Lease Project**

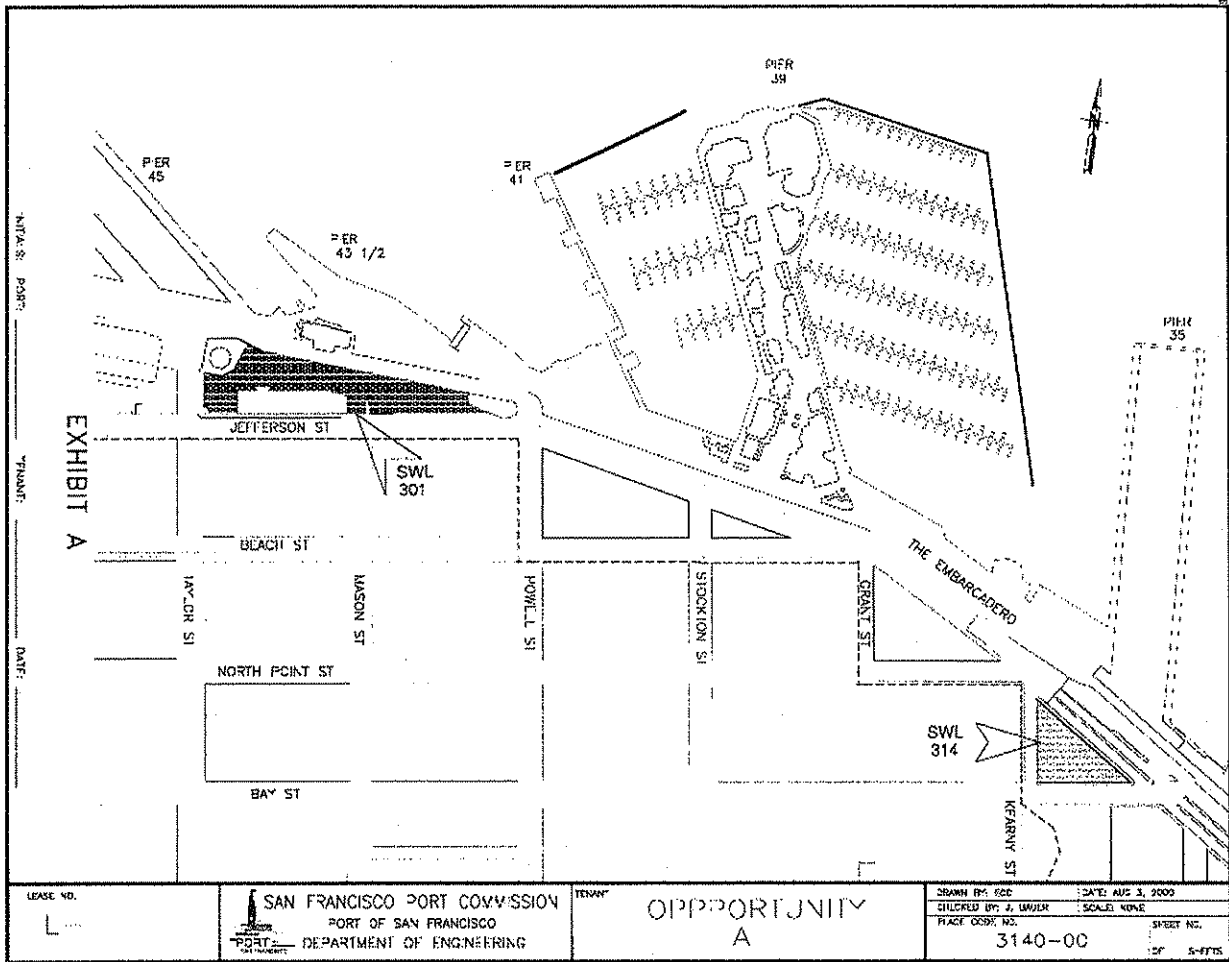
In January of 2008, the Port began a Holdover Lease Project, to reduce the number of Port leases which had expired and been extended under the “holdover” provisions of their leases and continued on a month-to-month basis. According to Mr. Brad Benson, Special Projects Manager for the Port:

“Since the beginning of the Port’s Holdover Lease Project, forty (40) agreements have been renewed, entered into or amended with existing Port tenants, which have resulted in an increase of \$79,836.59 in monthly revenues. When tenants chose not to enter a new term lease, Port staff increased rents consistent with rental rate charges approved by the Port Commission. Fifty-six (56) rent increase letters have been sent, which have resulted in an increase of \$37,109.78 in monthly revenues. Finally, thirty-five (35) agreements have been terminated (largely because tenants refused new term leases), resulting in a decrease of \$9,620.46 in monthly revenues.

As of December 2009, thirty-six (36) additional holdover and month-to-month agreements requiring new term leases were assigned to various Port leasing staff for renewal. Sixty-five (65) agreements have not yet been assigned; of these, twenty-four (24) agreements are at or above market rents approved by the Port Commission. The Port continues to dedicate 1.6 FTE leasing staff provided by the Department of Real Estate for this project, in addition to its own leasing staff.”

Existing Parking Contracts for Seawall Lots 301 and 314

The subject two parking lots are located at Port Seawall Lots (SWL) 301 and 314, as shown in the map below, provided by the Port.



Seawall Lot 301 is operated under a management agreement¹ with the Fisherman's Wharf Restaurant Association (FWRA) while Seawall Lot 314 is operated under a lease awarded to Central Parking System (CPS), as shown in Table 1 below.

¹ According to Mr. Bauer, a management agreement is a professional services contract for property management services which does not provide rights of tenancy to the property manager (as compared to a lease which does provide tenancy rights).

Table 1: Existing Parking Contracts with the Port

	Fisherman's Wharf Restaurant Association	Central Parking System (CPS)	Total
Contract Type	Management Agreement	Lease	n/a
Seawall Lot	301	314	301 and 314
Estimated Number of Parking Stalls	286	124	410
Total Square Feet	71,545	31,115	102,660
Monthly Rent	100% of net revenues, averaging \$30,000 per month	Greater of 66% of gross revenue or a minimum rent of \$25,437	\$55,437
Annual Rent	An average of \$360,000	Minimum rent of \$305,244	\$665,244
Monthly Rent per Square Foot	\$0.42	\$0.82	\$0.54 ²
Start Date	November 22, 1994	May 1, 2005	n/a
End Date	Month-to-month since inception	April 30, 2007	n/a

A detailed description of each parking lot's existing parking contract follows.

Seawall Lot 301

On November 22, 1994, the Port executed a management agreement³ with the Fisherman's Wharf Restaurant Association (FWRA) for the operation of the parking lot at SWL 301 (known as the Triangle Lot) which requires (a) that FWRA enter into a contract with a parking lot operator, and (b) pay the City 100 percent of net parking revenues, after deducting the cost of operations and City Parking Taxes. The Budget Analyst notes that this management agreement was not awarded pursuant to a competitive bidding process. According to the attached memorandum from Mr. Bauer (Attachment I), rather than awarding a lease subsequent to a competitive bidding process, the Port entered into this management agreement with FWRA because (a) FWRA members were Port tenants at Fisherman's Wharf paying rent to the Port based on a percentage of revenue, and (b) providing low cost parking to visitors at Fisherman's Wharf would increase both the percentage rents paid by Port tenants and sales taxes resulting from tourist spending at Fisherman's Wharf.

² \$0.54 is the weighted average of rent per square foot, weighted by parking lot size.

³ According to Mr. Bauer, this management agreement replaced a licensing agreement between the Port and the FWRA which was executed on May 25, 1982, such that FWRA has operated the parking lot for 28 years.

On November 9, 2009, the Controller's City Services Auditor (CSA) issued an audit of operations at Seawall Lot 301 for the two-year period from July 1, 2006 through June 30, 2008, an excerpt of which follows:

"The audit identified an estimated \$591,486 in potential unreported revenue to the Port and overcharges for operating expenses. However, CSA is unable to determine the full extent of potential underreporting for the audit period because FWRA and City Parking have not complied with City code requirements to install revenue control equipment. FWRA and City Parking rely on manual record-keeping that in some respects is unauditible. Therefore, CSA recommends that the Port engage a forensic accountant to perform the necessary audit tests to determine the extent of possible underreporting. The audit also found that neither the Port nor FWRA exercise sufficient oversight over Triangle Parking Lot operations."

In addition to the \$591,486 in "potential unreported revenue to the Port and overcharges for operating expenses", the audit also found that FWRA (a) failed to enter into a written contract for parking operations, as required under the management agreement, (b) failed to install parking revenue control equipment in violation of Article 22 of the San Francisco Business and Tax Regulation Code, (c) failed to submit annual budgets to the Port as required by the management agreement, and (d) allowed other businesses to participate in the parking validation program without the Port's approval, as required by the management agreement.

In addition to the above-noted recommendation that the Port initiate a forensic audit of FWRA⁴, the Controller's City Services Auditor recommended that the Port competitively bid the parking operations agreement for Seawall Lot 301.

According to Mr. Bauer, the Port receives average rent payments from FWRA of \$30,000 per month, such that, since the November 22, 1994 inception of the management agreement, the FWRA has paid the Port approximately \$5,460,000 (\$30,000 per month x 182 months).

Although San Francisco Charter Section 9.118(a) states that the award of any contract which is anticipated to result in revenue to the City of over \$1,000,000 requires approval by the Board of Supervisors, the Port did not submit the existing agreement with FWRA to the Board of Supervisors for approval because, at the time of award in 1994, the agreement was not anticipated to generate more than \$1,000,000.

Seawall Lot 314

On May 1, 2005, subsequent to a competitive bidding process, the Port awarded a two-year lease, expiring April 30, 2007, to Central Parking System for the parking lot located at Seawall Lot 314. According to the terms of the existing lease, Central Parking System pays the Port the greater of (a) 66 percent of gross revenues, or (b) \$25,437 per month.

Although this lease expired on April 30, 2007, the Port has extended this lease on a month-to-month basis under the holdover provisions of the lease because, according to Mr. Bauer, (a) commercial leasing staff resources are not sufficient to address every lease when each lease terminates, and (b) the lease for Sewall 314 was not determined to be a priority for rebidding.

⁴ According to Mr. Bauer, such a forensic audit (an audit which is designed to report results which are suitable for presentation in a court of law) will begin on February 17, 2010.

According to Mr. Bauer, as part of the Port's Holdover Lease Project discussed above, the existing lease with Central Parking System for parking operations at Seawall Lot 314 was targeted for rebidding.

Mr. Bauer stated that, since inception of the lease, Central Parking System has paid the Port a total of \$2,033,970 under this lease, or an average of \$36,981 per month (considering some of the rent was based on the percentage of gross revenues, not simply the monthly minimum) over the 55-month duration of the lease (from June 2005, when the first rent payment would have been paid after inception of the lease, through January 2010).

Although San Francisco Charter Section 9.118(a), requires that the award of any contract which is anticipated to result in revenue to the City of over \$1,000,000 requires approval by the Board of Supervisors, the Port did not submit the existing agreement with Central Parking System to the Board of Supervisors for approval because, at the time of award in 2005, the agreement was not anticipated to generate more than \$1,000,000.

Competitive Bidding Process

On October 13, 2009, the Port re-issued⁵ a competitive Bid Opportunity for Lease to operate the two subject parking lots on Port-owned property at SWLs 301 and 314 under a single lease. According to Mr. Bauer, the Port's bid documents required all parking operators to pay rent to the Port equal to the greater of (a) 66 percent of the gross parking revenues, or (b) a minimum monthly rental amount to be proposed by the parking operator. The Port received three qualifying bids on November 18, 2009, as shown in Table 2 below, with the bid from Central Parking System (the existing SWL 314 operator) providing the highest minimum monthly rent to the Port.

Table 2: Received Bid Amounts

Firm	Minimum Monthly Rent in the First Year of the Proposed Lease	Minimum Monthly Rent Per Square Foot
Central Parking System, Inc. (CPS)	\$160,916	\$1.57
Pacific Park Management, Inc	146,111	1.42
Imperial Parking (US)	141,889	1.38

As noted above, CPS currently is the lessee for Seawall Lot 314.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease to be awarded by the Port to Central Parking System (CPS) to operate the two subject parking lots on Port-owned property at

⁵ The Port had previously issued a competitive Bid Opportunity for Lease to operate the two subject parking lots on Port-owned property at Seawall Lots 301 and 314 on May 26, 2009. However, due to procedural errors, the results of that bidding process were invalid, such that the Bid Opportunity was reissued on October 13, 2009.

Seawall Lots 301 and 314, for a term of three years, with CPS paying rent equal to the greater of (a) 66 percent of gross parking revenues, or (b) a minimum monthly rent shown in Table 3 below.

Table 3: Rent Schedule

Year	Monthly Minimum Rent	Annual Minimum Rent
1	\$160,916	\$1,930,992
2	166,309	1,995,708
3	172,469	2,069,628
Total Rent During Lease Period	n/a	\$5,996,328
Month-to-Month After Lease Expiration	\$258,704	\$3,104,448

According to Mr. Benson, after the original term of the proposed three year lease expires, the Port intends to rebid the lease so long as the anticipated use of Seawall Lots 301 and 314 remains for parking lots. However, if the lease extends on a month-to-month basis after the original three year lease term expires, the Port included a holdover provision which would increase the minimum monthly rent from by \$86,235, or 50 percent, from \$172,469 (Year 3 rent) to \$258,704, as shown in Table 3 above.

FISCAL IMPACTS

The proposed three-year lease agreement (March 1, 2010 through April 30 2013) would provide the Port with minimum rent revenue totaling \$5,996,328, as shown in Table 3 above.

The proposed first year minimum monthly rent rate of \$1.57 per square foot represents an increase of \$1.03, or 191 percent, as compared to the current combined rent rate of \$0.54 (see Tables 1 and 2 above) received from Seawall Lots 301 and 314.

OTHER CONSIDERATIONS

The proposed parking lease includes a parking validation program for customers of Port tenants at Fisherman’s Wharf and Fisherman’s Wharf Crab Stand.

Under the existing management agreement with the Fisherman’s Wharf Restaurant Association, free parking is available for validated customers of Port tenants. The proposed parking lease with Central Parking System would also include a validation program, providing (a) either two or three hours of free parking to customers of Port tenants at Fisherman’s Wharf, and (b) one hour of free parking to customers of Port tenants at Fisherman’s Wharf Crab Stand.

The proposed lease includes a holdover provision which could allow the Port to extend the lease indefinitely, after the original three year lease term expires, without further approval by the Board of Supervisors.

As shown in Table 3 above, at the termination of the three year term, the lease could enter into a holdover period where the minimum monthly rent would increase by 50% from the Year 3 rent, to \$258,704 per month. Although Mr. Benson stated that, after the original term of the proposed three year lease expires, the Port intends to rebid the lease, the Budget Analyst notes that the proposed lease does not limit the duration of the holdover period such that the lease could continue indefinitely. According to the attached memorandum from Mr. Benson (Attachment II), the holdover provision in this lease, as well as all other Port commercial leases, benefit the City by providing flexibility during adverse real estate conditions or the use of the property is in transition.

