



**City and County of San Francisco
Edwin M. Lee, Mayor**

Lease No. L-15814

Between the

**THE CITY AND COUNTY OF SAN FRANCISCO
operating by and through the
SAN FRANCISCO PORT COMMISSION**

as Landlord

and

**HISTORIC PIER 70, LLC
a California limited liability company**

as Tenant

Dated as of _____, 201[___]

**Monique Moyer
Executive Director**

San Francisco Port Commission

**Leslie Katz, President
Willie Adams, Vice- President
Kimberly Brandon, Commissioner
Mel Murphy, Commissioner
Doreen Woo Ho, Commissioner**

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LEASE NO. L-15814

THIS LEASE NO. L-15814 is entered into as of [], 201[XX], by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**” or “**Port Commission**”), and **HISTORIC PIER 70, LLC**, a California limited liability company (“**Tenant**”). Initially capitalized terms in this Lease are defined in *Article 47*. Any capitalized terms used herein but not otherwise defined shall have the meaning given to them in the LDDA.

RECITALS

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

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. The Waterfront Plan is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Port has jurisdiction of approximately sixty-nine (69) acres of land along San Francisco’s Central Waterfront, generally bounded by Mariposa Street, Illinois Street, 22nd Street, and San Francisco Bay, commonly known as Pier 70. Previously known as the San Francisco Yard and the Bethlehem Steel Shipyard, Pier 70 is a former 19th century ship building and repair facility, and the most intact historic maritime industrial complex of that era west of the Mississippi River. A portion of the site remains an active ship repair facility. On May 11, 2010, by Resolution 10-27, the Port Commission endorsed the vision, goals, objectives, and design criteria of the Pier 70 Preferred Master Plan (“**Pier 70 Master Plan**”) published in April 2010, and authorized staff to begin implementation of the Pier 70 Master Plan objectives by soliciting development partners for the “**Waterfront Site**” (approximately 25 acres at the eastern edge) and the “**historic core**” consisting of six historic buildings on 20th Street (the “**20th Street Historic Buildings**”) located on that certain real property more particularly described on *Exhibit A-1* and depicted on the site plan attached as *Exhibit A-2*. Pier 70 is roughly divided into five key subareas: the Waterfront Site, the 20th Street Historic Buildings, the lease area of the ship repair facility, the vacant parcels fronting Illinois Street, and planned parks and open spaces (together, “**Pier 70**”).

C. Most Port property consists of tidelands and submerged lands that are subject to the common law public trust doctrine, the California Constitution, the Burton Act, and the related transfer agreement under which the State of California (the “**State**”) transferred most of the San Francisco waterfront to the City in 1969. Port acquired much of Pier 70 subsequent to the Burton Act transfer, however, and parts of the Pier 70 are upland areas that are not tidelands. Pier 70’s complex ownership history and mix of tidelands, submerged lands, and uplands creates questions about whether certain parcels at Pier 70 are subject to public trust land use restrictions. AB 418 authorized the California State Lands Commission to approve internal transfers that will align the public trust parcels within Pier 70 to achieve the goals and objectives of the Pier 70 Master Plan.

D. On April 12, 2011, by Resolution 11-21, the Port Commission awarded Forest City Development California, Inc. (“**Forest City**”) the opportunity to negotiate for the development of the Waterfront Site and authorized Port staff to proceed with exclusive negotiations for the lease and development of the Waterfront Site. Port and Forest City entered into an Exclusive Negotiation Agreement as of July 12, 2011.

E. On February 28, 2012, by Resolution 12-18, the Port Commission awarded Tenant the opportunity to negotiate for development of the 20th Street Historic Buildings and authorized Port staff to proceed with exclusive negotiations for the lease and development of the 20th Street Historic Buildings. On April 24, 2012, by Resolution 12-36, the Port Commission

authorized the Executive Director to enter into an Exclusive Negotiation Agreement (“ENA”) with Tenant for the rehabilitation, stabilization, and development of the 20th Street Historic Buildings. The ENA set forth the process, terms, and conditions upon which Port and Tenant would negotiate terms for the rehabilitation, stabilization, and development of the 20th Street Historic Buildings, and seek to complete necessary documents.

F. On December 4, 2012, by Resolution No. 440-12, the Board found that the proposed terms for the Lease, as set forth in the term sheet agreed to by the Parties were fiscally feasible and responsible pursuant to San Francisco Administrative Code Chapter 29.]

G. The Project is within the Eastern Neighborhoods Community Plan Area, for which the San Francisco Planning Commission certified the Eastern Neighborhoods Rezoning and Area Plans Final EIR (“EN FEIR”) (Planning Department Case No. 2004.0160E). The Planning Department reviewed the Project and determined that a community plan exemption under CEQA Guidelines Section 15183 would be appropriate because the Project is within the scope of the EN FEIR and would not have any additional or significant adverse effects that were not examined in the EN FEIR. The San Francisco Planning Department prepared a Community Plan Exemption for the proposed Project, which exemption was approved on May 7, 2014, and a Notice of Exemption was filed with the County Clerk on June 17, 2014.

H. On May 13, 2014, the Port Commission, by Resolution No. 14-33, among other things, authorized and directed the Executive Director of Port to (i) enter into this Lease, the LDDA, and other Transaction Documents with Tenant and (ii) seek approval from the Board to execute the Lease with Tenant.

I. In accordance with the ENA, the Parties entered into a Lease Disposition and Development Agreement dated as of [____], 2014 (the “LDDA”), consistent with the Term Sheet, pursuant to which Tenant agreed to restore and rehabilitate the 20th Street Historic Buildings and construct certain other improvements within the Premises, all to be leased to Tenant under this Lease.

J. The LDDA set forth the conditions for delivery of the Premises to Tenant for development of the Improvements to be constructed on the Premises and the rights and obligations of the Tenant to develop the Improvements.

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

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

1. PREMISES

1.1. Premises.

(a) Initial Site. In consideration of the Rent payable by Tenant to Port and subject to all other terms and conditions of this Lease, subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, that certain real property located in the City and County of San Francisco, consisting of Buildings 113, 114, 115, and 116 and the adjacent courtyard, as further described in *Exhibit A-3* and depicted on the site plan attached as *Exhibit A-2* (the “Initial Site”), together with all improvements now located on the Initial Site and all the rights and privileges appurtenant to the Initial Site and owned by Port, and the Improvements to be hereafter constructed on the Initial Site (subject to *Section 12.2*), for the Permitted Uses (the “Premises”).

(b) License for Portion of Building 116. A portion of Building 116, as depicted on *Exhibit XX* (“Building 116 License Area”), is currently a public right-of-way under the jurisdiction of the City and County of San Francisco. Accordingly, until the Building 116

License Area is vacated by the City, Tenant has only a non-exclusive and non-possessory license to access and use the Building 116 License Area during the Term. For purposes of this Lease, other than its use in **Section 1.1(a)**, the term “Premises” includes the Building 116 License Area.

(c) **Expansion of Premises.** The Premises will be expanded from time to time, but in no event, later than [____], 2017, [Note: insert date 3 years from LDDA execution] to include additional land and Buildings 14, 101, 122, 104, and/or 123, identified as Parcels B, C, and D on the attached **Exhibit XX** (each such parcel, an “Expansion Site”) [Note: Same exhibit as Historic Core], unless Tenant elects not to expand the Premises to include a specific Expansion Site due to an Unforeseen Condition on such Expansion Site, all as provided in [Sections 2.2 and 2.3 of the LDDA]. The Premises may be further expanded on or prior to [____], to include additional land and Building 102, identified as Parcel E on the attached **Exhibit XX** (also an “Expansion Site”) as further provided in [Section 2.2 of the LDDA]. From and after the date each Expansion Site is added to the Premises pursuant to the LDDA, the term “Premises” shall include such Expansion Site and **Exhibit XX** will be revised to include such additional Expansion Site.