Therefore, the Budget Analyst recommends that the proposed resolution be amended to require that at the end of the proposed three year lease, and by no later than May 15, 2013, the Port report back to the Board of Supervisors(a) as to the status of the Port's plans to competitively rebid the lease, or (b) if the Port does not rebid the lease, the justification for allowing the lease to continue on a month-to-month basis.

RECOMMENDATION

1. Amend the proposed resolution to require that at the end of the proposed three year lease, and by no later than May 15, 2013, the Port report back to the Board of Supervisors(a) as to the status of the Port's plans to competitively rebid the lease, or (b) if the Port does not rebid the lease, the justification for allowing the lease to continue on a month-to-month basis.
2. Approve the proposed resolution, as amended.



February 8, 2010

To: Nathan Cruz
Budget Analyst Office

From: Jeffrey Bauer
Senior Leasing Manager

After making a finding that bidding the Triangle Parking Lot (Seawall Lot 301) would be impractical and infeasible, the Port of San Francisco entered into a Management Agreement with the Fisherman's Wharf Restaurant Association (FWRA) in October 1994 to operate the Triangle Parking Lot, a public parking lot located at 2860 Taylor (at Jefferson) Street at Fisherman's Wharf (Seawall Lot 301).

The Management Agreement replaced a license agreement dated May 25, 1982. FWRA has managed the parking lot for a total of 27 years on behalf of the Port. Neither the license agreement nor the Management Agreement were reviewed or approved by the Board of Supervisors

FWRA is required to hire subcontractors to operate the Triangle Parking Lot. The current parking lot operator is City Parking Company (City Parking). Net receipts from the Triangle Parking Lot, after payment of parking taxes and operating expenses, are to be paid monthly to the Port in accordance with a Port-approved budget. The Management Agreement requires FWRA to submit to the Port a budget for each upcoming fiscal year. As documented in a management audit report by the City Controller, this methodology has been inconsistent and flawed.

The original Management Agreement was designed to support Fisherman's Wharf customers by making parking easy and affordable to visitors of the Wharf by offering a validated parking program. As a regional attraction, the largest in the City, parking for visitors is critical to the merchants operations and therefore to rents paid to the Port and sales and parking taxes paid to the City.

The Management Agreement between the Port and FWRA was amended in July 2002 to include parking operations for the nearby Pier 45 Shed A area.

In 2009, consistent with policy direction from the Board of Supervisors and advice from the Budget Analyst, Port management reviewed Port properties leased on month-to-month agreements. While the Triangle Parking Lot Management Agreement was not a property agreement, it differed in form from all of the Port's other parking lot operations. Based on experience with other parking lots, Port management subsequently recommended, and the Port Commission concurred, that, with current validation technology, it is practical and feasible to bid this parking lot as a lease opportunity, thus reversing the 1990s determination.

The Port requested the Controller to audit of the management and operations of the Triangle Parking Lot and Pier 45 Shed A in preparation for the issuance of Revenue Bonds. While a competitive solicitation had already been issued on behalf of these parking lots, the results of this management audit underscored the Port's determination to convert from a management agreement to a standardized lease agreement. The Port continues to work with the Fisherman's Wharf Restaurant Association to implement the Controller's audit recommendations.

The proposed lease – with a base rent based on the highest responsible bid or 66% of gross receipts – is a substantially improved form of contract for the Triangle Parking Lot, compared to the former Management Agreement, in that it 1) provides a direct financial incentive for the operator to control costs, and 2) creates incentives for market pricing of parking. The proposed lease expands the current validation program to include other Port retail tenants that have gross receipts lease agreements with the Port.

The lease at Seawall Lot 314 was awarded through the public bid process on April 12, 2005 to Central Parking System with a lease term of two years, Port Commission Resolution No. 05-26. The lease expired on April 30, 2007. In the intervening 30 month period prior to the public offering, Port staff concluded that the Port was receiving fair market rent for the lot (the greater of 66% of gross receipts or \$25,642.07 or \$0.86/square foot).

As you may know, the Port has been working for almost a year to bid and award leases for five parking lots. The Board of Supervisors approved an award for three such leases to Priority Parking in November 2009. Unfortunately, the bid for Sea Wall Lots 301 and 314 had to be reissued by the Port in October 2009. It was approved by the Port Commission at its January 12, 2010 meeting.



Memorandum

To: Nathan Cruz
From: Brad Benson
cc: Monique Moyer, Jeff Bauer
Date: February 11, 2010
Re: Holdover and Month-to-Month Leases

Thank you for the opportunity to provide background information on holdover provisions and month-to-month leasing.

The Port accepts the Budget Analyst's recommendation that the Port report back to the Board of Supervisors after the three year term of Lease L-14795 with Central Parking System, Inc. expires regarding (a) the Port's plans to competitively rebid a lease for Seawall Lot 314 and Seawall Lot 301, or (b) if the Port does not rebid the lease, the justification for allowing the lease to continue on a month-to-month basis.

Furthermore, Port staff shares the Budget Analyst's objective that the Port should collect market rent for its properties. The Port's Holdover Lease Project initiated in response to the Budget Analyst's recommendation has been a successful project, bringing a total of ninety-six (96) lease to market rent, with increased monthly revenues of approximately \$117,000.00. Thirty-five (35) leases have been terminated (largely because tenants refused new term leases), resulting in a decrease of \$9,600.00 in monthly revenues.

Holdover and Month-to-Month Provisions

The Port includes indefinite holdover provisions in each of its commercial leases, with a provision to increase base rent by a factor of 150% or reset to market rate. Pursuant to Resolution 09-28, the Port Commission has also authorized Port staff to enter or maintain certain leases on a month-to-month basis as described below.

Port staff believes that these provisions serve a public interest. Month-to-month provisions provide flexibility to both the property owner and the tenant, particularly during adverse real estate market conditions when it is hard to attract new tenants. When a property is in transition from one use to another (e.g., a parking lot to a commercial building), indefinite lease terms provide flexibility for project approval processes that are of uncertain length. California law does not provide an automatic right of holdover occupancy to commercial tenants; a holdover provision must be agreed by the parties in a property contract.

PORT OF SAN FRANCISCO

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Nathan Cruz, Budget Analyst
February 11, 2010

The Port surveyed other City departments and other California public ports to determine their practice with respect to holdover provisions and month-to-month leases. The results are shown in Table 1 below:

Table 1: Holdover and Month-to-Month Lease Provisions		
Agency	Leases Contain Holdover Provision?	Initiate Month-to-Month Leases?
City Departments		
Port of San Francisco	Yes. Base Rent increase by factor of 150% or market reset.	Yes. See below.
Department of Real Estate	Yes. Base Rent increase by factor of 150% when authorized to holdover; 200% when not authorized.	Rarely (e.g., when property is planned for another use).
SFPUC	Yes	Yes
California Ports		
Oakland	Yes	Yes
Richmond	Yes	Yes
Stockton	Yes	Yes
Redwood City	Yes	Yes
Hueneme	No	Yes
San Diego	TBD	Yes
Los Angeles	Yes	Yes

The San Francisco Port Commission, by Resolution 09-28, authorized Port staff to enter or maintain Port leases on a month-to-month basis under the following circumstances:

1. For interim leases, when development or a capital project is planned at the site (e.g., the Pier 27 cruise terminal);
2. For storage agreements, not to exceed \$5,000 in total monthly rental income.
3. For parking spaces, except for parking lots.
4. For use of public rights of way.
5. For use of, or access to, Port-owned equipment.
6. To allow structural, geotechnical or environmental investigation of Port property.
7. For other short-term agreements, such as for construction lay-down purposes, where the precise duration of the activity is unknown.
8. During periods of adverse commercial real estate market conditions, but with a limited twenty-four (24) month term.
9. For other agreements where the Port Executive Director finds a public purpose to enter a month-to-month lease, but with a limited twenty-four (24) month term.

Thank you for your consideration.



January 15, 2010

File 100081

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for the Board of Supervisors approval related to the approval of a Lease with Central Parking System, Inc.

The Lease provides for surface parking operations in the Northern Waterfront with a Three (3) year term and anticipated revenues of \$5 million dollars.

Pursuant to the provisions of Section 9.118 of the Charter, a lease requires Board of Supervisors approval if the total anticipated revenues of \$1 million dollars or more. The terms proposed in the Lease would result in revenues over \$1 million to the Port.

The following is a list of accompanying documents (five sets):

1. Board of Supervisors Resolution
2. Port Lease No.L-14795
3. Port Staff Report and Commission Resolution No. 10-04

Please contact me at (415) 274-0514 if you have any questions.

Sincerely,

Jeffrey A. Bauer
Port of San Francisco Leasing Manager

BY AK

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BOARD OF SUPERVISORS
SAN FRANCISCO
2010 JAN 15 AM 10:57



**CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR**

LEASE NO. L-14795

BY AND BETWEEN

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

AND

**CENTRAL PARKING SYSTEM, INC.
A TENNESSEE CORPORATION**

SEAWALL LOTS 301 AND 314

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**RODNEY FONG, PRESIDENT
STEPHANIE SHAKOFSKY, VICE PRESIDENT
KIMBERLY BRANDON, COMMISSIONER
MICHAEL HARDEMAN, COMMISSIONER
ANN LAZARUS, COMMISSIONER**

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EXHIBITS AND SCHEDULES

- EXHIBIT A DESCRIPTION OF PREMISES**
- EXHIBIT B COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM**
- EXHIBIT C ESTOPPEL CERTIFICATE**
- EXHIBIT D PLAN OF OPERATION**
- EXHIBIT E FISHERMAN'S WHARF PERCENTAGE RENT TENANTS AND CRAB STAND OPERATORS**
- EXHIBIT F POTENTIAL EXPANSION SITES**
- SCHEDULE 1 FEMA DISCLOSURE NOTICE**

**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	December 15, 2009
<i>Lease Number:</i>	L-14795
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	Central Parking System, a Tennessee corporation <i>Inc. HgA</i>
<i>Tenant's Contact Person:</i>	Kyle Dunst
<i>Tenant's Address:</i>	550 Kearny Street, Suite 640 San Francisco, CA 94108 Telephone: (415) 793-3411 Facsimile: (415) 277-0405 Email address: kdunst@parking.com
<i>Contact Information for Tenant's Agent for Service of Process (if Tenant is a corporation):</i>	Kyle Dunst 550 Kearny Street, Suite 640 San Francisco, CA 94108
<i>Premises:</i>	Seawall Lots 301 and 314
<i>Facility:</i>	Seawall Lots 301 and 314 San Francisco, California 94111
<i>Premises Rentable Square Footage:</i>	Parcel A: Approximately 71,545 rentable square feet of surface parking lot at SWL 301 Parcel B: Approximately 31,114.9 rentable square feet of surface parking lot at SWL 314.

<i>Length of Term:</i>		Thirty Six (36) months		
<i>Commencement Date:</i>		See Section 4.1		
<i>Rent Commencement Date:</i>		Commencement Date		
<i>Expiration Date:</i>		Thirty-Six (36) months after the Commencement Date		
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
Parcel A	1-12	71,545	\$1.57	\$160,916.00
Parcel B		31,114.9		
Parcel A	13-24	71,545	\$1.62	\$166,309.03
Parcel B		31,114.9		
Parcel A	25-36	71,545	\$1.68	\$172,468.63
Parcel B		31,114.9		
<i>Percentage Rent</i>	Sixty-Six percent (66%) of monthly Gross Revenue. In addition to the monthly Base Rent specified above, Tenant shall pay a monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent. See Section 5.2.			
<i>Security Deposit:</i>	Three Hundred Forty Four Thousand Nine Hundred Thirty Seven Dollars and Twenty Six Cents (\$344,937.26)			
<i>Permitted Use</i>	The Premises shall be used solely for operation of surface parking lots and for no other purpose.			
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant and its customers shall be prohibited from using the Premises for any of the following activities:</p> <p>(a) Vehicle washing, detailing, or servicing of any kind.</p> <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>			
<i>Maintenance and Repair:</i>	Tenant's sole responsibility, as further described in Section 11 below.			

<p><i>Utilities:</i></p>	<p>Tenant's sole responsibility, as further described in Section 12 below.</p>
<p><i>Prevailing Rate of Wages and Displaced Work Protection Required for Workers:</i></p>	<p>Tenant shall comply fully and be bound by all the requirements of Section 21.25-2 of the City's Administrative Code (Prevailing Rate of Wages and Displaced Work Protection Required for Workers in Public Off-Street Parking Lots, Garages, or Storage Facilities for Automobiles). In general, the Work Protection Ordinance requires operators of public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by the City (including the Port) to pay employees working in such facilities not less than the Prevailing rate of Wages, as defined in the ordinance, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the agreement with the City (including the Port) is being performed. The Work Protection Ordinance also requires the operator of such facilities to retain for a 90-day transition employment period, the Employees, as defined by the ordinance, who have worked at least 15 hours per week and have been employed by the immediately preceding operator or its subcontractors, if any, for the preceding twelve months or longer at the facility or facilities covered by the agreement with the City (including the Port), providing just cause does not exist to terminate any Employee. The predecessor operator's Employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor.</p>
<p><i>Development Projects:</i></p>	<p>Cruise Terminal Project at Pier 27; Pier 43½ Promenade project; and Taylor Street Sidewalk and Roadway Improvement Project.</p>
<p><i>Special Restrictions for Parcel A (SWL 301):</i></p>	<p><u>No Monthly Parking.</u> Monthly parking service, rates or passes are prohibited.</p> <p><u>Validated Parking.</u> Tenant shall provide two hours of no cost validated parking from 10:00 A.M. to 6:00 P.M. and three hours of no cost validated parking from 6:00 P.M. to midnight to customers of Port of San Francisco Fisherman's Wharf tenants that pay the Port percentage rent (but excluding Pier 39 and Pier 41) with proof of purchase or stamped/validated tickets.</p> <p>Tenant shall provide one hour of no cost validated parking from 10:00 A.M. to midnight to customers of Port of San Francisco's Wharf crab stand tenants (but excluding Pier 39 and Pier 41) with proof of purchase or stamped/validated tickets.</p> <p>Validated parking is not available for subtenants, concessionaires or sellers of non-maritime tours or excursions. Exhibit E hereto lists the Port's Fisherman's Wharf tenants that pay the Port percentage rent and crab stand</p>

	tenants that may participate in the validation program at the time of Lease execution. Tenant is responsible for maintaining this list with Port's prior written approval of any changes, though the Executive Director may update the list from time to time.
<i>Right of Recapture</i>	Port, in its sole discretion, may recapture all or any portion of the Premises for any period of time upon not less than ten (10) days prior written notice to Tenant. Base Rent will be reduced by the recaptured square footage during any recapture period.
<i>Plan of Operation:</i>	Tenant shall, at all times, operate in compliance with the Port-approved Plan of Operation ("the Plan ") attached hereto as Exhibit D . The Plan must support good relations with retail and restaurant customers and include the following elements: Operational Approach; Customer Service/Quality Control; Employee Training; Staffing Organization; and Management Hiring Plan and Transition. Non-compliance with the Plan is a material breach of this Lease. Changes to the Plan shall be made only with the approval of the Executive Director of the Port.
<i>Revenue Control Equipment</i>	Tenant shall comply with Article 22 of the San Francisco Business and Tax Regulations Code, including, without limitation the requirement to install, maintain and use Revenue Control Equipment at the Premises. Tenant shall immediately notify Port in writing of any audit, inspection, alleged violation, violation or penalty action taken under such Article by any Enforcing Agency, as defined by the Article. In addition to any other requirements under this Lease, upon Port's request, Tenant shall provide Port a copy of all information submitted to the Tax Collector and any other City department or official to demonstrate Tenant's compliance with such Article.
<i>Prior Lease:</i>	The parties agree that as of the Commencement Date, Lease No. L-13803 dated as of May 1, 2005 for Seawall Lot 314 (the " Prior Lease "), between Central Parking System, Inc. 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.
<i>Lease Prepared By:</i>	Jeffrey A. Bauer, Senior Leasing Manager

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 the Lease Agreement are and shall be construed as a single instrument and are referred herein as this "**Lease**". In event of any conflict or inconsistency between the Basic Lease Information and the 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.

"Affiliate Transfer" means a Transfer from Tenant to an Affiliate meeting the requirements of Section 20.1.

"Agents" when used with reference to either party to this Lease or any other person, means the officers, directors, employees, agents, 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.

"**Annual Statement**" is defined in Section 5.2(b) below.

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

"**BCDC**" means the 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, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, information required by Article 22 of the Business and Tax Regulation Code, as amended from time to time, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

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

"**Cal-OSHA**" is defined in Section 15.6 below.

"**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.

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

"**Concession**" is defined in Section 30.8 below.

"**Control**" means a Person that: (a) owns or has the right to acquire 50 percent or more (25 percent or more if publicly traded) of each class of equity interests in the second Person or 50 percent or more (25 percent or more if publicly traded) 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 second Person; or (b) otherwise has the right to direct or cause the direction of substantially all of the management

and policies of the second Person.

"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.

"Date of Taking" is defined in Section 18.1 below.

"disturbed or removed" is defined in Section 13.2(g) below.

"Encroachment Area" is defined in Section 3.1 below.

"Encroachment Area Charge" is defined in Section 3.1 below.

"Energy Provider" is defined in Section 12.5 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 Law 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. "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 are located.

"Facility Systems" means the plumbing, electrical, fire protection, life safety, security and

other mechanical, electrical, 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.

"**Gross Revenue**" means all payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received 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 Premises. Except as specified below, Gross Revenues shall include the entire amount of the price charged by Tenant or any other party for the sale of tickets and any other charges. Gross Revenues shall be determined without reserve or deduction for failure or inability to collect and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant, except as expressly set forth below. Except as specifically provided in this section, 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 separate records are available to Port to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly and Annual Percentage Rent Statements:

(i) The amount of any refund made or credit allowed due to a bona fide complaint from a customer concerning the quality of service by Tenant;

(ii) Sums collected by Tenant to pay the San Francisco parking tax required by Article 9 of the Business and Tax Regulations Code, to the extent such amounts are in fact paid to the appropriate governmental entities for which they are collected;

(iii) 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

(iv) Parking sold or provided to employees of Tenant, not to exceed, however, one percent (1%) of Gross Revenues in any single month.

"**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 11.4 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 Materials 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(g) below.

"Improvement Costs" is defined in Section 4.2 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).

"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" is defined in Section 5.5.

"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 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 equivalent to fifteen percent (15%) of Rent that is due and unpaid.

"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 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.

"Monthly Percentage Rent Statement" shall have the meaning described in Section 5.2(b) 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 3.1 below.

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

"OSHA" is defined in Section 15.6 below.

"PACMs" is defined in Section 15.6 below.

"Percentage Rent" means the Percentage Rent set forth in the Basic Lease Information and Section 5.2 below.

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

"Pesticide Ordinance" is defined in Section 28.6 below.

"Port" means the San Francisco Port Commission.

"Port program or project" shall mean (a) any development or renovation, by public and/or private parties, of the building, pier or seawall lot in or on which the Premises is located (including, but not limited to any Development Projects 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).

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

"Port Work" is defined in Section 13.7 below.

"Premises" means the real property described in Section 3.1 below and depicted on Exhibit A and any Expansion Site(s).

"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, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commission 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.

"Relocation Space" is defined in Section 3.2 below.

"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, Percentage 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 below.

"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.

"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 15.10(a) below.

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

"Tenant Affiliate" is defined in Section 20.1 below.

"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) Tenant sells, assigns, encumbers, subleases, or otherwise transfers any of its 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) Tenant dissolves, merges, consolidates, or otherwise reorganizes, or sells, assigns, encumbers, or otherwise transfers cumulatively or in the aggregate 50 percent or more (25 percent or more if publicly traded) of its equity interests or business assets, such as goodwill, inventory, and profits; or (d) any subtenant, assignee, or other Transferee of Tenant sells, assigns, encumbers, sub-subleases, or otherwise Transfers any of its interest in its Sublease or premises.

"**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 the reward**" 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 (the "**Premises**"). 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. Relocation Option. At any time up to the last twelve (12) months of the Term, Port may relocate Tenant from the Premises to reasonably comparable space ("**Relocation Space**") within the Facility or on Port property at Port's expense upon sixty (60) days' prior written notice to Tenant. From and after the date of the relocation, "**Premises**" shall refer to the Relocation Space into which Tenant has moved and the Base Rent shall be adjusted based on the rentable square footage of the Relocation Space. Port shall pay Tenant's reasonable costs for moving Tenant's Property and printing and distributing notices to Tenant's customers of Tenant's change of address and three (3) months supply of stationery showing the new address.

3.3. 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 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 the last paragraph of this Section), 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 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 so 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 placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.1 and the reasonableness of the amount of the charges described in this Section 3.1.

Initials:

Port

HJD

Tenant

3.4. Proximity of Development Projects. Tenant acknowledges that during the Term, the Development Projects described in the Basic Lease Information is scheduled to be, or may be, constructed on property in the immediate vicinity of the Premises. Tenant is aware that the construction of such project 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.

3.5. 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.

3.6. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) 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; and (c) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of the Lease.

3.7. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are 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 FEMA disclosure notice attached as *Schedule 1* and Tenant further 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), 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.

3.8. 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 date that Port executes this Lease ("Commencement Date") and expiring on the Expiration Date. Promptly following Port's execution, 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 are 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 Subsection, upon thirty (30) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 30-day period.

(b) Port has the right to terminate the Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's substructure has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety if the Premises were occupied for the full Term, and Port has not budgeted for the required repairs. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection. 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 Subsection.

(i) For a period ending fifteen (15) calendar days after receipt of Port's notice of termination, Tenant may request Port's consent to allow Tenant to make the required substructure repairs in accordance with this Lease and any additional conditions reasonably imposed by Port, in consideration of Concessions from Port. If Port consents, 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 the 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 this Lease.

Initials:

Port

HGA

Tenant

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 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. Percentage Rent.

(a) Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to Section 5.1 above, a monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.

(b) 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 expires or 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 expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement ("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 each Lease Year, a complete statement, showing the computation of the Percentage Rent for the immediately preceding Lease Year ("Annual Statement") in a form approved by Port. The Annual Statement is for verification and certification of Monthly Percentage Rent Statements only and shall not result in any averaging or reconciliation of monthly Percentage Rent. Each Monthly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or Lease Year, 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 Lease Year, as applicable.

By way of example, with no deductions or exclusions from Gross Revenue except for the SF parking tax:

"Parking" fees	80,000
Parking tax @25% collected from customers and paid to SF Tax Collector	<u>20,000</u>
Total collected	<u>100,000</u>
Total collected	100,000
Less parking tax paid	<u>(20,000)</u>
Gross Revenue subject to % rent	<u>80,000</u>
Port rent @ 66%	52,800

(c) 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 Annual Statement shall be reviewed or examined 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 Annual Statement showing that Tenant has underpaid Percentage Rent. At Port's option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Statement showing an overpayment.

(d) If Port receives the Percentage Rent payment but does not receive the Monthly Percentage Rent Statement therewith, such failure, until cured, shall be treated as a late payment of Percentage Rent, subject to a Late Charge, until Port receives the applicable Monthly Percentage Rent Statement. Additionally, if Tenant shall fail to deliver any Monthly Percentage Rent Statement within the time period set forth in this Section 5.2 (irrespective of whether any Percentage Rent is actually paid by Tenant to Port) and such failure shall continue 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 Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) 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 cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge.

5.3. Books and Records. Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises or at another location in the City and County of San Francisco accessible to the City and Port and reasonably acceptable to Port 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 Premises 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").

5.4. No Joint Venture. Port's receipt of a portion of Tenant's Gross Revenues as Percentage Rent shall be deemed strictly as rental and nothing herein shall be construed to create the legal relation of a partnership or joint venture between Port and Tenant.

5.5. Acceptance by Port of any monies paid to Port by Tenant as Percentage Rent as shown by any Monthly Percentage Rent Statement or Annual Statement, shall not be an admission of the accuracy of said Monthly Percentage Rent Statement or Annual Statement or the amount of such Percentage Rent payment.

5.6. Late Charges. 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, a Late Charge will be paid by Tenant for any Rent that remains due and unpaid, plus any attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent when due under this Lease. 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. Amounts due under this Section are in addition to, not in lieu of, amounts due under Section 5.4 above.

5.7. 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 and default interest.

5.8. Default Interest. Any Rent, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law (the "Interest Rate"). However, interest shall not be payable on Late Charges incurred by Tenant nor on any amounts on which Late Charges are paid by Tenant 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.

5.9. 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.

5.10. 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 15.4(a), 15.8, 15.10, 28.1(d), and 32 below, 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 placing their initials below, 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.

Initials:

Port

NGA

Tenant

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 property and personal taxes, general and special assessments, 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, 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 shall not permit any such 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 and hold Port, City, and their Agents harmless from and against all losses, damages, costs, or expenses, including attorneys' fees, 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 the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the Port to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

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;

(c) any activity or object which will overload 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;

(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;

(n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the load restrictions, if any, described in the Basic Lease Information; or

(o) any 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 of the Premises that Prohibited Uses are occurring on the Premises, 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) of the Premises 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 of the Premises and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises 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 placing their initials below, each party specifically confirms the accuracy of the

statements made in this Section 8.3 and the reasonableness of the amount of the charges described in this Section 8.3.

Initials:

Port

HGA

Tenant

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 is 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 Commission approval of entitlements to develop Port property, Port staff issuance of building and other construction-related permits, Port staff

issuance of licenses and regulation of certain sidewalks and streets, 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 and hold City, Port and their Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities 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 initialing below, 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.

Initials:

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Tenant

10.3. Compliance with City's Risk Manager's Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase rates under a standard form fire insurance policy or subject Port to potential premises liability. 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, including any period of early entry if any under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with Port, 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. 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, 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 an applicable building code, standard or regulation, including, without limitation, the Port Building Code, the Port Facility Code, or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

11.2. *Port's Right to Inspect.* 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. 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 Sections 11.1 and 11.3 above, or Tenant fails to promptly repair any damage to the Facility 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) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("Maintenance Notice"). 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. Parties agree 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 11.3 above shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

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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 to 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.

For purposes of this Section 11, the term "Commencement Date" shall mean the commencement date (including any early entry period, if any) of the Prior Lease

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 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). If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

Tenant will 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, including without limitation, electronic data processing machines and machines 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. If Tenant shall require 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 City and County of San Francisco 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 the 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. 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.

Initials:

Tenant

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 (ii) a payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount no less than one and one-half (1.5) times 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 the Alterations or Improvements within sixty (60) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's objection 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 expenses 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 reasonable 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.

(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 California

Occupational Safety and Health (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 San Francisco Building Code, Section 3423, 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 3423 of the San Francisco 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 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) below.

13.4. Removal of Improvements. Prior to the Expiration Date or earlier termination of this Lease, Port shall 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 13, 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 to the Premises 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. 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 Tenant Sign Guidelines and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

13.7. 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, defend and hold Port, City and their respective Agents harmless 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.

(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 Materials 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 Pollution 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 Materials 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 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 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. Failure to Comply. Failure to comply with Section 15 shall constitute a material default under the Lease. In the event of such default, Port shall have all rights available under the Lease and at law or equity including, without limitation, the right to either:

(a) Terminate this Lease and collect damages Port incurs as a result of such default, including, without limitation, Remediation costs incurred by Port resulting from the Remediation of any Hazardous Materials present in, on or under the Premises, the Facility, any other Port property; or

(b) Continue this Lease and require Tenant to Remediate such Hazardous Materials at the Tenant's sole cost and expense.

15.7. Survival. Tenant's obligations under Section 15 shall survive the expiration or earlier termination of the Lease.

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 on-site.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction storm water control provisions of the Statewide General Permit for Discharge of Storm water from Small Municipalities and the San Francisco Storm water Design Guidelines, subject to review and permitting by the Port's Engineering Division.

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 lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: metals, volatile and semi-volatile organic compounds, lead, and petroleum hydrocarbons as further described in the following reports: for **Seawall Lot 301**: Environmental Site Characterization – Boudin Bakery At The Wharf – 160 Jefferson Street, Treadwell & Rollo, April 15, 2003; Site Mitigation Plan – Boudin Bakery At The Wharf – 160 Jefferson Street, Treadwell & Rollo, January 22, 2004; Green

Environmental, Soil & Groundwater Characterization Survey SWL 301 ½, Muni F-Line Fisherman's Wharf Loop Project (adjacent to SWL 301), September 3, 1997; and Soil & Groundwater Characterization Survey, Muni F-Line, Fisherman's Wharf Loop, Green Environment, Inc., 9/3/97; and for Seawall Lot 314: UST Closure Report, Beacon Service Station, 2 Bay Street, Tait Environmental Management, Inc., 5/7/98, 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 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.

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) Worker's 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 its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property.

(e) Garage Liability and Garage Keepers Legal Liability Insurance. Garage Liability and Garage Keepers Legal Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence.

(f) Other Coverage. Such other insurance or different coverage amounts as is required by Law or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility, as may change from time to time, or as may be required by the City's Risk Manager.

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 the "**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS,**" shall be primary 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 provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port. Such notice shall be given in accordance with the notice provisions of Section 29 below.

(d) Tenant shall deliver to Port certificates of insurance and additional insured policy endorsements in a form satisfactory to Port 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. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) 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 in Section 16.1 above if Port finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with the use of the Premises.

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. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes 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 when title or the right to possession vests in the condemnor ("**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) or 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. Port shall be entitled to any and all payment, income, rent, award, or any interest therein whatsoever which may be paid or made in connection with any taking or conveyance hereunder, and Tenant shall have no claim against Port or otherwise for the value of any unexpired term of this Lease. Notwithstanding the foregoing, to the extent that the same shall not diminish Port's recovery for such taking, Tenant shall have the right to make a claim, and to receive any award specifically made to Tenant, for moving and other relocation expenses and for loss or damage to Tenant's trade fixtures, equipment and movable furniture. 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, if requested, shall defend them, without cost to the Indemnified Parties, against any and all Claims, direct or vicarious liability, damage, injury or loss 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 Materials Claims that arise as a result of: (i) any Hazardous Material Condition, except where caused by the Indemnified Parties' sole willful misconduct; 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 Materials 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 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. The Indemnification obligations of Tenant set forth in this Lease includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

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. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter.

The Indemnification obligations of Tenant set forth in this Lease shall include without limitation, Indemnification from all Claims. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

19.4. Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims against the Indemnified Parties, and agrees to Indemnify the Indemnified Parties from any Claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about the Premises, the Facility or any other Port property for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by the Indemnified Parties.