(d) **Port’s Reservation of Rights.** Without limiting Tenant’s maintenance responsibilities under **Section 11.1**, Port hereby reserves, and Tenant leases and accepts the Premises subject to, the following:

(i) Port’s right of access to the Premises to the extent required to access the Flagpoles, if any, located thereon for the placement, replacement and adjustment of flags thereon, subject to the limitations described in **Section 10.6**, or at the Port’s sole expense, to install, maintain, repair and replace any Port or City Satellite Dish, subject to the limitations described in **Section 15.3**. The foregoing notwithstanding, any interruptions or disturbance for such access purposes will be temporary only and will not unreasonably interfere with or disturb Tenant’s use of the Premises, will be subject to the reasonable security procedures adopted by Tenant and may be subject to temporary interruption in cases of emergency. Tenant may require prior written consent for flagpole access occurring during regular business hours (except in cases of emergency) and require all commercially reasonable assurances regarding the prompt restoration of any damage to persons or property caused to the roofs as a result of Port’s activities.

(ii) Port’s right to replace and/or install sign(s) and other interpretive elements within the Premises at Port’s cost once a Pier 70 district wide interpretive program is established.

(iii) Port’s right to, or cause its Agents to, maintain, repair, and replace, as necessary, utilities within the area depicted on **Exhibit XX** attached hereto [Note: area north of Bldg 101, 102 & 104], upon no less than twenty-four (24) hours notice to Tenant; provided, however, that no notice will be required in the event of an emergency, which includes, but is not limited to, utility failure; provided, further, that such maintenance, repair, and/or replacement shall be completed in a reasonable period of time. Tenant will not be entitled to any lost parking revenue during the period of such maintenance, repair, and/or replacement.

(iv) The general public’s rights to access at all times for parking purposes, the area generally north of Buildings 101, 102, and 104 and depicted on **Exhibit XX**, that are not within the Premises. [Note: Exhibit boundaries being discussed between parties]

(v) Access and use rights for emergency vehicles in the Parking Area and the Parking License Area.

(vi) Access for loading and unloading purposes for Buildings 101, 102 and 104 through the area generally north of Buildings 101, 102, and 104 and depicted on **Exhibit XX** if the applicable Expansion Sites are not added to the Premises in accordance with the LDDA.

(vii) Port's right to remove from the Premises, the areas shown on *Exhibit XX* in one or more instances upon no less than twelve (12) months prior notice to Tenant. [**Note: Reversion areas to be refined and discussed**]

(e) Permitted Title Exceptions. The interests granted by Port to Tenant pursuant to *Sections 1.1(a), 1.1(b) and 1.1(c)* are subject to (i) the matters reflected in *Exhibit XX* (the "Permitted Title Exceptions"), (ii) the rights of Port and the public reserved under the terms of this Lease, and (iii) other matters as Tenant will cause or suffer to arise subject to the terms and conditions of this Lease. [**Note: PTE should also include Building 116 ROW, utility/easement rights behind 101, 102, and 104.**]

(f) Subsurface Mineral Rights. Under the terms and conditions of Article 2 of the Burton Act, the State has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises, and specifically located in [Zone-3], California Grid System, at a point where X equals [_____] and Y equals [_____] provided that such right will not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by *Article 16*. Port will have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(g) "AS IS WITH ALL FAULTS". TENANT AGREES THAT PORT IS LEASING THE PREMISES TO TENANT, AND THE PREMISES ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, ABOVE, OR ABOUT THE PREMISES, TITLE TO THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE, OR OPERATION OF THE IMPROVEMENTS, THE COMPLIANCE OF THE PREMISES WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR ANY OTHER MATTER PERTAINING TO THE PREMISES, ANY APPURTENANCES THERETO OR THE IMPROVEMENTS.

As part of its agreement to accept the Premises in their "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port, the City, and their respective Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the development of the Improvements, the Permitted Uses, and (iii) any Laws applicable thereto, including Environmental Laws.

In connection with the foregoing release, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER

FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

Tenant agrees that the release contemplated by this *Section 1.1(g)* includes unknown claims pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the release contained in this *Section 1.1(g)*.

Tenant Initials: _____

(h) Title Defect. Port will have no liability to Tenant in the event any defect exists in Port's title to the Premises as of the Commencement Date and no such defect will be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect will be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

(i) Memorandum of Technical Corrections. The Parties reserve the right, upon mutual agreement of Port's Executive Director and Tenant, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises, and upon full execution thereof, such memoranda will be deemed to become a part of this Lease.

1.2. Relationship of Lease to LDDA. This Lease describes the rights and obligations of Tenant and Port during the Term. This Lease also will be subject to the provisions of the LDDA until the Certificate of Completion is recorded in accordance with the LDDA. Until the recording of the Certificate of Completion, the LDDA will govern the development of the Initial Improvements in the event of any inconsistency between this Lease and the LDDA. Other than the construction of the Initial Improvements, this Lease will govern the rights and obligations of the Parties with respect to the Premises in the event of any inconsistency between this Lease and the LDDA. The recordation of a Certificate of Completion will conclusively establish, for the purposes of this Lease, that all requirements of the LDDA relating to the construction and completion of the Initial Improvements have been waived or satisfied. If at such time there exist any Deferred Items, Tenant will be responsible under this Lease for completing such Deferred Items in a timely manner and in accordance with good construction and engineering practices. Port will, within thirty (30) days following satisfactory completion of the Deferred Items, release in accordance with Tenant's instructions any security, guaranty or bond held by Port pursuant to the LDDA to secure satisfactory completion of the Deferred Items. The Parties acknowledge that any and all provisions contained in the LDDA that the Parties intend to survive the recordation of a Certificate of Completion have been inserted into this Lease.

2. TERM.

The effectiveness of this Lease will commence on the date first above written (the "Commencement Date") and will expire 66 years after the Commencement Date, unless earlier terminated in accordance with the terms of this Lease (the "Expiration Date"). The period starting on the Commencement Date and ending on the Expiration Date is referred to as the "Term."

3. RENT

3.1. Tenant's Covenant to Pay Rent. During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in this *Article 3*. "Rent" means Minimum Rent, Participation Rent, Transfer Proceeds, Refinancing Proceeds, Additional Rent, and all other sums payable by Tenant to Port hereunder, including any Late Charges and interest assessed at the Default Rate.

3.2. Minimum Rent. Subject to *Section 3.3*, from and after the date that is the later of: (a) the Port Capital Repayment Date, or (b) the earlier of (i) the twentieth (20th) Anniversary

Date, or (ii) if the Developer Equity Repayment Date is earlier than the tenth (10th) Anniversary Date, the tenth (10th) anniversary of the Developer Equity Repayment Date (“**Minimum Rent Commencement Date**”) and continuing thereafter throughout the Term, Tenant will pay to Port, in advance on the first day of each calendar month during the Term, without further notice or demand and without abatement, offset, rebate, credit or deduction for any reason whatsoever, monthly installments of rent equal to one hundred percent (100%) of the amount determined by multiplying \$16,667 by a fraction, the numerator of which is the Index for the calendar month immediately preceding the Minimum Rent Commencement Date and the denominator of which is the Initial Published Index (the “**Minimum Rent**”). Minimum Rent will be further adjusted after the Minimum Rent Commencement Date in accordance with **Section 3.4**. The Minimum Rent will not be impacted by, or adjusted for, the inclusion or exclusion of any, all, or none of the Expansion Sites within the Premises.

3.3. Delay of Minimum Rent Commencement Date Due to Unforeseen Condition.

(a) **Definitions.** “**Unforeseen Condition**” means one or more physical conditions in the Initial Site or any of the Expansion Sites that cause the total anticipated Project Costs to exceed the anticipated Project Costs set forth in the Final Pro Forma, by more than \$1,000,000 (“**Unforeseen Condition Cost**”) for each of the Initial Site or applicable Expansion Site individually and not in the aggregate, but only if the physical condition(s) could not have been known or reasonably anticipated by Developer based on: (i) the information contained in the Existing Site Reports, and (ii) the due diligence that was actually conducted by Developer or should have been conducted by a developer exercising due care, taking into account Developer’s proposed use(s), the age, materials, and existing conditions of the Expansion Sites and the improvements located thereon. In no event will an Unforeseen Condition Cost include any cost overruns. **[Note: Conform with any changes to LDDA definition prior to execution of LDDA]**

(b) **Generally.** If Tenant encounters an Unforeseen Condition at, on, or under the Premises during construction of the Initial Improvements, Tenant will promptly deliver to Port notice of the same (“**Unforeseen Condition Notice**”). Tenant will submit with the Unforeseen Condition Notice, information substantiating Tenant’s determination that it has encountered an Unforeseen Condition at the applicable Initial Site or Expansion Site. Port has thirty (30) days after its receipt of the Unforeseen Condition Notice to review the information provided in the Unforeseen Condition Notice and notify Tenant whether Port agrees or disagrees with Tenant’s determination. If Port agrees with Tenant’s determination, the Parties may elect to increase the Developer Equity Cap (aka \$14 million) by an additional amount to be determined between the Parties (“**Additional Developer Equity**”). If the Additional Developer Equity would cause the Developer Equity Repayment Date to be delayed beyond the tenth (10th) Anniversary Date, then the Minimum Rent Commencement Date will be the later of (i) the twentieth (20th) Anniversary Date or (ii) the tenth (10th) anniversary of the Developer Equity Repayment Date. In addition to negotiating the amount of Additional Developer Equity, the Parties will negotiate the rate of return on the Additional Developer Equity, which rate of return will not exceed fourteen percent (14%) per annum, at simple interest.

(c) **Port’s Disagreement.** If Port disagrees with Tenant’s determination of Unforeseen Condition, then the Parties will meet to resolve their disagreement as many times as possible within thirty (30) days following Port’s delivery of its disagreement notice. If the Parties are unable to resolve their disagreement within such thirty (30) day period, then either Party may submit the matter to arbitration in accordance with the dispute Resolution procedure in **Section 3.3(d)**.

(d) **Dispute Resolution for Unforeseen Condition.** If the Parties are unable to resolve the disagreement over whether Developer encountered an Unforeseen Condition at the Premises within the time period set forth in **Section 3.3(c)**, then either party may invoke the provisions of this **Section 3.3(d)** within forty-five (45) days after such Party has made a good faith effort to resolve the disputed matter with the other Party, by delivering written notice to the

other Party. If neither Party invokes the dispute Resolution procedures set forth herein within such forty-five (45) day period, then Port's determination shall control.

(i) Within twenty (20) days after delivery of notice invoking the provisions of this Section, each Party will provide, by written notice to the other Party, a list of its three preferred arbitrators in order of descending preference along with a description of the qualifications of each such arbitrator and any past or current relationships between the arbitrator and the Party. Each proposed arbitrator must have at least ten (10) years experience in managing and developing commercial real estate projects in San Francisco, including comparable mixed use light industrial/retail/office projects. Such person must be competent, qualified by training and experience, disinterested and independent. Either Party has the right to directly contact any of the arbitrators nominated by the other Party to obtain further information about such arbitrator's qualifications or relationship to the other Party. Within thirty (30) days after delivery of the notice invoking the provisions of this Section, the two Parties will meet and mutually agree upon one arbitrator from among the six (6) nominees, attempting to select the highest-ranking nominee from either list. If they cannot agree within such time then either Party, on behalf of both, may request that appointment of an arbitrator be designated by the American Arbitration Association or similar provider of professional commercial arbitration services, from the six (6) nominees. If either Party fails to provide its list of arbitrators within such twenty (20) day period, the other Party will select the highest ranking arbitrator stated on such Party's list of three (3) nominees.

(ii) The scope of the arbitrator's decision under this Section will be limited to whether or not Developer has encountered an Unforeseen Condition at the Premises. The appointed arbitrator will make a final, written determination within twenty (20) days of appointment. The fees of the arbitrator and any court or arbitration fees (but not Attorneys' Fees and Costs or other consulting fees incurred by either Party) will be borne equally by both Parties. The determination of the arbitrator will be conclusive and binding on both Parties.

3.4. *Adjustments to Minimum Rent.*

(a) Definitions.

"**Adjustment Date**" means the fifth (5th) anniversary date of the Minimum Rent Commencement Date and each five-year anniversary date thereafter; provided, however, that if the Minimum Rent Commencement Date is other than the first day of a month, then the first Adjustment Date will be the first day of the sixty-first (61st) month thereafter.

"**Adjustment Period**" means each five-year period during the Term commencing on each Adjustment Date.

"**Current Index**" means the Index for the calendar month immediately preceding the applicable Adjustment Date or the applicable Reserve Re-Set Date.

"**Index**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the prior Adjustment Date, the Index will be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued during the Term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued; provided, however, if there is no replacement government index or computation, then Port will select another similar published index, generally reflective of increases in the cost of living, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

"**Initial Published Index**" means the Index published October, 2012.

“**Periodic 10-Year Adjustment Date**” means the 10th anniversary date of the Minimum Rent Commencement Date and each ten-year anniversary date thereafter; provided, however, that if the Minimum Rent Commencement Date is other than the first day of a month, then the first Periodic 10-Year Adjustment Date will be the first day of the one hundred twenty-first (121st) month thereafter.

“**Prior Index**” means (i) with respect to adjusting the Minimum Rent, the Index published closest (but prior) to the month five (5) years prior to the applicable Adjustment Date, provided however, for the first Adjustment Date, the used will be the Initial Published Index; and (ii) with respect to adjusting the Capital Reserve Deposit, the Index published closest (but prior) to the last Reserve Re-Set Date.

(b) 5-Year Adjustment to Minimum Rent. On each Adjustment Date, the Minimum Rent payable under this Lease will be adjusted to equal the greater of (i) the Minimum Rent in effect immediately prior to such Adjustment Date, or (ii) one hundred percent (100%) of the amount determined by multiplying the Minimum Rent in effect immediately prior to such Adjustment Date by a fraction, the numerator of which is the Current Index and the denominator of which is the Prior Index as shown below:

Current Index

$$\text{Prior Index} \quad \times \quad \text{Minimum Rent} = \text{Adjusted Minimum Rent}$$

In no event will any adjustments to Minimum Rent in accordance with this **Section 3.4(b)** (being the increase from the amount of the Minimum Rent payable for the Adjustment Period immediately prior to such Adjustment Date) exceed twenty percent (20%) of the Minimum Rent as adjusted payable for the immediately preceding Adjustment Period for each Adjustment Period thereafter.

In the event the Adjustment Date and the Periodic 10-Year Adjustment Date occurs on the same date, then Minimum Rent will be adjusted first in accordance with this **Section 3.4(b)** before calculating the adjusted Minimum Rent in accordance with **Section 3.4(c)**. The “**Minimum Rent then in effect**” referred to in **Section 3.4(c)(i)** will mean the Minimum Rent as adjusted in accordance with the immediately preceding sentence.