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 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, and (vi) any other acts, omissions or causes. Nothing in this Section 19.4 shall relieve the Indemnified Parties from liability caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. Effect of Waivers. Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims arising directly or indirectly from the actual or alleged facts or circumstances of the process leading to this Lease prior to the Effective Date.

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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, 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.

Initials:

NGN

Tenant

20. ASSIGNMENT AND SUBLETTING.

20.1. *Transfer to Affiliate.*

(a) Tenant may make an Affiliate Transfer without obtaining Port's consent, but only if Tenant gives Port: (i) prior written notice at least 20 business days before the Transfer Date; and (ii) copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within 5 days after the actual Transfer Date.

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

20.2. *Transfer to Non-Affiliate.*

(a) Except for an Affiliate Transfer, 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 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; (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; or (8) Tenant has not cured 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.

(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 60 days before any Transfer to a Non-Affiliate, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the 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.

(i) For up to 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 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.

(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, 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; and

(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.

20.5. 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 for a period of no less than one year after the Expiration Date. 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 Tenant Affiliates where applicable.

20.6. 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.

20.7. 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 twelve (12)-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (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) failure by Tenant to deliver the Monthly Percentage Rent Statement or Annual Statement 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 twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12) month period shall, at the option of Port, constitute an Event of Default by Tenant hereunder without any further action by Port (including, but not limited to, notice to Tenant of such failure) or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(c) a second understatement by Tenant of its Gross Revenues for any audit period by five percent (5%) or more within any three (3) Lease Year period of the first such understatement; or

(d) failure to comply with Tenant's management covenants set forth in Section 30, as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

- (e) abandonment or vacation of the Premises by Tenant; or
- (f) 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 without notice or demand to Tenant; or
- (g) failure to pay Port at close of escrow of any Sale, Port's Participation in Net Sale Proceeds and such default continues for a period of three (3) days following written notice from Port.
- (h) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 32, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or
- (i) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provision of Section 20 above; or
- (j) failure to provide evidence of insurance coverage complying with the provisions of Section 16, 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 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
- (k) failure by Tenant to comply with the provisions of Section 15 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
- (l) without limiting the provisions of Sections 23(f) or 23(k) above, 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; or
- (m) 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
- (n) delivery to Tenant of three (3) or more notices of default, irrespective of whether Tenant actually cures such default within the specified time period, may, at the sole and absolute discretion of Port, be deemed an incurable breach of this Lease allowing Port to immediately terminate this Lease without further notice or demand to Tenant; or
- (o) 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 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

(p) 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 Federal Bankruptcy Act 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

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

(r) 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; or

(s) Tenant has been notified by Port that Tenant is considered a Habitual Late Payer.

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 City 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 and preparing the Premises for subletting, the other costs of subletting, 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. Tenant shall also pay to Port, as soon as ascertained, any costs and expenses incurred by Port in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. 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

(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 the 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. Port's Options for Hazardous Materials Default. If Tenant's Event of Default arises from Tenant's failure to comply with its Remediation obligations under Section 15, in addition to its other remedies at law, in equity, and under this Lease, Port may elect at its sole

discretion any of the following remedies.

(a) Port may terminate this Lease and collect damages Port incurs as a result of the Event of Default, including Port's costs to Remediate any Hazardous Materials.

(b) Port may keep this Lease in effect and require Tenant to Remediate the Hazardous Materials at the Tenant's sole cost.

(c) Port may deem Tenant to have held over, and Tenant will be required to pay Rent as increased under Section 26.2 until the Premises are Remediated. If Port elects this remedy, only Port's notice to Tenant confirming termination of this Lease and accepting Tenant's surrender of the Premises will terminate this Lease or any holdover tenancy. No other Port acts or conduct, such as accepting the keys to the Premises, will constitute an acceptance of Tenant's surrender of the Premises.

22.6. 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.

22.7. 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.

22.8. 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.

22.9. Remedies Not Exclusive. The remedies set forth in Section 21 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. 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 23 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 23 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 are 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

(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 them.

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 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 are 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 26.3 below until the Premises are surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any costs of Port to obtain possession of the Premises, any and all loss or liability resulting from delay by Tenant in so 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 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 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 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 Sections 1980-1981, 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 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 the: (a) 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.

27. MINERAL RESERVATION.

The State of California, 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. In accordance with the provisions of these Statutes, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract subsurface minerals, including oil and gas deposits, from such area.

In no event shall Port be liable to Tenant for any Claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of Tenant, or 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 this chapter or in retaliation for opposition to any practices forbidden under Chapter 12 of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 28.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply such provisions.

(c) Nondiscrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) HRC Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(e) Penalties. Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

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 Administrative Code Chapter 12Q (Chapter 12Q).

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3 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 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code.

Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(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.

(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.

Tenant agrees to comply with the ordinance through compliance with the following:

(a) No later than thirty (30) days after full execution of this Lease, Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by the Port of San Francisco.

(b) Tenant shall follow all requirements of the San Francisco Workforce

Development System, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to the ordinance, Tenant may be subject to monetary penalties for failure to comply with the ordinance.

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 HRC to determine appropriate methods for promoting participation by LBEs in the Scope of Work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm.

28.5. Resource-Efficient Facilities and Green Building Requirements. Tenant agrees to comply with all applicable provisions of Environment Code Chapters 7 and 13C relating to resource-efficiency and green building design requirements.

28.6. Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

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 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. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant agrees to remove all graffiti from any real property owned or leased by Tenant in the City 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. The term "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 the Public Works Code, the Planning Code, or the 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. Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the Environment Code (the "Pesticide Ordinance") which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Tenant to submit to Port an integrated pest management (IPM) 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, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide 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. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 307 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, if Tenant seeks in good faith an exemption under the Pesticide Ordinance.

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 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. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the Campaign and Governmental Conduct Code (the "Conduct Code") which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or six (6) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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.

28.15. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

28.16. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

28.17. Wages and Working Conditions. Tenant agrees that any person performing labor in the construction of any Alterations or Improvements to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for construction of such Alterations or Improvements a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of such Alterations or Improvements to the Premises.

28.18. 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.

28.19. Food Service Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

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 Lease information in Tenant's written response to Port's written request.

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. TENANT'S MANAGEMENT COVENANTS.

30.1. Covenants. Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with standards for the maintenance and operation of other surface parking lots located in San Francisco. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 11, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping and (e) security services for the Premises.

30.2. Continuous Operations. Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion. Notwithstanding the foregoing, the Port shall not unreasonably withhold its consent to any

cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become untenable due to Force Majeure, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

31. MISCELLANEOUS PROVISIONS.

31.1. California Law. 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. Port and Tenant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

31.2. 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.

31.3. 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.

31.4. 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.

31.5. 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, 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 costs 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.

31.6. 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.

31.7. 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 and hold Port harmless 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.

31.8. 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 as 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.

31.9. 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 a duly authorized and existing entity, that Tenant has and is qualified to do business in California, 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.

31.10. 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.

31.11. *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.

31.12. *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.

31.13. *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.

31.14. *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.

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

31.16. *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 either the Executive Director of Port or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

32. LIMITATION ON DAMAGES.

32.1. *No Recourse Beyond Value of Facility.* 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 Facility (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

32.2. *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.

32.3. *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.

33. 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 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.

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 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, 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 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: _____

Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

TENANT: ^{SYSTEM HQA}
CENTRAL PARKING, INC.
A TENNESSEE CORPORATION

By: Gregory J. Stormberg

Name: Gregory J. Stormberg

Title: Executive Vice President

Date Signed: December 22, 2009

By: Henry J. Abbot

Name: HENRY J. ABBOTT

Title: SECRETARY

Date Signed: DECEMBER 17, 2009

Two Corporate Officers
MUST SIGN

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

By: _____

Name: Rona H. Sandler
Deputy City Attorney

Port Commission Reso. 10-04
Board of Supervisors Reso. _____

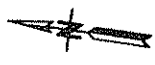
Lease Prepared By: Jeffrey Bauer, Commercial Property Manager [Signature] (initial)

EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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PIER 39

PIER 35

PIER 41

PIER 43 1/2

PIER 45

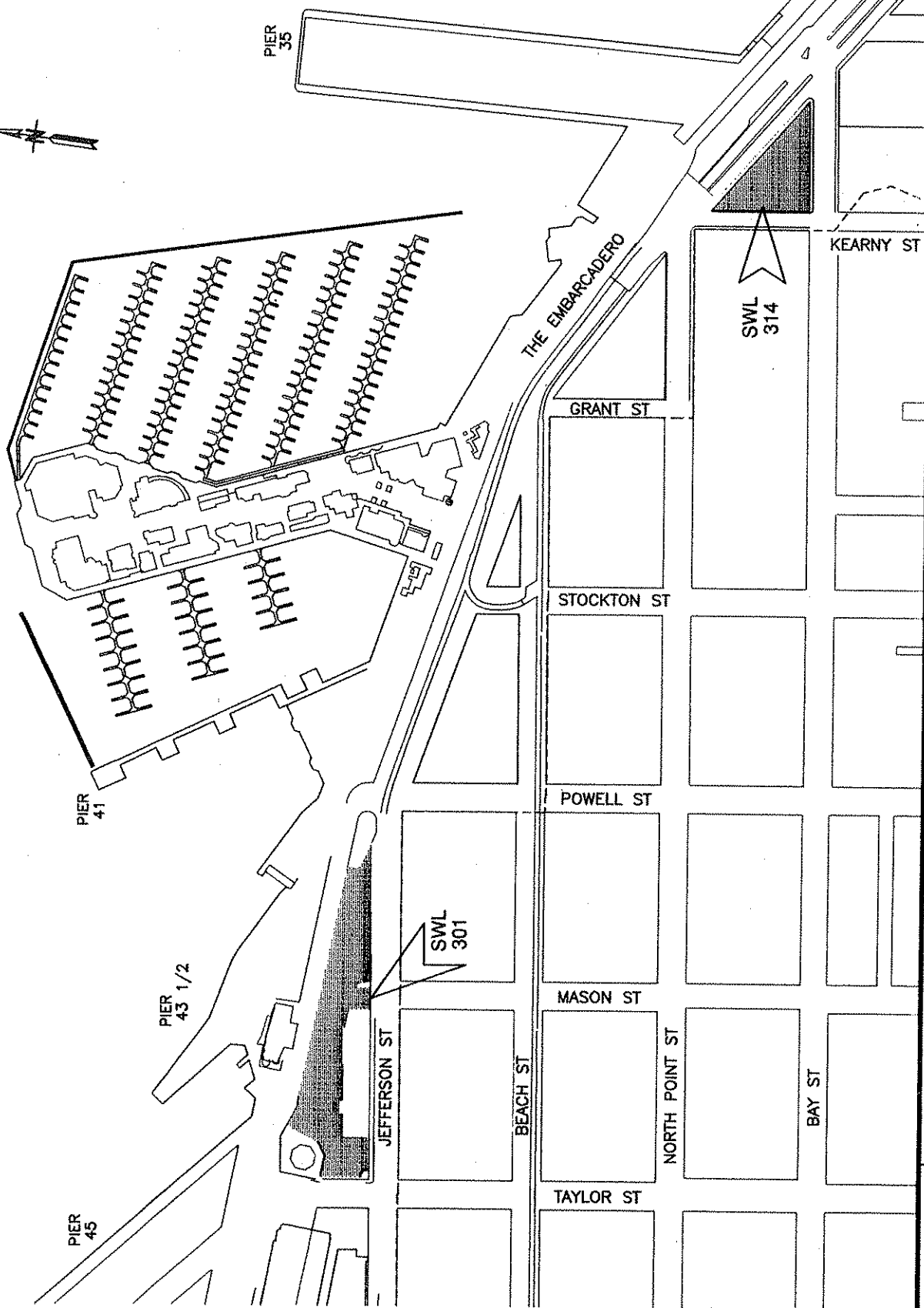


EXHIBIT A

INITIALS: PORT: _____ TENANT: *NSA* DATE: _____

DRAWN BY: ECC	DATE:	SCALE: NONE	SHEET NO. OF SHEETS
	CHECKED BY: J. BAUER		
FLAME CODE NO.		3140-00	
TENANT:		CENTRAL PARKING SYSTEM, INC.	
SAN FRANCISCO PORT COMMISSION		PORT OF SAN FRANCISCO	
PORT OF SAN FRANCISCO		DEPARTMENT OF ENGINEERING	
LEASE NO.	L-14795		

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____ 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: _____

Name: _____

Title: _____

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 the 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

APPROVED PLAN OF OPERATIONS

[To Be Attached]

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OPERATIONS PLAN TRIANGLE LOT

Introduction:

This manual is designed to provide a standard set of operational procedures and policies in all aspects of the Triangle lot owned by the Port of San Francisco.

The parking facility consists of approximately 286 marked stalls and serves the patrons of the local eateries along the Fishermans Wharf and Piers, as well as the adjacent businesses. The express intent of this facility is to provide easily accessible and convenient parking for all transient users.

New South Parking will work closely with Port of San Francisco to maintain the high standards of customer service expected. A Central Parking Area Manager and field staff will be fully responsible for all aspects of the operation and will be supported by the General Manager. This Plan of Operations will be updated and revised as warranted.

Contact List:

Kyle Dunst	General Manager	415.793.3411
Anthony Mazeika	Operations Manager	310.527.1282
All Lopez	Area Manager	415.317.4898
Louis Vasquez	Human Resources	415.317.4898
San Francisco Office		415.277.0400
Jeff Bauer	Port of San Francisco	415.274.0514

Proposed Rates:

The current market rates are significantly below market. Upon taking control of the Triangle lot, Central Parking will raise the incremental rate from \$2.00 every thirty minutes to \$3.00 every twenty minutes and continue to honor all contractual obligations to any vendors with validations. The rates for transient patrons will be reviewed on a regular basis, with all cash control procedures being enforced to insure that revenue will be maximized at the facility.

Hours of Operation:

The facility will be automated and open for daily parking 24 hours a day, seven days a week. Staffing will be from 7:00 AM to 10:00 PM

Equipment:

Central Parking will install automation equipment at both points of entry. Although we have yet to determine the manufacturer, the equipment will benefit the facility in two ways: the cash will be out of attendants' hands, and the attendants will be more efficient at unblocking vehicles for patrons who have already paid. Vendors that chose to validate will be given a "shell" that encrypts a validation onto a magnetic stripe ticket.

Proposed Staffing Plan:

<u>Employee</u>	<u>Start Time</u>	<u>End Time</u>	<u>Total Hours</u>
Area Manager	N/A	N/A	4
Attendant 1	7 AM	3 PM	8
Attendant 2	7 AM	3 PM	8
Attendant 3	7 AM	12 PM	5
Attendant 4	1 PM	8 PM	7
Attendant 5	3 PM	8 PM	5
Attendant 6	2 PM	10 PM	8

Operations:

The staffing will be staggered with some part time shifts for the morning and evening rush mingled with several all-day employees who will work one or part of both rushes. We anticipate a staff of 7-8 employees including management. We will staff individuals beginning at 7:00 AM and will have a continuous presence until 10:00 PM, if necessary. During downtime the attendants will restack vehicles in order to allow the quickest egress pattern. They will have the ability to stack vehicles in order of egress times because the attendant will ask each parker, at the time they park, what time they will be returning and mark that return time on the valet portion of the ticket.