(c) Periodic 10-Year Adjustment to Minimum Rent. On each Periodic 10-Year Adjustment Date, the Minimum Rent payable under this Lease will be adjusted to equal the higher of (i) the Minimum Rent then in effect, or (ii) the amount obtained by adding all of the Participation Rent due for the five (5) year period immediately prior to the applicable Periodic 10-Year Adjustment Date, dividing the total by five (5), and multiplying the result by 0.6. By way of example only, if total Participation Rent due to Port for the five (5) year period immediately prior to the applicable Periodic 10-Year Adjustment Date was equal to \$5,000,000, then the adjusted annual Minimum Rent due as of the applicable Periodic 10-Year Adjustment Date would equal \$600,000.

3.5. Net Revenues and Participation Rent.

(a) Definitions.

“**Cash Flow Bonus**” is defined in **Section 3.6**.

“**Cash Flow Bonus Threshold**” is defined in **Section 3.6**.

“**Gross Revenues**” means for any calendar month or portion thereof during the Term, and determined on a cash basis, the following: all payments, revenues, fees, income, proceeds, or amounts of any kind actually received by Tenant or by any other party for the account of Tenant from any Person for any Person’s use or occupancy of any portion of the Premises, the Parking Area, or the Parking License Area or from any other sales, advertising, concessions, licensing or programming generated from the Premises, the Parking Area, or the Parking License Area, including, without limitation, all minimum rent, percentage rent, license fees, parking fees,

advertising revenues, event or promotional fees or charges and permit fees, and any and all payments made to Tenant from the Business Interruption or delayed opening insurance required to be carried by Tenant under *Section 23.1(a)(vii)*; provided, however, Port's share of any Transfer Proceeds or Refinancing Proceeds will not be treated as a part of Gross Revenues but will be treated in accordance with *Sections 20.3 and 39.7*, respectively. The following are also excluded from the calculation of Gross Revenues: insurance proceeds arising from a Casualty at the Premises (provided that if such insurance proceeds exceed the actual cost incurred by Tenant and Developer to repair and restore the Premises, then the difference will be included in the calculation of Gross Revenues), or Developer Equity.

"Net Revenues" means Gross Revenues, and 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 Statements, as applicable, less unrecovered or unrecoverable Operating Expenses, any principal reduction of indebtedness secured by a Permitted Mortgage so long as such amount has not be included in Permissible Financing Costs, and any parking tax payable to the City that is included in Gross Revenues.

"Operating Expenses" means all reasonable costs and expenses directly related to the Premises and incurred by Tenant, which in accordance with general industry practice with respect to the operation of a mixed-use industrial and commercial project located in San Francisco, California would be characterized as an operating expense, including, without limitation (i) real property taxes and assessments which payments will be amortized on a straight-line basis over the calendar year in which payments are made, (ii) utilities, (iii) salaries and wages of employees other than J.R. Orton III, provided that if any employee performs services in connection with the Premises and other buildings, costs associated with such employee may be proportionately included in Operating Expenses based on the percentage of time such employee spends in connection with the operation, maintenance and management of the Premises, (iv) advertising and marketing expenses, (v) management fees provided that if Tenant or an Affiliate manages the Premises, such fees do not exceed the prevailing market management fees for comparable third party management companies offering comparable management services in projects similar to the Premises in class, size, age and location, (vi) Capital Items, leasing commissions, and/or tenant improvements not funded out of any reserves or from Refinancing Proceeds for such, (vii) insurance premiums which payments will be amortized on a straight-line basis over the calendar year in which payments are made, (viii) debt service on Permitted Mortgages and other Permissible Financing Costs incurred in connection with any Permitted Mortgage or Refinancing, (ix) maintenance and repairs, (x) the funding of any capital, operating, leasing commission or tenant improvement reserves which deposits shall be amortized on a straight-line basis over the calendar year in which deposits are made, and (xi) from and after the Developer Equity Repayment Date until the Port Capital Repayment Date, the Monthly Capital Payments to Port.

["Tax Credit Costs" means all direct and indirect costs incurred and paid by Developer or its Affiliates in connection with any sale of Historic Preservation Tax Credits derived from the Project to tax credit investors not affiliated with Developer including, without limitation, the following: (i) accounting, legal, consulting and other professional fees paid by Developer for itself and the tax credit investors; (ii) appraisal fees, escrow fees and title policy premiums; (iii) application fees, asset management or other fees paid to or for the benefit of the tax credit investors; (iv) any amount paid to the tax credit investors to redeem their partnership or limited liability company interest(s) at a future date; and (v) all cash distributions paid to tax credit investors while they are partners or members in an entity owning or operating the Project.]

(b) Distribution of Net Revenues Prior to Developer Equity Repayment Date. From and after the Commencement Date until and including the Developer Equity Repayment Date, one hundred percent (100%) of the amount of Net Revenues Monthly Statement will be applied (i) first, against outstanding Developer Equity Return until fully paid, (ii) second, against outstanding Developer Equity and Deferred Port Transaction Costs, which shall be applied pari

passu in proportion to the respective amounts of each that remain outstanding as of the date of payment, and (iii) third, against outstanding Port Capital Contribution and Port Capital Return until fully paid. The foregoing application of Net Revenues against Outstanding Developer Equity Return, Outstanding Developer Equity, Deferred Port Transaction Costs, and outstanding Port Capital Contribution and Port Capital Return will be illustrated in each Monthly Statement. If the Annual Statement shows any Net Revenues collected for the prior calendar year were not applied against Developer Equity Return, Developer Equity, or Deferred Port Transaction Costs, as applicable, then the previously unapplied Net Revenues will be applied as of the first (1st) day of the month that such amount should have been applied against Developer Equity Return or Developer Equity, as applicable.

(c) Distribution of Net Revenues After Developer Equity Repayment Date.

From and after the Developer Equity Repayment Date and throughout the Term thereafter, subject to **Section 3.6** and so long as the Monthly Capital Payment has been paid to Port first, Tenant will pay to Port participation rent on a monthly basis equal to fifty percent (50%) of remaining Net Revenues (“**Participation Rent**”).

(d) Payment of Participation Rent.

Participation Rent will be determined by Tenant for each calendar month during the Term and is payable by the twentieth (20th) day of the following calendar month. In the event this Lease expires or terminates on a day other than the last day of a calendar month, Participation Rent for such fractional part of the calendar month preceding such expiration or termination date will be prorated to account for the partial calendar month and paid within twenty (20) days after such expiration or termination date, but if this Lease terminates as a result of a Tenant Event of Default, any amounts due hereunder is payable immediately upon termination.

3.6. Cash Flow Bonus.

“**Cash Flow Bonus**” means twenty percent (20%) of Net Revenues (less any Transfer Proceeds included in Gross Revenues or Net Revenues) in excess of the Cash Flow Bonus Threshold.

“**Cash Flow Bonus Threshold**” means the amount set forth for each calendar year in the Exhibit XX attached hereto; provided however, that the Cash Flow Threshold will be prorated to take account of any partial calendar year for the last year that Tenant is entitled to a Cash Flow Bonus. [Note: Should be depicted in the Final Pro-Forma]

“**Potential Bonus Period**” means the period from and after the second full calendar year immediately following the Commencement Date until the calendar year that includes the twenty-second (22nd) Anniversary Date.

If Tenant meets the Cash Flow Threshold by the end of each calendar year during a Potential Bonus Period, Tenant will be entitled to a Cash Flow Bonus from the Net Revenues generated from the Premises provided Tenant has satisfied all of the following conditions:

- (i) Tenant has complied with the Equal Opportunity Program in connection with the development of the Project and as certified by [insert City agency];
- (ii) All outstanding Developer Equity Return has been fully repaid;
- (iii) All outstanding Developer Equity has been fully repaid;
- (iv) All outstanding Deferred Port Transaction Costs have been fully repaid;
- (v) Net Revenues exceed the Cash Flow Bonus Threshold; and
- (vi) There is no uncured or outstanding Tenant Event of Default or Unmatured Tenant Event of Default.

If Tenant is eligible to receive a Cash Flow Bonus in any given calendar year during the Potential Bonus Period, the amount of the Cash Flow Bonus will be applied to Tenant's account in accordance with this Section. Tenant will include (i) in each Monthly Statement, Tenant's estimate of the amount of Cash Flow Bonus it will be entitled to at the end of the applicable calendar year, and (ii) in each Annual Statement, the actual amount of Cash Flow Bonus Tenant is entitled to for the applicable calendar year, accompanied by documentation to support its position. Subject to Port receiving the Annual Net Revenue Statement in accordance and in compliance with **Section 3.9(b)** and Port's approval of the same, Tenant will be entitled to a Cash Flow Bonus set forth in such Annual Net Revenue Statement. Following Port's approval of the applicable Annual Net Revenue Statement, the Cash Flow Bonus earned by Tenant will be deducted from Net Revenues immediately prior to calculating the Participation Rent due to Port and applied to Tenant's account in subsequent Monthly Statements until fully applied. In no event will the amount of Net Revenues or the Cash Flow Bonus Threshold used to calculate Cash Flow Bonus include any Transfer Proceeds, Net Transfer Proceeds, or collection of previously outstanding dues, rent, fees, or any other charges due Tenant unless such amount was due and payable during the same calendar year of the applicable Cash Flow Bonus Threshold.

3.7. Port Participation in Transfer Proceeds.

(a) Definitions.

"Cash Consideration" means (i) cash, or (ii) cash equivalents.

"Costs of Transfer" means only the following costs incurred by Tenant in connection with a Transfer: (i) brokerage commissions paid to licensed real estate brokers (provided, however, that in the case of brokerage commissions paid to Affiliate brokers, such commissions must be commercially reasonable), (ii) finder's fees (provided that in the case of finder's fees to Affiliates, such finder's fees must be commercially reasonable), (iii) reasonable and customary closing fees and costs including title insurance premiums, survey fees, recording fees, and transfer taxes, (iv) reasonable advertising and marketing costs, and (v) reasonable Attorneys' Fees and Costs. Costs of Transfer exclude adjustments to reflect prorations of rents, taxes or other items of income or expense customarily prorated in connection with sales of real property.

"Non-Cash Consideration" means consideration received by Tenant in connection with a Transfer that is not Cash Consideration.

"Transfer Proceeds" means all consideration received by or for the account of Tenant in connection with a Transfer of this Lease or Leasehold Estate or portion of the Leasehold Estate, including Cash Consideration, the principal amount of any loan made by Tenant to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price.

(b) Distribution of, and Port's Participation in, Transfer Proceeds of Initial Tenant. Transfer Proceeds from the first Transfer by the initial Tenant, Historic Pier 70, LLC, will be distributed in the following order:

(i) First, to pay down the outstanding principal amount of outstanding indebtedness secured by a Permitted Mortgage, if any, including any associated fees and prepayment and defeasance costs;

(ii) Second, to pay Port's Attorneys' Fees and Costs associated with Port's review of the Transfer;

(iii) Third, to pay Costs of Transfer;

(iv) Fourth, to pay down any outstanding amount of Developer Equity Return, if any;

(v) Fifth, to pay down any outstanding amount of Developer Equity, if any;

- (vi) Sixth, to pay down the amount of outstanding Deferred Port Transaction Costs, if any;
- (vii) Seventh, to pay down any outstanding amount of Port Capital Return, if any;
- (viii) Eighth, to pay down any outstanding amount of Port Capital Return, if any;
- (ix) Ninth, to Port ten percent (10%) of the amount of Transfer Proceeds remaining after deducting the foregoing items 3.7(b)(i) through and including 3.7(b)(v); and
- (x) Tenth, the remainder to Tenant.

An example of this calculation is shown on [Exhibit XX] attached hereto.

(c) Distribution of, and Port's Participation in, Transfer Proceeds by Subsequent Tenants. Transfer Proceeds from and after the second Transfer will be distributed in the following order:

- (i) First, to pay down the outstanding principal amount of existing debt secured by a Permitted Mortgage to finance the construction of the Project, if any, including any associated fees and prepayment and defeasance costs;
- (ii) Second, to pay Port's Attorneys' Fees and Costs associated with Port's review of the Transfer;
- (iii) Third, to pay Costs of Transfer;
- (iv) Fourth, to Port ten percent (10%) of the amount of Transfer Proceeds remaining after deducting the foregoing items 3.7(c)(i) through and including 3.7(c)(iii); and
- (v) Fifth, the remainder to Tenant.

An example of this calculation is shown on [Exhibit XX] attached hereto.

(d) Reporting of Transfer Proceeds. No less than fifteen (15) days prior to a Transfer, Tenant will deliver to Port an estimated closing statement that includes the best estimate of the following items:

- (i) Estimated Transfer Proceeds;
- (ii) Estimated Costs of Transfer;
- (iii) The amount of any outstanding principal of any debt secured by a Permitted Mortgage, if any, to be paid from the Transfer Proceeds;
- (iv) The amount of any outstanding Developer Equity Return, if any, to be paid from the Transfer Proceeds;
- (v) The amount of any outstanding Developer Equity, if any, to be paid from the Transfer Proceeds;
- (vi) The amount of outstanding Deferred Port Transaction Costs, if any, to be paid from the Transfer Proceeds;
- (vii) The amount of any outstanding Port Capital Return, if any, to be paid from the Transfer Proceeds;
- (viii) The amount of any outstanding Port Capital Contribution, if any, to be paid from the Transfer Proceeds; and

(ix) The calculation of Port's share of Transfer Proceeds in accordance with *Sections 3.7(b)* or *3.7(c)*, as applicable.

(e) Manner of Payment. The estimated closing statement will be updated as of the date of closing of the Transfer to show the actual (i) Costs of Transfer, (ii) Transfer Proceeds and Port's share thereof, and (iii) amounts, if any, paid from Transfer Proceeds for items *3.7(d)(iii)* through and including *3.7(d)(v)*. If escrow is opened for the Transfer, then Port's share of the Transfer Proceeds will be distributed through escrow. If no escrow is opened for the transfer, Port's share of the Transfer Proceeds will be paid upon the closing of any such Transfer. Port may reference in any estoppel certificate or other representation requested from Port that payment of Port's share of Transfer Proceeds is a material obligation under the Lease, due and owing upon the closing of any Transfer hereunder, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of Transfer Proceeds. Within forty-five (45) days after any such Transfer, transferor Tenant will submit to Port a statement prepared in accordance with sound accounting principles consistently applied, and certified by Tenant's chief executive officer or chief financial officer (or equivalent position), as complete and correct in all material respects, confirming the actual amount of Transfer Proceeds received, the Costs of Transfer, any of the foregoing items *3.7(d)(iii)* through and including *3.7(d)(v)* paid from Transfer Proceeds, and the amount of Transfer Proceeds due to Port. At Port's option, any overpayments may be either refunded to transferor Tenant or applied to any other amount then due and unpaid. Tenant will accompany the statement of Transfer Proceeds with the amount of any underpayments. The statements delivered to Port under this Section are subject to the audit provisions of *Section 3.12* for determination of the accuracy of Tenant's reporting of the Port's share of Transfer Proceeds.

(f) Survival. The provisions of this *Section 3.7* will survive the earlier termination or expiration of this Lease. Additionally, any release by Port of Tenant's obligations under this Lease in connection with any Transfer is conditioned on Port's receipt of Port's share of Transfer Proceeds.