Traffic control is vital in the success of this operation. Our staff will initially greet each customer then direct them to the stall in which they may park. Once the self-park spaces are full, Valet attendants will begin stacking vehicles at the far end, in rows, facing the self park spaces. During peak time, this process would continue until the lot is full. Once Lot One is completely full, the attendants would then direct traffic to the overflow lot (Pier 45 sheds).

The attendants will visually inspect each vehicle to note all pre-existing dents, scratches, etc. Each customer will receive a ticket in return for their car keys. This ticket will be the customer's vehicle claim check when they arrive back at the station to retrieve their vehicles. All vehicle keys must remain in our possession in order to have the ability to move the vehicles within the stacking area. We will lock all of the vehicle keys in a centrally located booth. All attendants will have a key to the key box for security and easy.

Job Description and Responsibilities of On-Site Manager

The Area Manager has the responsibility of organizing and directing subordinate personnel in all aspects of required procedures and standards necessary to maintain a professional, first class, day-to-day operation. A list of duties to be performed by the Area Manager includes, but is not limited to, the following:

- Maintain close liaison with the GM on the day-to-day operations, advising of any problems encountered or anticipated and assure complete compliance with the Port of San Francisco's requirements on matters of accountability, security and daily operational requirements.
- Observing and evaluating the performance of each employee under his direction. He will conduct unannounced personal inspections at various times of the day and week, including non-business hours to effect such observation and evaluation.
- Be responsible for achieving superior level of customer service from all employees.
- Monitor and review all required operational logs; i.e. claims reports, equipment maintenance, and revenue reports for completeness and accuracy and assuring that adequate records are maintained.
- Works closely with technicians on day-to-day equipment operation and assure cooperation of CPS personnel with regard to equipment malfunctions.
- Monitor and review line level and supervisory work schedules to ensure contractual staffing requirements are maintained and overtime is kept to a minimum.
- Assists in the evaluation process of employees within the trainee/probationary periods and reviewing their strengths/weaknesses and any required performance improvements prior to permanent assignment.

Personnel and Uniforms:

All personnel at the Triangle Lot will be employees of Central Parking System, Inc. All potential employees will be screened by Central Parking System, Inc. An employment application is completed by each prospective employee and all persons interested in employment must fill out a pre-employment honesty survey. All interviews for line level employees are done by the on-site manager, with interviews for clerical or management positions being approved by the General Manager. There is a 90 day probationary period for all new employees. At the conclusion of this period, the employee's job performance is discussed in confidence and a determination is made on whether or not they meet our criteria for continued employment beyond the probationary period. All employees are paid by Central Parking System, who is also responsible for making all payroll deductions and filing all required local, state and federal taxes.

It is Central Parking's policy to grant promotion and pay increases on a collective bargaining agreement basis. Raises are given automatically. Hourly pay raises are typically given to union employees after six months for progressionary employees and on December 1st as per the bargaining agreement.

An "open door" policy is maintained at Central Parking System, Inc. This works to facilitate communication from employees at every level, and helps to better determine any needs that might affect the operation of the facility. All employees are expected to adhere to CPS code of conduct and behave in a professional and courteous manner at all times.

All Central Parking System and Regional Office staffs, including company officers, are available to assist the staff on all matters relating to the operation of the Triangle Lot parking facility. All managers are on call 24 hours a day, seven days a week, to attend to the operation of the facility. Employees will be in uniform with nametags. Laundering of individual maintenance uniforms will be performed by the uniform leasing company. Maintenance employees will turn their uniforms in to the uniform leasing company for laundering and repairs such as stain removal, button replacement, or patching if uniforms are torn or ripped.

Alcohol and Drug Use:

Managers and supervisors shall not allow an employee to perform work at the location, if the manager or supervisor has actual knowledge or a reasonable suspicion that an employee has alcohol in his or her possession, is using alcohol or has used alcohol within eight (8) hours of reporting for work. Managers and supervisors must not allow employees who have an alcohol concentration of 0.00 or greater to remain at work.

In addition managers and supervisors shall not allow an employee to perform work at the location, if the manager has actual knowledge or reasonable suspicion that the employee is under the influence of illegal drugs or improperly using prescribed or over the counter medications. Improper use of prescription medication means the medication is not taken as directed by the employee's health care provider; improper use of over the counter medication means the medication is not taken as directed by the packaging.

It is the responsibility of the manager or supervisor to place employees who violate this policy on leave without pay immediately and to alert the General Manager to the violation.

Managers and supervisors may not allow an employee who refuses to submit to a required alcohol or controlled substances test to remain at work.

Employee Responsibility:

Employees covered by this policy must inform their supervisors if their use of prescribed or over the counter medications could affect their job performance or pose safety problems. Employees who are using prescription medication or over the counter medication may have to be removed from the workplace and placed on sick leave or a leave of absence, the leave of absence may be without pay.

Employees are prohibited from using illegal drugs or improperly using prescribed or over the counter medications. Improper use of prescription medication means the medication is not taken as directed by the employee's health provider; improper use of over the counter medication means the medication is not taken as directed by the packaging. In addition, employees may not consume alcohol while at work or for a period of eight (8) hours before reporting for work. No employee may have alcohol in his or her possession while at work. An employee whose alcohol blood content is determined to exceed 0.00 while at work shall be placed immediately on leave without pay until a decision concerning the continued employment of the employee can be made.

Drug Testing:

In the event of a large scale accident, any employee may be required to submit to testing of breath, blood or urine for the presence of alcohol, controlled substances or metabolites as such. All tests shall be conducted at a federally certified laboratory, using DOT - mandated forms and procedures.

Any employee who is involved in an accident involving personal injury or property damage while he or she is performing work at the location shall submit to a post accident test. In addition, an employee will be tested if he or she receives a citation under state or local law for a moving traffic violation arising from a motor vehicle accident.

Employees who have been involved in an accident, as set out above, shall remain readily available on the scene, at a medical facility or the nearest office for testing or will be deemed to have refused to submit to testing. In the event, an employee is deemed to be unavailable for testing, he or she will be subject to the same disciplinary actions as if he or she refused to submit to testing. This requirement to remain available for testing does not mean that an employee who needs medical attention should not seek it immediately. However, an employee who leaves the scene of the accident must immediately notify the Parking office of the accident and his or her whereabouts as soon as possible. An employee who is unable to report an accident within one hour of its occurrence will be required to explain the delay in writing to his or her manager.

Employee Benefits:

Employees are provided benefits as outlined in the Central Parking System Employee Handbook. These benefits include paid vacations, sick leave with pay, a retirement plan, company offered health insurance and company offered life insurance. Employee benefits are further explained in detail in the collective bargaining agreement and employee benefit manual.

ALERTLINE (1-800-93-ALERT)

Central Parking System is committed to providing a great work environment, but we need your help. If you become aware of business risks – situations that are harmful to you, your co workers, customers or the company – report the situation immediately to your supervisor, higher level manager or ALERTLINE. Business risks include: Work environment, Theft/Fraud and Business Integrity. Remember, creating a great work environment starts with you!

Code of Conduct:

- Obey all applicable laws and regulations
- Be fair and honest in all business activities and relationships
- Avoid conflicts of interest
- Support diversity and foster an atmosphere of respect and equal opportunity for all employees
- Strive to create a safe and healthy environment for employees and customers
- Record all transactions accurately and timely and safe guard Company assets

Procedures for Handling Customer Complaints:

Parking is the first and last experience visitors often have of a project and that the level of service is a reflection upon the Port of San Francisco. Our policy is for the trained attendant or valet to call his or her supervisor over in the event of an escalated conflict. Should the manager not be able to quickly resolve the issue, the Area Manager is called.

The office phone number, visible on all Central Parking System signage, will be provided by the attendant responding.

Revenue Collection and Cash Handling Procedures:

Revenue is removed and collected from machines by Area or Operation Manager only. Collection is completed prior to automatic shift closure on a daily basis. All revenue is audited and deposits are made for each pay station.

All deposits are prepared by Manager and stored in a locked office safe until picked-up by armored personnel. A daily Master Deposit Summary is created, and stored for record keeping. All managers have additional assistance available as needed 7 days a week / 24 hours a day.

- ✓ Dual counting for Pay on Foot (POF) revenues— Two persons are present for pick-up of all POF revenues.
- ✓ In the event of an equipment malfunction, Blind cash counts will occur when location is attended — Blind counts (where the manager and cashier are not aware of the amount of sales on the revenue equipment) is used for cashiered locations.
- ✓ Reconciliation of daily deposits to the monthly bank statement is completed.

Review of the Daily Cash Reports (received from managers) are reviewed as follows:

- The Revenue Auditor compares the sales amounts on the equipment reports (attached to the Daily Cash Report) to the deposit slip. The Revenue Auditor validates that the total for cash on equipment report matches the attached green deposit slip. Total cash for the day together with POF's and exits' cash collected must match the equipment - Daily Total Lane Report.
- Adjustments to system reports (i.e. system malfunctions) must be documented and supported (see below note).
- The Revenue Auditor prints the Daily Credit Card Summary report from the equipment computer. This report reflects the actual amount of Credit Cards batched for that day for each location. Total cash deposits are added to this revenue and the original DCR is revised with new Daily Total prior to entry into the DCR system.
- Using Daily Credit Card Summary report from the equipment, the auditor completes the Excel file to determine the amount that must be adjusted on the DCR report prior to entry into DCR system.
- ADS reports are pulled, and entered on the above spreadsheet as well. Any difference is adjusted on weekly basis using adjusting DCR's.
- After reviewing, the auditor enters DCR's in DCR system, recording the correct # of tickets, debiting cash deposited and amount of credit cards collected, and crediting the appropriate type of revenue (Day Transient, Non-tax monthly, Non-tax validation or Special Event).
- DCR's role into Revenue Summaries, which the auditor provides to the city at the end of each month as part of Monthly Reports.

Review of bank deposit:

- Total cash deposits are verified by checking the Total Cash report, and comparing it to the green deposit slip attached to it. Finally, green deposits slip are added up and compared to cash deposits stated on the Daily Cash Report.
- Deposit Summaries which have yellow slips attached are audited as well. All deposits made that are stated on Deposit summary are accounted by verifying yellow deposit slips.

If there are discrepancies, it is noted on the original deposit summary, before it is sent to the city.

Review of bank deposit:

- Total cash deposits are verified by checking the total cash on the Audit report and cashier's report, and comparing it to the green deposit slip attached to it. Finally, green deposits slip are added up and compared to cash deposits stated on the Daily Cover Sheet.
- Deposit Summaries which have yellow slips attached are audited as well. All deposits made that are stated on Deposit summary are accounted by verifying yellow deposit slips. If there are discrepancies, it is noted on the original deposit summary, before it is sent to the city. (Note, credit card transactions are seen on the bank slip)

Entry Fail Contingency:

All managers, ambassadors and maintenance have been trained for immediate repair of light to medium equipment failures. In the Event of long term equipment failure or urgent entry needs, customers are directed to use alternate entry at manager's direction using on-site personnel, red cones, on-site signage, barricades and electronic signage.

In the event of catastrophic entry failure, ambassadors will, at managers direction issue tickets manually by stamping entry date/time and replacing these tickets prior to exit.

Exit Fail Contingency:

All managers, ambassadors and maintenance have been trained for immediate repair of light to medium equipment failures. In the event of long term equipment failure or urgent exit needs, customers are directed to use alternate exits at manager's direction using on-site personnel, on-site signage, barricades and red cones.

In the event of catastrophic automatic exit failure, Exit gates, at manager's direction, will be locked up. CPS personnel will provide customers with direction to use automatic pay machines prior to exit. All managers have additional assistance available as needed. Equipment service will be requested with approval from operation manager. All managers have additional assistance available as needed 7 days a week / 24 hours a day.

Ticket Inventory:

The Area Manager inventories all new tickets received and checks numerical sequence. The managers record each stack of tickets by beginning and ending ticket numbers on the ticket master inventory log. The tickets, bill of lading and the master ticket log are then stored in a locked storeroom, in sequential order.

- Tickets are secured in a locked area (with limited access) at the N. Market Street location for all revenue equipment.
- A ticket log (with ticket #'s) is maintained for tickets on-hand. For tickets issued, the log indicates the location where the tickets were distributed. A log is maintained at each location to document the spitter # where tickets were filled (and the specific box in each spitter).
- Tickets are removed from the storage room and restocked by either the Area Manager or maintenance personnel. All tickets are ordered by the Area Manager. The Area Manager inventories the supply of unused tickets each 60 days between orders, again verifying numerical sequence.

Tickets are distributed (in sequence order) to each entrance lane by garage location, series number and identifying letter. As tickets are removed from inventory they are logged out on the master ticket inventory log by recording the date, series numbers removed, location and spitter # to be restocked and the signature of the person who removed the tickets.

Once the tickets have been audited, they are bundled, labeled with the date the tickets were processed and placed in a storage box. As a box becomes full it is labeled with the location and dates of the tickets it contains, and is placed in a locked storage room. Used tickets are held in storage according to the agreed upon time.

Security and Safety Issues:

Security for the location will not be performed by Central Parking.

Car Leaking Gas

The area around the car will be blocked off by CPS personnel, **do not flush with water**, this will spread the gasoline, an oil dry material will be applied to soak up the gas and to prevent any customers from slipping. If possible, a container will be used to attempt to contain the leaking gas. An employee will be stationed near the area around the vehicle and pedestrian traffic will then be prevented from entering the area. The Fire Department will be called and the vehicle's tag number will be researched in an attempt to locate the owner and have the vehicle removed. If the owner is not located within 30 minutes, the vehicle will be towed out of the Facility into a controlled and safe area.

Robbery

Attendants of the lots are not to carry cash.

Theft of a Vehicle

In the event of a reported vehicle theft, the Facility is to be thoroughly searched to ensure that the car is not lost. If it is determined that a car has been stolen, the Area Manager will notify the Police and building security so the proper course of action can be initiated immediately. The Area Manager will contact the cashiers to obtain any lost ticket vouchers that have been processed that day to determine if the vehicle exited the Facility through this type of transaction. An incident report will be completed following the confirmation of theft. Copies of this report will be sent to the Los Angeles Dept of Transportation, the New South Parking central office in San Jose, and will be kept on file in the Facility office.

Auto Damage

No claims are to be accepted for damage to a vehicle unless obviously caused by a parking gate. CPS personnel or Operations Management will handle these claims and complete a damage report form. If possible, rubbing compound will be used to remove any mark left on the vehicle from the gate. If further repair work is deemed necessary the claimant will be asked to provide two (2) estimates, and the lowest estimate of the two will be paid. A disclaimer will be stamped on the back of the check before issuing to assure the claimant understands this will be the final compensation to cover any reimbursement for damage.

Tornado, Hurricane, Earthquake or Severe Storm

In the impending threat of a tornado, hurricane, earthquake or other severe storm, the Facility will be closed if warranted. The Area Manager will notify the City Office and Building Management to confirm closing of the Facility. Once a closing has been confirmed all cashiers will be notified of the closing. At this point the cashiers will deposit all tickets, revenue collected, and operating banks into a plastic sealed deposit bag and return to the garage office. Maintenance personnel will check each level of the facility and notify any individuals of the closing of the facility and direct them to areas of safety as determined by City Management. Maintenance personnel will raise all exit gates to allow vehicles to leave the facility if they choose to do so. All maintenance personnel will then report to the main office and await further instructions.

Fire

In the event of a fire at the Facility, personnel on duty will immediately notify the Fire Department, then City Management and then the CPS Operation and General Managers. All pedestrians and all personnel will be evacuated from the immediate area to a safety area to be predetermined by New

South Parking and City Management. The cashier will deposit all tickets, collected revenue, and operating bank in a plastic sealed deposit bag and report to a safety area.

The Facility's entrance equipment will be turned off if possible and blocked with cones (fire department vehicles will be allowed to enter). All exit lanes will be opened by whatever means necessary (i.e. breaking gate arms or manually opening gates) to allow uninterrupted flow out of the Facility. The Area Manager will meet the fire truck(s) at the entrance and direct them to the fire. Other employees will be stationed at the Facility's entrance to prevent any customers from entering the Facility. Fire extinguishers will only be used by Facility employee(s) if it is obviously safe to do so.

On The Job Injuries

In the case of a work-related injury, the Area Manager will first make sure the injured person is provided with immediate medical attention. Photographs will be taken, details pertinent to the injury will be recorded, and if possible elimination of the cause will be undertaken. A written report will be forwarded to the City Office, Corporate Office and the Worker's Compensation Insurance carrier, relating to all details of the injury/accident.

Fall Downs or Personal Liability

The Area Manager will be notified in order to handle the situation. In the event of the Area Manager's absence, the cashier will page the General Manager and call the City Office; notify City Management immediately and advise them of the situation; ask the injured person if they need medical assistance; call an ambulance if necessary; make the injured person as comfortable as possible; have them explain, in their own words what happened; complete an incident report and obtain the names and addresses of any witnesses; photograph the area where the injury occurred and, if necessary, the injured party. This information will be documented and forwarded to the City Office and Building Management for review.

The staff is instructed not to alter the condition of the accident scene without the General Manager's approval. The area will be blocked off with traffic barriers or cones if conditions warrant. Once the scene is cleared, pictures of the accident scene will be taken by the Central Parking System Area Manager. A first notice of injury will be sent to notify the insurance carrier of the situation. The Port of San Francisco and will be notified immediately of all customer injury situations.

Facility personnel are instructed to never state who owns the property involved, but only to state that we (Central Parking System) are the operators. Our main responsibility is to obtain all information possible. Facility personnel are instructed **NEVER TO ADMIT ANY LIABILITY WHATSOEVER**.

Mugging and/or Rape

In the event of a reported mugging or rape, Facility personnel will make the victim as comfortable as possible. The Area Manager will then notify the Police Department and request an ambulance if necessary. Facility personnel will block off the area and not allow anything to be touched or moved. The Area Manager will complete an incident report; take photographs of the area where the incident occurred and, if necessary, of the injured party. Central Parking will cooperate fully with any police investigation, and Building security. In the event of such an occurrence, the General Manager will notify the Port of San Francisco of immediately.

The staff will not discuss details of the incident, levels of security, or any other aspects of this situation with anyone except the Police, CPS management, and the Port of San Francisco

Bomb Threats

It has been clearly proven that the vast majority of these calls are indeed false alarms, meant only to disturb or disrupt the normal work of a person or company. However, at no time should any call be regarded as just another false alarm.

More information on Mugging and Bomb Threat Procedures can be added at the Port of San Francisco's request.

Liability Insurance

New South Parking carries the General Liability Insurance, Umbrella Coverage, Worker's Compensation Insurance, and Crime Coverage. The premiums for this coverage are an operating expense of the parking facility. **The Port of San Francisco** is also named as an additional insured with the Certificates of Insurance being forwarded to the additional insured annually. Since the garages are a self-park facility, normally no claims for damage or stolen property are honored.

All coverage's listed below are per the management agreement.

General Liability Insurance

This is a \$5,000,000 combined single limit policy which provides coverage for liability claims arising out of bodily injury or property damage claims which occur on premises we operate. Additionally, this policy has an endorsement which covers what is known in the insurance industry as "Personal Injury". The claims covered by this endorsement include false arrest, slander and libel. This policy includes liability coverage for a single occurrence regardless of the type of damage, i.e. bodily injury or property damage, and regardless of the number of persons involved.

Garagekeepers Legal Liability

This is a \$1,000,000 combined single limit policy that covers claims for a loss of or damage to property belonging to others that is in our care, custody and control.

Fidelity Bond/Crime Insurance

This is a \$500,000 policy that covers Manager and Owner in the case of robbery, theft and mysterious disappearance of any monetary assets in our control. Money and Securities (inside and out) with limits not less than \$25,000.00 any one loss, and Comprehensive Crime insurance that includes depositor's forgery coverage with limits not less than \$25,000.00.

Workers Compensation and Employers Liability Insurance

Statutory Worker's compensation insurance. Employers' Liability with \$500,000.00 per accident for bodily injury and \$500,000 per employee/aggregate for disease.

Umbrella Liability Insurance

Minimum combined single limit of \$10,000,000.

EXHIBIT E

**FISHERMAN'S WHARF PERCENTAGE
RENT TENANTS AND CRAB STAND TENANTS**

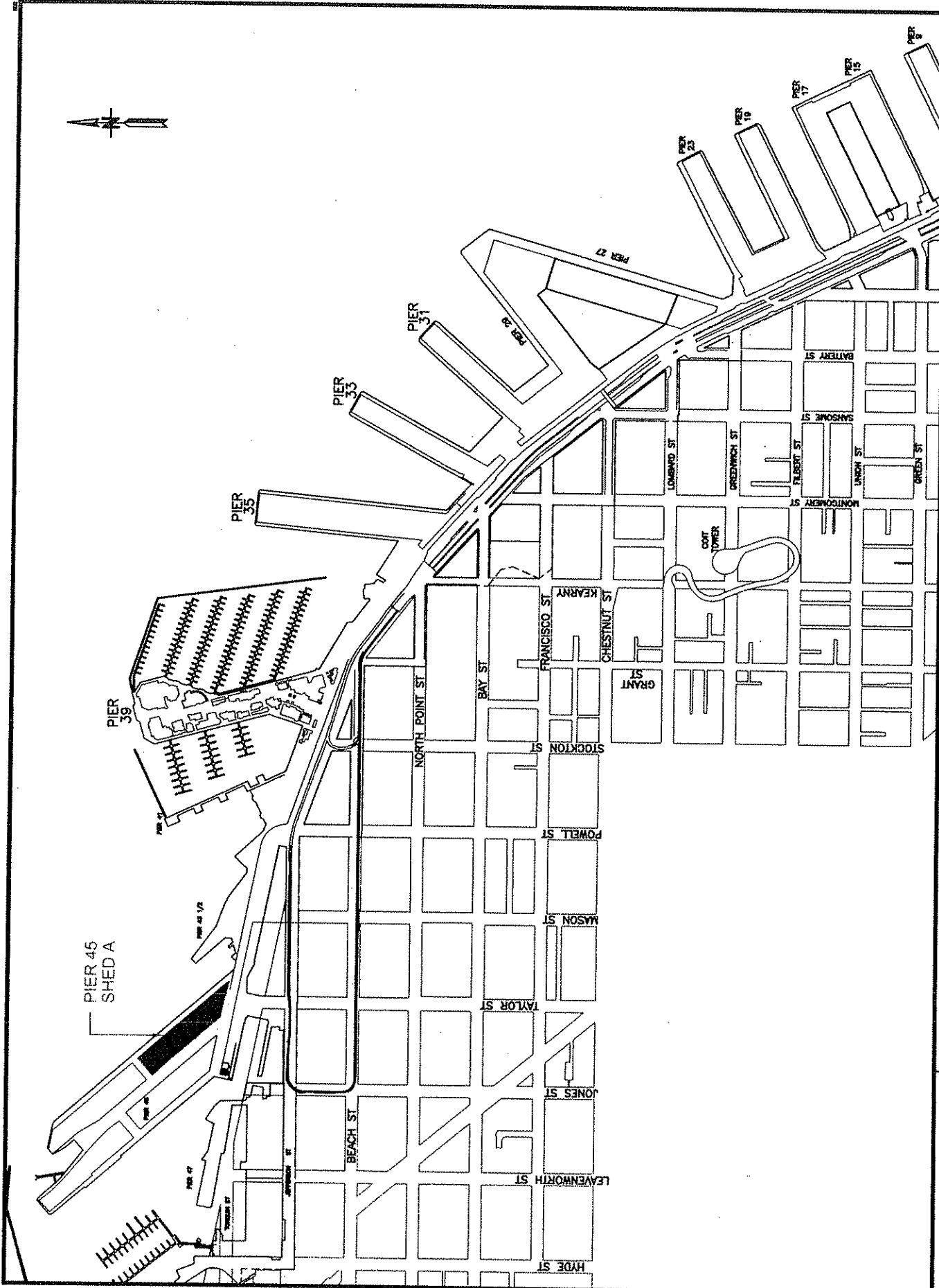
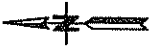
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Fishermen's Wharf Percentage Rent Tenants

10:00 a.m. to 6:00 p.m. 2 hrs; 6:00 p.m. to Midnight 3 hrs	10:00 a.m. to Midnight 1 hr
Alioto Fish Co. "Alioto No. 8" (Upstairs)	Andree Boudin Bakeries "Octagon" Café
Bistro Boudin	Chu, Frances Y. & Hwang, Jyi Jeng aka The Crab Station
Castagnola's Restaurant	Coast Marine & Industrial Supply Retail Store
D & G Co. "Lou's Pier 47"	Frank's Fisherman's Supply
Fishermen's Grotto Restaurant	Fishermen's Grotto Crab Stand
MaMa Franceschi "Capurro's"	Guardino's Souvenir & Gift Shop and Crab Stand
SFS39 Franciscan Crab Restaurant	Arthur Hoppe, The Bay Company
Tarantino's, Inc. Restaurant	Pollack Group, Nick's Lighthouse Crab Stand
Pompei Grotto	Portco, Inc. "Safe Harbor"
Portco aka Cioppino's	San Francisco Maritime National Park Association, "Pampanito"
Scoma's	Tarantino's Inc. Crab Stand/Street level café
Sabella and La Torre's	Golden Gate's Scenic / Red & White
	Guardino's Souvenir & Gift Shop
	Nonna Rose (Alioto)
	Alioto Crab Stand
	Café 8 (Alioto)
	Boudin Café & Bakery (1st Floor)
	Boudin Wine Bar (2nd Floor)
	Jeremiah O'Brien - boat tours (Nat'l Liberty Ship Memorial) (Not bay torus tend to last for hours)
	Musee Mechanique aka San Francisco Museum and Historial Society

Exclusion: All private and special events, non-maritime tours, Pier 39, Pier 41 "Blue & Gold", license holders (airspace, sidewalk)

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DATE: MAR 2, 2009
 SCALE: NONE
 DRAWN BY: ECC
 CHECKED BY: J. BAUER
 PLACE CODE NO.

EXPANSION PARKING
 LOT SITE

TENANT
 SAN FRANCISCO PORT COMMISSION
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

LEASE NO.
 SHEET NO. OF SHEETS

SCHEDULE I

FEMA Disclosure Notice

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new buildings and reconstructing or repairing existing buildings on certain parts of the San Francisco waterfront.

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

Because FEMA has not previously published a FIRM for the City and County of San Francisco, there are no identified SFHAs within San Francisco's geographic boundaries. FEMA has completed the initial phases of a study of the San Francisco Bay. On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco for review and comment by City. FEMA has tentatively identified SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the City of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands and an area adjacent to Islais Creek. City has submitted comments on the preliminary FIRM to FEMA. FEMA anticipates publishing a revised preliminary FIRM in 2009.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. Participation in the NFIP is based on an agreement between the local government and the federal government that requires the local government to adopt and enforce a floodplain management ordinance to reduce future flood risks. As part of the floodplain management ordinance, the local jurisdiction must impose significant restrictions on construction of new or substantially improved structures located in SFHAs and ban construction of certain new structures seaward of the mean high tide line, unless appropriate variances can be granted. Federally backed lenders must require the purchase of flood insurance for residential and commercial structures located in SFHAs. Otherwise, purchase of flood insurance is voluntary.

In August 2008, the San Francisco Board of Supervisors adopted Ordinance No. 188-08, a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP. In accordance with the ordinance, the City Administrator's Office has issued maps of flood prone areas. Specifically, the ordinance requires that any new construction or substantial improvement of structures in city-designated flood zones be constructed in accordance with specified requirements intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

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Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

The legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14.

In addition, FEMA publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines."

Additional information about the San Francisco legislation can be found on the city's website (<http://www.sfgov.org>), File Nos. 080823 (floodplain management ordinance) and 080824 (NFIP participation resolution).

MEMORANDUM

January 4, 2010

TO: MEMBERS, PORT COMMISSION
Hon. Rodney Fong, President
Hon. Stephanie Shakofsky, Vice President
Hon. Kimberly Brandon
Hon. Michael Hardeman
Hon. Ann Lazarus

FROM: Monique Moyer *M. Moyer*
Executive Director

SUBJECT: Request authorization to award, subject to the Board of Supervisors approval, a three-year lease for surface parking between the Port of San Francisco and Central Parking System, Inc. Lease No. L-14795 for Bid Opportunity A: Seawall Lot 301 commonly known as the Triangle Parking Lot, and SWL 314 located in the Northern Waterfront.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

BACKGROUND

On October 13, 2009 the Port Commission approved Resolution No. 09-13, authorizing Port staff to offer through competitive bid a three-year lease for surface parking: Opportunity A: Seawall Lot ("SWL") 301, commonly known as the Triangle Parking Lot, bounded by Taylor Street, Jefferson Street, and Powell Street, and SWL 314, bounded by the Embarcadero and Bay Street, and Kearny Street. Both Seawall lots are located in the Northern Waterfront, see attached maps.

The process was to culminate in the award of a lease with a term of three (3) years. The successful bidder would be selected based on proposing the highest minimum monthly rent for the opportunity and meeting the minimum qualifications for experience and financial standing.

The submittal date for the bids was November 18, 2009, at which time the bids were publicly opened and ranked in order of highest bid. The Port received requests for thirty-eight (38) bid packages. Eventually the Port received three (3) qualified bids for Opportunity A. The bids were ranked accordingly:

THIS PRINT COVERS CALENDAR ITEM NO. 9A

Bid Ranking Opportunity A, Dollars Per Month

1. Central Parking System, Inc.	\$160,916.00
2. Pacific Park Management, Inc.	\$146,111.11
3. Imperial Parking (U.S.), Inc.	\$141,888.89

Port Staff recommends that the Port Commission award, subject to Board of Supervisors' approval, the three-year lease to the qualified highest bidder, Central Parking System, Inc. Port staff further requests that the Port Commission authorize the Executive Director to forward the lease to the Board of Supervisors for approval.

Analysis

There are currently two parking lot operators in the Northern Waterfront. In order to gain economies of scale that would result in better economic returns, Port staff reconfigured the parking lots in the bid opportunities. Staff also sought to provide various parking alternatives to the Port's parking customer base, such as hourly, daily, valet parking, and where permitted, monthly parking. To achieve these goals, the lots were combined as bid Opportunity A consisting of SWL 301 (71,545 s.f.) and SWL 314 (31,114.9 s.f.).