3.8. Port Participation in Refinancing Proceeds .

(a) Definitions.

"Net Refinancing Proceeds" means all Refinancing Proceeds after subtracting the following items, as applicable, in the following order of priority:

(i) First, to pay all actual lenders' costs of such Refinancing paid by Tenant including application fees, closing costs, points and other customary lenders' fees such as lenders' Attorneys' Fees and Costs and title insurance costs paid at close of escrow for such Refinancing;

(ii) Second, to pay down the amount of outstanding indebtedness secured by the Permitted Mortgage by an amount desired by Tenant or required by any lender; provided, however, with respect the SSLP Loan, the amount to pay down all or any portion of the outstanding SSLP Loan will be an amount agreed to between the Parties or required by MOHCD;

(iii) Third, to pay down the amount of outstanding indebtedness for the seismic loan provided by the City and secured by a Permitted Mortgage, if any, by an amount agreed to between the Parties;

(iv) Fourth, to pay Port's Attorneys' Fees and Costs associated with Port's review of the Refinancing;

(v) Fifth, to pay Tenant's Attorneys' Fees and Costs associated with the Refinancing;

- (vi) Sixth, if any of the Refinancing Proceeds are to be used for Operating Expenses or Capital Items, then the amount of the Refinancing Proceeds allocated for such Operating Expenses or Capital Items, as applicable;
- (vii) Seventh, to pay down the amount of outstanding Developer Equity Return;
- (viii) Eighth, to pay down the amount of outstanding Developer Equity, if any;
- (ix) Ninth, to pay down the amount of outstanding Deferred Port Transaction Costs, if any;
- (x) Tenth, to pay down any outstanding amount of Port Capital Return, if any; and
- (xi) Eleventh, to pay down any outstanding amount of Port Capital Return, if any.

“**Refinancing**” means any debt financing (other than the debt financing for the design and construction of the Initial Improvements), refinancing or replacement of existing debt secured by a Permitted Mortgage, including any permanent take-out financing for financing the construction of the Initial Improvements.

“**Refinancing Proceeds**” means all sums actually disbursed by a Bona Fide Institutional Lender in connection with a Refinancing.

(b) Port’s Participation. Tenant and all subsequent assignees will pay to Port from each Refinancing that occurs during the Term, fifty percent (50%) (“**Port’s Share**”) of Net Refinancing Proceeds.

An example of the calculation and payment of Net Refinancing Proceeds as set forth in this **Section 3.8** is shown on **Exhibit [XX]** attached hereto.

(c) Reporting of Refinancing Proceeds. No less than fifteen (15) days prior to the close of escrow for each Refinancing Tenant will deliver to Port, an estimated closing statement that includes the best estimate of the following items:

- (i) Gross proceeds from Refinancing;
- (ii) The estimated Net Refinancing Proceeds including a separate line item for each of the costs permitted to be deducted from the gross proceeds from the Refinancing, as applicable to arrive at Net Refinancing Proceeds; and
- (iii) The estimated Net Refinancing Proceeds allocated to Port and Tenant.

(d) Manner of Payment. The estimated closing statement will be updated as of the date for close of escrow under the Refinancing to show the actual (i) gross proceeds from the Refinancing (ii) Net Refinancing Proceeds and Port’s Share thereof, as applicable, and (iii) with respect to any Refinancing, line item description of the deductions and exclusions from Refinancing Proceeds to arrive at Net Refinancing Proceeds. Tenant will pay Port from the close of escrow of any Refinancing, Port’s Share of the Net Refinancing Proceeds. Port may reference in any estoppel certificate or other representation requested from Port by a Mortgage lender, that payment of Port of Port’s Share of Net Refinancing Proceeds is a material obligation under the Lease, due and owing at close of escrow of any Refinancing hereunder, provided, however, failure to reference such obligation will in no way negate Tenant’s obligation to pay, and Port’s right to receive, Port’s Share of Net Refinancing Proceeds. Within forty-five days (45) after any Refinancing, Tenant will submit to Port a statement, prepared in accordance with sound accounting principles consistently applied, and certified by Tenant’s chief executive officer or chief financial officer (or equivalent position) as complete and correct in all material respects,

confirming the actual amount of Refinancing Proceeds, disbursed, permitted deductions made from such proceeds, and the amount of Net Refinancing Proceeds due to Port and actually paid to Port. At Port's option, any overpayments shall be either refunded to Tenant, applied to any other amount then due and unpaid, or credited against Rent due. Tenant will accompany the statement of Net Refinancing Proceeds with the amount of any underpayments. The statements delivered to Port under this **Section 3.8(d)** will be subject to the audit provisions of **Section 3.12** for determination of the accuracy of Tenant's reporting of Net Refinancing Proceeds.

(e) **Survival.** The provisions of this **Section 3.8** will survive the earlier termination or expiration of this Lease.

3.9. Reporting of Gross Revenues, Net Revenues, Participation Rent, Transfer Proceeds, and Refinancing Proceeds; Application Against Developer Equity Return and Developer Equity.

(a) **Monthly Statement.** From and after the first Project Cost Cut-Off Date, Tenant will furnish to Port by the twentieth (20th) day of each calendar month, a complete statement setting forth in reasonable detail for the immediately preceding calendar month: (i) its Gross Revenues and Net Revenues for such immediately preceding calendar month for each of the Initial Site and the Expansion Sites, if any, and the Premises as a whole, including an itemized list of any and all deductions or exclusions from Gross Revenues to arrive at Net Revenues, (ii) Transfer Proceeds, if any, (iii) Refinancing Proceeds, if any, (iv) until the Developer Equity Repayment Date, (x) the amounts, if any, of Net Revenues applied against Developer Equity Return and Developer Equity, for the immediately preceding calendar month, (y) the anticipated Developer Equity Repayment Date, (v) during the Potential Bonus Period, its estimate of the amount of Cash Flow Bonus that will be deducted from Net Revenues at the end of the applicable calendar year, and (vi) from and after the Developer Equity Repayment Date, a computation of the Participation Rent for the immediately preceding calendar month, if any (the "Monthly Statement"). An example of the Monthly Statement is attached hereto as **Exhibit XX**. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Monthly Statement must certify each Monthly Statement as accurate, complete and current. If Port receives Participation Rent payment but does not concurrently receive the applicable Monthly Statement, such failure, until cured, will be treated as a late payment of Participation Rent, subject to a Late Charge. Additionally, if Tenant fails to deliver any Monthly Statement within the time period set forth in this **Section 3.9** (irrespective of whether any Participation Rent is actually paid or payable by Tenant to Port) and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port has the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to determine the amount of Gross Revenues and Net Revenues generated for the period in question and Participation Rent due to Port for the period in question. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant must promptly pay to Port the total cost of the examination, and if applicable, together with the full amount of Participation Rent due and payable for the period in question, including any Late Charge.