Currently, the Fisherman's Wharf Triangle Parking Lot at SWL 301 operates through a direct month-to-month operating agreement between the Fisherman's Wharf Restaurant Association ("Association") and the Port of San Francisco. The Association sublets the lot to a parking operator.

The current operating agreement returns approximately \$30,000 per month (\$0.42 per square foot per month) to the Port after the deduction of operating expenses by the Association and includes free validated parking for some Port restaurant tenants. The agreement does not contain a percentage rent provision. Therefore, the Port has not participated in any revenue overages derived from the lot.

Under the proposed new lease with Central Parking System, Inc., the Port is guaranteed the greater amount of either \$112,142.36 per month (\$1.57 per square foot) or 66% of all gross receipts net of the City Parking Tax. This represents an approximate 274% incremental increase in revenue to the Port over the existing operating agreement. The lot will continue to provide for a high level of customer service to Fisherman's Wharf visitors with specific hours of free-validated parking to both the existing restaurant participants and an additional number of the Port's Fisherman's Wharf retail tenants.

Central Parking Systems, Inc. is the current lessee at SWL 314 and provides monthly rent equal to the greater amount of \$25,437.00 (\$0.86 per square foot) or 66% of all gross receipts net of City Parking Tax. Under the new proposed lease with Central Parking System, Inc., the new monthly rent is the greater of \$48,773.64 (\$1.57 per square foot) or 66% of all gross receipts net of City Parking Tax. This represents an approximate 80% incremental increase in revenue to the Port over the existing lease.

LEASE TERMS

- **Tenant** Central Parking System, Inc.
- **Lease No.** L-14795
- **Premise** SWLs 301 and 314
- **Lease Commencement** Following Board of Supervisors approval anticipated to be March 1, 2010.
- **Lease Expiration Date** 36 months following the commencement date.
- **Monthly Base Rent ("Minimum Rent")** \$160,916.00
- **Security Deposit** Stand By Letter of Credit or Certificate of Deposit acceptable in lieu of cash at Port's sole discretion.
- **Rent Adjustment** Annual 3.5%
- **Percentage Rent** The greater amount of the base rent or 66% of gross receipts net of City Parking Tax.
- **Use** Operation of surface parking Lot.
- **Right of Recapture** Port may recapture all or portion of premises with notice.
- **Operations Plan** Tenant is required to submit and comply with Port approved Operations and Customer Service Plan (Attached hereto as Exhibit B).
- **Expansion Sites** Pier 45, Shed A and C
- **Expansion Sites Rent** 66% of Gross Sales after the deduction of Parking Tax.
- **Special restrictions**
 - (a) SWL 301 monthly parking prohibited;
 - (b) Must provide free validated parking to Port Fisherman's Wharf retail tenants for specified duration during specific hours. In order to participate, Port tenant will be required to purchase validation equipment which ranges in cost from \$500 to \$2,500;
 - (c) Tenant shall make some or all of SWL 314 available for parking and staging to support cruise ships with notice from Port at market rates;
 - (d) Tenant shall make a minimum of 20% of stalls at SWL 314 available on an hourly basis to support local merchants.

RECOMMENDATIONS

Port staff recommends that the Port Commission approve the three-year lease for surface parking in the Northern Waterfront between the Port of San Francisco and Central Parking System, Inc., Lease No. L-14795, for SWLs 301 and 314 and authorize the Executive Director to forward said Lease to the Board of Supervisors for award and approval pursuant to Board's authorization under Charter Section 9.118, and upon the effectiveness of such approval, execute said lease.

Prepared by: Jeffrey A. Bauer, Senior Commercial Leasing Manager
For: Susan Reynolds, Deputy Director, Real Estate

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 10-04**

- WHEREAS, Charter Section 4.114 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, surface parking generates a significant revenue stream to the Port, and the Port desires to operate its parking lots in an efficient manner while maximizing revenues; and
- WHEREAS, the Port requires continued operation of SWLs 301 and 314, located in the Northern Waterfront, for parking by both Port tenants and the public; and
- WHEREAS, On October 13, 2009, pursuant to Resolution 09-13, the Port Commission authorized staff to competitively bid a three-year lease for surface parking lots in the Northern Waterfront: Bid Opportunity A: SWLs 301 and 314; and
- WHEREAS On November 18, 2009 bids were publicly opened and ranked in order of highest bid, the results are enumerated in the staff report; now, therefore, be it
- RESOLVED, That the Port Commission awards, subject to Board of Supervisors' approval, the Leases on the terms described in the attached staff report and authorizes and directs the Executive Director or her designee to forward the Lease to the Board of Supervisors (the "Board") for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and, be it further
- RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments, or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligation or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease contemplate and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease, and any such amendments hereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 12, 2010.



Secretary



PIER 39

PIER 35

PIER 41

PIER 43 1/2

PIER 45

SWL 301

SWL 314

THE EMBARCADERO

KEARNY ST

GRANT ST

STOCKTON ST

POWELL ST

MASON ST

BEACH ST

NORTH POINT ST

BAY ST

TAYLOR ST

EXHIBIT A

INITIALS: PORT: _____ TENANT: _____ DATE: _____

DRAWN BY: ECC	DATE:
CHECKED BY: J. BAUER	SCALE: NONE
PLAGE CODE NO.	SHEET NO.
3140-00	OF
	SHEETS

TENANT
CENTRAL PARKING SYSTEM, INC.

SAN FRANCISCO PORT COMMISSION
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

LEASE NO.
L-14795

OPERATIONS PLAN TRIANGLE LOT

Introduction:

This manual is designed to provide a standard set of operational procedures and policies in all aspects of the Triangle lot owned by the Port of San Francisco.

The parking facility consists of approximately 286 marked stalls and serves the patrons of the local eateries along the Fishermans Wharf and Piers, as well as the adjacent businesses. The express intent of this facility is to provide easily accessible and convenient parking for all transient users.

New South Parking will work closely with Port of San Francisco to maintain the high standards of customer service expected. A Central Parking Area Manager and field staff will be fully responsible for all aspects of the operation and will be supported by the General Manager. This Plan of Operations will be updated and revised as warranted.

Contact List:

Kyle Dunst	General Manager	415.793.3411
Anthony Mazeika	Operations Manager	310.527.1282
All Lopez	Area Manager	415.317.4898
Louis Vasquez	Human Resources	415.317.4898
San Francisco Office		415.277.0400
Jeff Bauer	Port of San Francisco	415.274.0514

Proposed Rates:

The current market rates are significantly below market. Upon taking control of the Triangle lot, Central Parking will raise the incremental rate from \$2.00 every thirty minutes to \$3.00 every twenty minutes and continue to honor all contractual obligations to any vendors with validations. The rates for transient patrons will be reviewed on a regular basis, with all cash control procedures being enforced to insure that revenue will be maximized at the facility.

Hours of Operation:

The facility will be automated and open for daily parking 24 hours a day, seven days a week. Staffing will be from 7:00 AM to 10:00 PM

Equipment:

Central Parking will install automation equipment at both points of entry. Although we have yet to determine the manufacturer, the equipment will benefit the facility in two ways: the cash will be out of attendants' hands, and the attendants will be more efficient at unblocking vehicles for patrons who have already paid. Vendors that chose to validate will be given a "shell" that encrypts a validation onto a magnetic stripe ticket.

Proposed Staffing Plan:

<u>Employee</u>	<u>Start Time</u>	<u>End Time</u>	<u>Total Hours</u>
Area Manager	N/A	N/A	4
Attendant 1	7 AM	3 PM	8
Attendant 2	7 AM	3 PM	8
Attendant 3	7 AM	12 PM	5
Attendant 4	1 PM	8 PM	7
Attendant 5	3 PM	8 PM	5
Attendant 6	2 PM	10 PM	8

Operations:

The staffing will be staggered with some part time shifts for the morning and evening rush mingled with several all-day employees who will work one or part of both rushes. We anticipate a staff of 7-8 employees including management. We will staff individuals beginning at 7:00 AM and will have a continuous presence until 10:00 PM, if necessary. During downtime the attendants will restack vehicles in order to allow the quickest egress pattern. They will have the ability to stack vehicles in order of egress times because the attendant will ask each parker, at the time they park, what time they will be returning and mark that return time on the valet portion of the ticket.

Traffic control is vital in the success of this operation. Our staff will initially greet each customer then direct them to the stall in which they may park. Once the self-park spaces are full, Valet attendants will begin stacking vehicles at the far end, in rows, facing the self park spaces. During peak time, this process would continue until the lot is full. Once Lot One is completely full, the attendants would then direct traffic to the overflow lot (Pier 45 sheds).

The attendants will visually inspect each vehicle to note all pre-existing dents, scratches, etc. Each customer will receive a ticket in return for their car keys. This ticket will be the customer's vehicle claim check when they arrive back at the station to retrieve their vehicles. All vehicle keys must remain in our possession in order to have the ability to move the vehicles within the stacking area. We will lock all of the vehicle keys in a centrally located booth. All attendants will have a key to the key box for security and easy.

Job Description and Responsibilities of On-Site Manager

The Area Manager has the responsibility of organizing and directing subordinate personnel in all aspects of required procedures and standards necessary to maintain a professional, first class, day-to-day operation. A list of duties to be performed by the Area Manager includes, but is not limited to, the following:

- Maintain close liaison with the GM on the day-to-day operations, advising of any problems encountered or anticipated and assure complete compliance with the Port of San Francisco's requirements on matters of accountability, security and daily operational requirements.
- Observing and evaluating the performance of each employee under his direction. He will conduct unannounced personal inspections at various times of the day and week, including non-business hours to effect such observation and evaluation.
- Be responsible for achieving superior level of customer service from all employees.
- Monitor and review all required operational logs; i.e. claims reports, equipment maintenance, and revenue reports for completeness and accuracy and assuring that adequate records are maintained.
- Works closely with technicians on day-to-day equipment operation and assure cooperation of CPS personnel with regard to equipment malfunctions.
- Monitor and review line level and supervisory work schedules to ensure contractual staffing requirements are maintained and overtime is kept to a minimum.
- Assists in the evaluation process of employees within the trainee/probationary periods and reviewing their strengths/weaknesses and any required performance improvements prior to permanent assignment.

Personnel and Uniforms:

All personnel at the Triangle Lot will be employees of Central Parking System, Inc. All potential employees will be screened by Central Parking System, Inc. An employment application is completed by each prospective employee and all persons interested in employment must fill out a pre-employment honesty survey. All interviews for line level employees are done by the on-site manager, with interviews for clerical or management positions being approved by the General Manager. There is a 90 day probationary period for all new employees. At the conclusion of this period, the employee's job performance is discussed in confidence and a determination is made on whether or not they meet our criteria for continued employment beyond the probationary period. All employees are paid by Central Parking System, who is also responsible for making all payroll deductions and filing all required local, state and federal taxes.

It is Central Parking's policy to grant promotion and pay increases on a collective bargaining agreement basis. Raises are given automatically. Hourly pay raises are typically given to union employees after six months for progressionary employees and on December 1st as per the bargaining agreement.

An "open door" policy is maintained at Central Parking System, Inc. This works to facilitate communication from employees at every level, and helps to better determine any needs that might affect the operation of the facility. All employees are expected to adhere to CPS code of conduct and behave in a professional and courteous manner at all times.

All Central Parking System and Regional Office staffs, including company officers, are available to assist the staff on all matters relating to the operation of the Triangle Lot parking facility. All managers are on call 24 hours a day, seven days a week, to attend to the operation of the facility. Employees will be in uniform with nametags. Laundering of individual maintenance uniforms will be performed by the uniform leasing company. Maintenance employees will turn their uniforms in to the uniform leasing company for laundering and repairs such as stain removal, button replacement, or patching if uniforms are torn or ripped.

Alcohol and Drug Use:

Managers and supervisors shall not allow an employee to perform work at the location, if the manager or supervisor has actual knowledge or a reasonable suspicion that an employee has alcohol in his or her possession, is using alcohol or has used alcohol within eight (8) hours of reporting for work. Managers and supervisors must not allow employees who have an alcohol concentration of 0.00 or greater to remain at work.

In addition managers and supervisors shall not allow an employee to perform work at the location, if the manager has actual knowledge or reasonable suspicion that the employee is under the influence of illegal drugs or improperly using prescribed or over the counter medications. Improper use of prescription medication means the medication is not taken as directed by the employee's health care provider; improper use of over the counter medication means the medication is not taken as directed by the packaging.

It is the responsibility of the manager or supervisor to place employees who violate this policy on leave without pay immediately and to alert the General Manager to the violation.

Managers and supervisors may not allow an employee who refuses to submit to a required alcohol or controlled substances test to remain at work.

Employee Responsibility:

Employees covered by this policy must inform their supervisors if their use of prescribed or over the counter medications could affect their job performance or pose safety problems. Employees who are using prescription medication or over the counter medication may have to be removed from the workplace and placed on sick leave or a leave of absence. The leave of absence may be without pay.

Employees are prohibited from using illegal drugs or improperly using prescribed or over the counter medications. Improper use of prescription medication means the medication is not taken as directed by the employee's health provider; improper use of over the counter medication means the medication is not taken as directed by the packaging. In addition, employees may not consume alcohol while at work or for a period of eight (8) hours before reporting for work. No employee may have alcohol in his or her possession while at work. An employee whose alcohol blood content is determined to exceed 0.00 while at work shall be placed immediately on leave without pay until a decision concerning the continued employment of the employee can be made.

Drug Testing:

In the event of a large scale accident, any employee may be required to submit to testing of breath, blood or urine for the presence of alcohol, controlled substances or metabolites as such. All tests shall be conducted at a federally certified laboratory, using DOT - mandated forms and procedures.

Any employee who is involved in an accident involving personal injury or property damage while he or she is performing work at the location shall submit to a post accident test. In addition, an employee will be tested if he or she receives a citation under state or local law for a moving traffic violation arising from a motor vehicle accident.

Employees who have been involved in an accident, as set out above, shall remain readily available on the scene, at a medical facility or the nearest office for testing or will be deemed to have refused to submit to testing. In the event, an employee is deemed to be unavailable for testing, he or she will be subject to the same disciplinary actions as if he or she refused to submit to testing. This requirement to remain available for testing does not mean that an employee who needs medical attention should not seek it immediately. However, an employee who leaves the scene of the accident must immediately notify the Parking office of the accident and his or her whereabouts as soon as possible. An employee who is unable to report an accident within one hour of its occurrence will be required to explain the delay in writing to his or her manager.

Employee Benefits:

Employees are provided benefits as outlined in the Central Parking System Employee Handbook. These benefits include paid vacations, sick leave with pay, a retirement plan, company offered health insurance and company offered life insurance. Employee benefits are further explained in detail in the collective bargaining agreement and employee benefit manual.

ALERTLINE (1-800-93-ALERT)

Central Parking System is committed to providing a great work environment, but we need your help. If you become aware of business risks – situations that are harmful to you, your co workers, customers or the company – report the situation immediately to your supervisor, higher level manager or ALERTLINE. Business risks include: Work environment, Theft/Fraud and Business Integrity. Remember, creating a great work environment starts with you!

Code of Conduct:

- Obey all applicable laws and regulations
- Be fair and honest in all business activities and relationships
- Avoid conflicts of interest
- Support diversity and foster an atmosphere of respect and equal opportunity for all employees
- Strive to create a safe and healthy environment for employees and customers
- Record all transactions accurately and timely and safe guard Company assets

Procedures for Handling Customer Complaints:

Parking is the first and last experience visitors often have of a project and that the level of service is a reflection upon the Port of San Francisco. Our policy is for the trained attendant or valet to call his or her supervisor over in the event of an escalated conflict. Should the manager not be able to quickly resolve the issue, the Area Manager is called.

The office phone number, visible on all Central Parking System signage, will be provided by the attendant responding.

Revenue Collection and Cash Handling Procedures:

Revenue is removed and collected from machines by Area or Operation Manager only. Collection is completed prior to automatic shift closure on a daily basis. All revenue is audited and deposits are made for each pay station.

All deposits are prepared by Manager and stored in a locked office safe until picked-up by armored personnel. A daily Master Deposit Summary is created, and stored for record keeping. All managers have additional assistance available as needed 7 days a week / 24 hours a day.

- ✓ Dual counting for Pay on Foot (POF) revenues— Two persons are present for pick-up of all POF revenues.
- ✓ In the event of an equipment malfunction, Blind cash counts will occur when location is attended – Blind counts (where the manager and cashier are not aware of the amount of sales on the revenue equipment) is used for cashiered locations.
- ✓ Reconciliation of daily deposits to the monthly bank statement is completed.

Review of the Daily Cash Reports (received from managers) are reviewed as follows:

- The Revenue Auditor compares the sales amounts on the equipment reports (attached to the Daily Cash Report) to the deposit slip. The Revenue Auditor validates that the total for cash on equipment report matches the attached green deposit slip. Total cash for the day together with POF's and exits' cash collected must match the equipment - Daily Total Lane Report.
- Adjustments to system reports (i.e. system malfunctions) must be documented and supported (see below note).
- The Revenue Auditor prints the Daily Credit Card Summary report from the equipment computer. This report reflects the actual amount of Credit Cards batched for that day for each location. Total cash deposits are added to this revenue and the original DCR is revised with new Daily Total prior to entry into the DCR system.
- Using Daily Credit Card Summary report from the equipment, the auditor completes the Excel file to determine the amount that must be adjusted on the DCR report prior to entry into DCR system.
- ADS reports are pulled, and entered on the above spreadsheet as well. Any difference is adjusted on weekly basis using adjusting DCR's.
- After reviewing, the auditor enters DCR's in DCR system, recording the correct # of tickets, debiting cash deposited and amount of credit cards collected, and crediting the appropriate type of revenue (Day Transient, Non-tax monthly, Non-tax validation or Special Event).
- DCR's role into Revenue Summaries, which the auditor provides to the city at the end of each month as part of Monthly Reports.

Review of bank deposit:

- Total cash deposits are verified by checking the Total Cash report, and comparing it to the green deposit slip attached to it. Finally, green deposit slip are added up and compared to cash deposits stated on the Daily Cash Report.
- Deposit Summaries which have yellow slips attached are audited as well. All deposits made that are stated on Deposit summary are accounted by verifying yellow deposit slips.

If there are discrepancies, it is noted on the original deposit summary, before it is sent to the city.

Review of bank deposit:

- Total cash deposits are verified by checking the total cash on the Audit report and cashier's report, and comparing it to the green deposit slip attached to it. Finally, green deposits slip are added up and compared to cash deposits stated on the Daily Cover Sheet.
- Deposit Summaries which have yellow slips attached are audited as well. All deposits made that are stated on Deposit summary are accounted by verifying yellow deposit slips. If there are discrepancies, it is noted on the original deposit summary, before it is sent to the city. (Note, credit card transactions are seen on the bank slip)

Entry Fail Contingency:

All managers, ambassadors and maintenance have been trained for immediate repair of light to medium equipment failures. In the Event of long term equipment failure or urgent entry needs, customers are directed to use alternate entry at manager's direction using on-site personnel, red cones, on-site signage, barricades and electronic signage.

In the event of catastrophic entry failure, ambassadors will, at managers direction issue tickets manually by stamping entry date/time and replacing these tickets prior to exit.

Exit Fail Contingency:

All managers, ambassadors and maintenance have been trained for immediate repair of light to medium equipment failures. In the event of long term equipment failure or urgent exit needs, customers are directed to use alternate exits at manager's direction using on-site personnel, on-site signage, barricades and red cones.

In the event of catastrophic automatic exit failure, Exit gates, at manager's direction, will be locked up. CPS personnel will provide customers with direction to use automatic pay machines prior to exit. All managers have additional assistance available as needed. Equipment service will be requested with approval from operation manager. All managers have additional assistance available as needed 7 days a week / 24 hours a day.

Ticket Inventory:

The Area Manager inventories all new tickets received and checks numerical sequence. The managers record each stack of tickets by beginning and ending ticket numbers on the ticket master inventory log. The tickets, bill of lading and the master ticket log are then stored in a locked storeroom, in sequential order.

- Tickets are secured in a locked area (with limited access) at the N. Market Street location for all revenue equipment.
- A ticket log (with ticket #'s) is maintained for tickets on-hand. For tickets issued, the log indicates the location where the tickets were distributed. A log is maintained at each location to document the spitter # where tickets were filled (and the specific box in each spitter).
- Tickets are removed from the storage room and restocked by either the Area Manager or maintenance personnel. All tickets are ordered by the Area Manager. The Area Manager inventories the supply of unused tickets each 60 days between orders, again verifying numerical sequence.

Tickets are distributed (in sequence order) to each entrance lane by garage location, series number and identifying letter. As tickets are removed from inventory they are logged out on the master ticket inventory log by recording the date, series numbers removed, location and spitter # to be restocked and the signature of the person who removed the tickets.

Once the tickets have been audited, they are bundled, labeled with the date the tickets were processed and placed in a storage box. As a box becomes full it is labeled with the location and dates of the tickets it contains, and is placed in a locked storage room. Used tickets are held in storage according to the agreed upon time.

Security and Safety Issues:

Security for the location will not be performed by Central Parking.

Car Leaking Gas

The area around the car will be blocked off by CPS personnel, **do not flush with water**, this will spread the gasoline, an oil dry material will be applied to soak up the gas and to prevent any customers from slipping. If possible, a container will be used to attempt to contain the leaking gas. An employee will be stationed near the area around the vehicle and pedestrian traffic will then be prevented from entering the area. The Fire Department will be called and the vehicle's tag number will be researched in an attempt to locate the owner and have the vehicle removed. If the owner is not located within 30 minutes, the vehicle will be towed out of the Facility into a controlled and safe area.

Robbery

Attendants of the lots are not to carry cash.

Theft of a Vehicle

In the event of a reported vehicle theft, the Facility is to be thoroughly searched to ensure that the car is not lost. If it is determined that a car has been stolen, the Area Manager will notify the Police and building security so the proper course of action can be initiated immediately. The Area Manager will contact the cashiers to obtain any lost ticket vouchers that have been processed that day to determine if the vehicle exited the Facility through this type of transaction. An incident report will be completed following the confirmation of theft. Copies of this report will be sent to the Los Angeles Dept of Transportation, the New South Parking central office in San Jose, and will be kept on file in the Facility office.

Auto Damage

No claims are to be accepted for damage to a vehicle unless obviously caused by a parking gate. CPS personnel or Operations Management will handle these claims and complete a damage report form. If possible, rubbing compound will be used to remove any mark left on the vehicle from the gate. If further repair work is deemed necessary the claimant will be asked to provide two (2) estimates, and the lowest estimate of the two will be paid. A disclaimer will be stamped on the back of the check before issuing to assure the claimant understands this will be the final compensation to cover any reimbursement for damage.

Tornado, Hurricane, Earthquake or Severe Storm

In the impending threat of a tornado, hurricane, earthquake or other severe storm, the Facility will be closed if warranted. The Area Manager will notify the City Office and Building Management to confirm closing of the Facility. Once a closing has been confirmed all cashiers will be notified of the closing. At this point the cashiers will deposit all tickets, revenue collected, and operating banks into a plastic sealed deposit bag and return to the garage office. Maintenance personnel will check each level of the facility and notify any individuals of the closing of the facility and direct them to areas of safety as determined by City Management. Maintenance personnel will raise all exit gates to allow vehicles to leave the facility if they choose to do so. All maintenance personnel will then report to the main office and await further instructions.

Fire

In the event of a fire at the Facility, personnel on duty will immediately notify the Fire Department, then City Management and then the CPS Operation and General Managers. All pedestrians and all personnel will be evacuated from the immediate area to a safety area to be predetermined by New

South Parking and City Management. The cashier will deposit all tickets, collected revenue, and operating bank in a plastic sealed deposit bag and report to a safety area.

The Facility's entrance equipment will be turned off if possible and blocked with cones (fire department vehicles will be allowed to enter). All exit lanes will be opened by whatever means necessary (i.e. breaking gate arms or manually opening gates) to allow uninterrupted flow out of the Facility. The Area Manager will meet the fire truck(s) at the entrance and direct them to the fire. Other employees will be stationed at the Facility's entrance to prevent any customers from entering the Facility. Fire extinguishers will only be used by Facility employee(s) if it is obviously safe to do so.

On The Job Injuries

In the case of a work-related injury, the Area Manager will first make sure the injured person is provided with immediate medical attention. Photographs will be taken, details pertinent to the injury will be recorded, and if possible elimination of the cause will be undertaken. A written report will be forwarded to the City Office, Corporate Office and the Worker's Compensation Insurance carrier, relating to all details of the injury/accident.

Fall Downs or Personal Liability

The Area Manager will be notified in order to handle the situation. In the event of the Area Manager's absence, the cashier will page the General Manager and call the City Office; notify City Management immediately and advise them of the situation; ask the injured person if they need medical assistance; call an ambulance if necessary; make the injured person as comfortable as possible; have them explain, in their own words what happened; complete an incident report and obtain the names and addresses of any witnesses; photograph the area where the injury occurred and, if necessary, the injured party. This information will be documented and forwarded to the City Office and Building Management for review.

The staff is instructed not to alter the condition of the accident scene without the General Manager's approval. The area will be blocked off with traffic barriers or cones if conditions warrant. Once the scene is cleared, pictures of the accident scene will be taken by the Central Parking System Area Manager. A first notice of injury will be sent to notify the insurance carrier of the situation. The Port of San Francisco and will be notified immediately of all customer injury situations.

Facility personnel are instructed to never state who owns the property involved, but only to state that we (Central Parking System) are the operators. Our main responsibility is to obtain all information possible. Facility personnel are instructed **NEVER TO ADMIT ANY LIABILITY WHATSOEVER.**

Mugging and/or Rape

In the event of a reported mugging or rape, Facility personnel will make the victim as comfortable as possible. The Area Manager will then notify the Police Department and request an ambulance if necessary. Facility personnel will block off the area and not allow anything to be touched or moved. The Area Manager will complete an incident report; take photographs of the area where the incident occurred and, if necessary, of the injured party. Central Parking will cooperate fully with any police investigation, and Building security. In the event of such an occurrence, the General Manager will notify the Port of San Francisco of immediately.

The staff will not discuss details of the incident, levels of security, or any other aspects of this situation with anyone except the Police, CPS management, and the Port of San Francisco

Bomb Threats

It has been clearly proven that the vast majority of these calls are indeed false alarms, meant only to disturb or disrupt the normal work of a person or company. However, at no time should any call be regarded as just another false alarm.

More information on Mugging and Bomb Threat Procedures can be added at the Port of San Francisco's request.

Liability Insurance

New South Parking carries the General Liability Insurance, Umbrella Coverage, Worker's Compensation Insurance, and Crime Coverage. The premiums for this coverage are an operating expense of the parking facility. **The Port of San Francisco** is also named as an additional insured with the Certificates of Insurance being forwarded to the additional insured annually. Since the garages are a self-park facility, normally no claims for damage or stolen property are honored.

All coverage's listed below are per the management agreement.

General Liability Insurance

This is a \$5,000,000 combined single limit policy which provides coverage for liability claims arising out of bodily injury or property damage claims which occur on premises we operate. Additionally, this policy has an endorsement which covers what is known in the insurance industry as "Personal Injury". The claims covered by this endorsement include false arrest, slander and libel. This policy includes liability coverage for a single occurrence regardless of the type of damage. i.e. bodily injury or property damage, and regardless of the number of persons involved.

Garagekeepers Legal Liability

This is a \$1,000,000 combined single limit policy that covers claims for a loss of or damage to property belonging to others that is in our care, custody and control.

Fidelity Bond/Crime Insurance

This is a \$500,000 policy that covers Manager and Owner in the case of robbery, theft and mysterious disappearance of any monetary assets in our control. Money and Securities (inside and out) with limits not less than \$25,000.00 any one loss, and Comprehensive Crime insurance that includes depositor's forgery coverage with limits not less than \$25,000.00.

Workers Compensation and Employers Liability Insurance

Statutory Worker's compensation insurance. Employers' Liability with \$500,000.00 per accident for bodily injury and \$500,000 per employee/aggregate for disease.

Umbrella Liability Insurance

Minimum combined single limit of \$10,000,000.

EXHIBIT E

**FISHERMAN'S WHARF PERCENTAGE
RENT TENANTS AND CRAB STAND TENANTS**

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Fishermen's Wharf Percentage Rent Tenants

10:00 a.m. to 6:00 p.m. 2 hrs; 6:00 p.m. to Midnight 3 hrs	10:00 a.m. to Midnight 1 hr
Alioto Fish Co. "Alioto No. 8" (Upstairs)	Andree Boudin Bakeries "Octagon" Café
Bistro Boudin	Chu, Frances Y. & Hwang, Jyi Jeng aka The Crab Station
Castagnola's Restaurant	Coast Marine & Industrial Supply Retail Store
D & G Co. "Lou's Pier 47"	Frank's Fisherman's Supply
Fishermen's Grotto Restaurant	Fishermen's Grotto Crab Stand
MaMa Franceschi "Capurro's"	Guardino's Souvenir & Gift Shop and Crab Stand
SFS39 Franciscan Crab Restaurant	Arthur Hoppe, The Bay Company
Tarantino's, Inc. Restaurant	Pollack Group, Nick's Lighthouse Crab Stand
Pompei Grotto	Portco, Inc. "Safe Harbor"
Portco aka Cioppino's	San Francisco Maritime National Park Association, "Pampanito"
Scoma's	Tarantino's Inc. Crab Stand/Street level café
Sabella and La Torre's	Golden Gate's Scenic / Red & White
	Guardino's Souvenir & Gift Shop
	Nonna Rose (Alioto)
	Alioto Crab Stand
	Café 8 (Alioto)
	Boudin Café & Bakery (1st Floor)
	Boudin Wine Bar (2nd Floor)
	Jeremiah O'Brien - boat tours
	(Nat'l Liberty Ship Memorial) (Not bay torus tend to last for hours)
	Musee Mechanique aka San Francisco Museum and Historial Society

Exclusion: All private and special evetns, non-maritime tours, Pier 39, Pier 41 "Blue & Gold", license holders (airspace, sidewalk)

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