(b) **Annual Statement.** Application of Net Revenues against Developer Equity Return or Developer Equity, as applicable, Cash Flow Bonus (during the Potential Bonus Period only), and Percentage Rent shall be adjusted at the end of each calendar year and following expiration of the Term in accordance with this **Section 3.9(b)**. Within ninety (90) days after the expiration of each calendar year and the expiration of the Term, Tenant will deliver to Port audited financial statements of Tenant, including an audited supplementary schedule of Net Revenues applied against Developer Equity Return and Developer Equity, if any, Cash Flow Bonus (during the Potential Bonus Period only), and Percentage Rent for such calendar year, which will be prepared at Tenant's sole cost and expense by such certified public accounting firm as the Port may agree from time to time in its reasonable discretion, and will be prepared in

accordance with the terms of this Lease and otherwise upon sound accounting principles consistently applied. The required supplementary schedule will show all of the matters as set forth in **Section 3.9** (“**Annual Statement**”), except that such Annual Statement shall be based on the entire calendar year instead of a single calendar year month, and will also indicate the amount of any (i) over application or under application of Net Revenues against Developer Equity Return or Developer Equity, (ii) during the Potential Bonus Period only, overpayment or underpayment of Cash Flow Bonus for such calendar year, or (iii) overpayment or underpayment of Percentage Rent for such calendar year. Such Annual Statement will be in reasonable detail sufficient for such accounting firm to issue an opinion that said statements and supplementary schedule fairly and accurately reflect the terms and provisions of this Lease. At Port’s option, overpayments may be either refunded to Tenant, applied to any other amount then due and unpaid, or applied to Minimum Rent due at the first opportunity during the new calendar year. Until the Developer Equity Repayment Date, one hundred percent of the underpayment will be applied against Developer Equity Return first, if any, then Developer Equity. From and after the Developer Equity Repayment Date, Tenant shall accompany the statement of the Annual Statement with payment for the amount of any underpayments.

3.10. Project Cost Statements. Until the Developer Equity Repayment Date, Tenant will accompany each Monthly Statement with the Monthly Project Cost Statement and each Annual Statement with the Annual Project Cost Statement. [**Note: Port to identify preferred version of samples provided by ODI**]

3.11. Books and Records. Tenant will keep books and records in accordance with sound accounting principles or such other industry standard consistently applied. “**Books and Records**” means all of Tenant’s (or other person’s) books, records, and accounting reports or statements relating to this Lease (and with respect to Tenant Affiliates subleasing all or a portion of the Premises, the Books and Records of such Tenant Affiliates’ relating to the applicable sublease and the operation and maintenance of such subleased premises), Total Project Cost, the operation and maintenance of the Premises, Gross Revenues, Operating Expenses, Participation Rent, Transfer Proceeds, Costs of Transfer, Refinancing Proceeds, Net Refinancing Proceeds, deductions and exclusions from Refinancing Proceeds, Gross Revenues, Net Revenues, deductions and exclusions from Gross Revenues, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, closing and escrow statements, and any other bookkeeping documents used in business operations for the Premises. Tenant will maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises, from the Transfer of this Lease, or from any re-financings. If Tenant operates all or any portion of the Premises through a Subtenant or Agent, Tenant will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

3.12. Audit. Tenant agrees to make (i) its Books and Records, (ii) if Tenant operates all or a portion of the Premises through a Subtenant or Agent, the Books and Records of any such Subtenant or Agent, and (iii) to the extent within Tenant’s control, the Books and Records of any other person relating to the matters identified in **Section 3.11** available to Port, or to any accountant employed or retained by Port or the City who is competent to examine and audit the Books and Records (hereinafter collectively referred to as “**Port Representative**”), for the purpose of examining said Books and Records to determine the accuracy of Tenant’s reporting of Total Project Cost, Gross Revenues, Operating Expenses, Net Revenues, Transfer Proceeds, or Refinancing Proceeds, as applicable, for a period of five (5) years after the applicable report was delivered to Port. Tenant will reasonably cooperate with Port Representative during the course of any audit; provided however, once commenced, such audit will be diligently pursued to completion by Port within a reasonable time of its commencement. If an audit has commenced and Port claims that errors or omissions have occurred, Tenant will retain the Books and Records and make them available until those matters are resolved. If Tenant operates the Premises

through a Subtenant or Agent, Tenant will require such Subtenant or Agent to provide Port with the foregoing audit right with respect to the books and records of such Subtenant or Agent.

If an audit reveals that Tenant has understated its Net Revenues, Transfer Proceeds, or Refinancing Proceeds, as applicable, for said audit period, Tenant will pay Port, within fifteen (15) days after receipt of such audit results, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Default Rate. If Tenant understates its Net Revenues, Port's share of Transfer Proceeds, or Net Refinancing Proceeds, as applicable, for any audit period by five percent (5%) or more of Tenant's understated amount, Tenant will pay Port's cost of the audit. Any overpayments revealed by an audit will be credited towards Rent payments due subsequent to the audit until credited in full.

The provisions of this *Section 3.12* shall survive the expiration or earlier termination of this Lease.

3.13. *Manner of Payment.* Tenant will pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by notice to Tenant. Minimum Rent, Participation Rent, and Port's share of Transfer Proceeds and Net Refinancing Proceeds are payable without prior notice or demand. Rent is due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "**upon demand**," "promptly following notice," "**upon receipt of invoice**," or the like, then such Additional Rent is due thirty (30) days following the giving by Port and the receipt by Tenant of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

3.14. *No Abatement or Setoff.* Tenant will pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, credit, deduction, or counterclaim.

3.15. *Interest on Delinquent Rent.* If any installment of Minimum Rent or Participation Rent or Port's share of Transfer Proceeds or Net Refinancing Proceeds is not paid within five (5) days following the date such amount is due, or if any Additional Rent is not paid within thirty (30) days following written demand for payment of such Additional Rent, such unpaid amount will bear interest from the date due until paid at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due (the "**Default Rate**"). However, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Tenant.

3.16. *Late Charges.* Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant's failure to provide the Participation Rent Statement to Port, will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in a Tenant Event of Default, Tenant will pay a late charge (the "**Late Charge**") equal to the higher of (a) five percent (5%) of all Rent or any portion thereof which remains unpaid more than five (5) days following the date it is due (or with respect to a failure by Tenant to deliver the Participation Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Participation Rent due for the subject period of the Participation Rent Statement), or (b) one hundred Dollars (\$100). The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant.

3.17. *Net Lease.* It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties

is Port 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. Without limiting the foregoing, Tenant is 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, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any 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 will not affect or impair any right or remedy expressly provided Tenant under this Lease.

4. USES

Tenant will use and operate the Premises in accordance with this Lease, Laws, and if applicable, as further required or permitted in any State Lands Executive Officer Determination. Tenant will not allow any changes or additions to the Permitted Uses, or changes in its use or operation of the Premises that would be inconsistent with this Lease, applicable Law, or if applicable, any State Lands Executive Officer Determination, without the prior written consent of the Port Commission approval by Resolution of the Port Commission.

4.1. Permitted Uses. Tenant will use the Premises for the following uses and for no other use without the prior written approval of Port, not to be unreasonably withheld ("Permitted Uses"), which Permitted Uses may include:

(a) Building 101: general office use, cafeteria, restaurant, showroom, PDR, arts and arts production, research, development, design, or industrial kitchen use, and residential use of an existing penthouse residential unit located on the top floor, and related permitted ancillary uses only, including ancillary retail and storage.

(b) Building 104: general office or medical office use, showroom, PDR, arts and arts production, research, development, design and related ancillary uses only, including ancillary food production, retail, and storage.

(c) Building 102: restaurant or commercial uses, food production, industrial kitchen use, showroom, or office uses only, with permitted ancillary uses.

(d) Buildings 113, 114, 115, 116 and 14: Design, production (which may include any non-office uses that integrate multimedia, information technology, or software development functions), light manufacturing, research, recreation, education, life science, warehousing, manufacturing, industrial kitchen and food production, and arts-related activities and related ancillary uses, including ancillary office, showroom, and retail.

(e) The Atrium and Plaza as more particularly shown on *Exhibit XX*. Public and private events, food service, loading, placement of containers (but only in the Plaza), and retail, all in accordance with the terms and conditions set forth in *Exhibit XX* attached hereto.

(f) A project office for Tenant's use may be located within any one of the Buildings on the Premises.

4.2. Prohibited Uses within the Premises. Tenant will not conduct or permit on the Premises any of the following activities ("Prohibited Uses"):

(a) Any activity, or the maintaining of any object, which is not within or consistent with the Permitted Uses or otherwise previously approved by Port;

(b) Subject to *Section 4.1(e)*, any activity, or the maintaining of any object, which would restrict pedestrian flow through the Public Access Areas or open space areas adjacent to the Premises, or unreasonably interfere or impede the use of such areas by the public, Port, or other Port tenant, licensee, or other user.

(c) Any activity, or the maintaining of any object, which will 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 and such activity or maintenance of such object is not insured by Tenant pursuant to *Article 23*;

(d) Any activity which constitutes waste or nuisance (including the preparation, manufacture or mixing of anything that emits any objectionable odors, noises or lights onto adjacent properties), any use of loudspeakers or sound apparatus which can be heard or seen outside the Premises that exceed levels permitted under the Noise Ordinance, or any use of light apparatus (excluding interior and exterior building lighting and lighting along pathways in outdoor Public Access Areas) which can be seen outside the Premises, except as permitted for special events;

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

(f) Any use of the Premises for residential, sleeping or personal living quarters and/or “Live/Work” space, except as permitted in *Section 4.1(a)*;

(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) Any vehicle and equipment maintenance, including fueling, changing oil, transmission or other automotive fluids;

(i) The storage of any and all excavated materials, including dirt, concrete, sand, asphalt, and pipes;

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

(k) The washing or rinsing of any vehicles or equipment; and

(l) The operation of any private membership clubs or private eating or drinking establishments requiring nominations or recommendations for membership.

(m) In the event Port determines after inspection of the Premises that Prohibited Uses are occurring on the Premises, then Tenant must immediately cease the Prohibited Use and pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00), as Indexed, 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 must pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00), as Indexed, 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 is in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

(n) By placing their initials below, each Party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

Initials: _____ Port _____ Tenant

4.3. Restrictions on Encumbering Port's Reversionary Interest. Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port's reversionary interest in the Premises, or obtain changes in applicable land use laws or conditional use authorizations or other permits for any uses not provided for hereunder, in each instance without Port's prior written consent, which consent may be withheld in Port's sole discretion, and subject to the provisions of *Article 9*. The parties recognize that for Tenant to carry out the Permitted Uses, it may be necessary or desirable to obtain additional use, zoning, regulatory or land use approvals or conditional use authorization relating to the Premises. Port agrees, from time to time, to reasonably cooperate with Tenant, at no out of pocket cost to Port, in pursuing such aforementioned regulatory approvals or authorizations, including, but not limited to, executing documents, applications or petitions relating thereto, subject to the limitations of *Section 9.2*.

4.4. Signs. Tenant does not have the right to place, construct or maintain any Sign on the exterior of any Buildings within the Premises without Port's prior written consent. All Signs must comply with all Laws, Port's Sign Guidelines attached hereto as *Exhibit XX* and building permit requirements. The design, fabrication, installation, maintenance, repair, replacement, and removal of all Signs installed on and off the Premises, will be at Tenant's sole cost and expense. Tenant will promptly remove Signs that are not in compliance with this *Section 4.4* and at the expiration or earlier termination of this Lease.

4.5. Required Public Access Areas. Tenant must maintain throughout the Term, dedicated public access areas within the Premises, including areas within the Buildings where non-Public Trust uses are contemplated, to permit the public to view the interior and exterior historic architectural amenities, the Historic Fabric, and other amenities to educate the public about such Historic Building and its contribution to maritime history (collectively, "Public Access Areas"). Tenant must maintain the Public Access Areas in accordance with, and in compliance with, this Lease, any State Lands Executive Officer Determination, or as required by any other Regulatory Approval.

5. PARKING.

5.1. Surface Parking Spaces Within and Adjacent to Premises.

(a) Surface Parking Spaces Within Premises. The Expansion Sites identified as Parcel D (Buildings 122, 104, and 123) and Parcel E (Building 102) include parking for [____] and [____] cars, respectively, as further shown on *Exhibit XX* attached hereto (the "Parking Area"). Tenant will have exclusive use of the parking spaces within each Expansion Site that forms a part of the Premises for itself and its Agents, Invitees and Subtenants, which parking spaces may be assigned and reserved for specific persons as Tenant shall determine in its sole discretion; provided, however, the Parking Area must always provide and allow for emergency vehicular access and vehicular access to the users of the parking spaces within the Parking Area that are not part of the Premises; provided further, Tenant must charge prevailing market rate for each parking space on either a daily, weekly, or monthly rate, and the term of any agreement for use of the parking space must not exceed one (1) year. Tenant agrees and acknowledges that Port has no obligation, responsibility, or liability to maintain or repair the Parking Area or to remove vehicles parked in the Parking Area, other than vehicles owned or operated by Port.

(b) Surface Parking Spaces Adjacent to Premises. Within [XX] days following the expansion of the Premises to include the Expansion Site identified as Parcel D, the Parties will enter into a separate license agreement on Port's standard license agreement (the "Parking License"), to permit Tenant to use for parking, the area immediately north of the Parking

Area and as shown on *Exhibit XX* attached hereto (the “**Parking License Area**”). If the Premises are not expanded to include the Expansion Site identified as Parcel E, then at Port’s option, the Parking License Area may be expanded at any time to include the area immediately north of Building 102. The Parking License will permit Tenant to use the Parking License Area for parking of passenger vehicles for itself and its Agents, Invitees and Subtenants, which parking spaces within such Parking License Area may be assigned to and reserved for specific persons as Tenant shall determine in its sole discretion; provided, however, the License Parking Area must always provide and allow for emergency vehicular access and vehicular access to the users of the parking spaces within the Parking Area that are not part of the Premises; provided further, Tenant must charge prevailing market rate for each parking space within the Parking License Area on either a daily, weekly, or monthly rate, and the term of any agreement for use of the parking space must not exceed one (1) year. Tenant agrees and acknowledges that Port has no obligation, responsibility, or liability to maintain or repair the Parking Area or to remove vehicles parked in the Parking Area, other than vehicles owned or operated by Port. Port will have the right to terminate all or any portion of the Parking License Area upon no less than twelve (12) months notice to Tenant, provided, however, Port will cause its parking operator to provide Tenant with the same number of parking spaces terminated in either or both of the surface parking lots or Port parking structure pursuant to the parking operator’s standard parking agreement. If Tenant fails to enter into such agreement with Port’s parking operator within six (6) months after such spaces are made available to Tenant, then Port and its parking operator will have no liability if all or any of such parking spaces are no longer available for use by Tenant or any of its Agents, Subtenants, or Invitees; provided however, if Tenant or any of its Agents or Subtenants, as applicable, wish to reserve on a non-exclusive basis, any of such spaces, then Tenant, its Agents or Subtenants, as applicable, will have priority over any other user on a waiting list for such parking spaces.

(c) Access to the Parking Area and the Parking License Area will be through Georgia Street only. Tenant will be solely responsible for paving, re-paving, striping and re-striping, as necessary, the Parking Area and the License Parking, to enable the Parking Area to be used for surface parking. Additionally, if Tenant elects not to use the Parking Area for surface parking, other than as set forth in *Section 5.2*, Port has no obligation to provide Tenant rights to any additional parking spaces.

5.2. Port Surface Parking Lot(s) Outside Premises; Potential Port Parking Structure.

(a) Port Surface Parking Lot(s) Outside Premises. On or prior to the date a final Certificate of Occupancy for the Initial Site is issued by Port until commencement of construction of a Port parking structure described in *Section 5.2(b)*, Port will have operational, one or more surface parking lots at Pier 70. The surface parking lots will be outside the Premises, available to the general public on a first-come, first-served basis and operated by Port’s parking operators. Provided Tenant enters into the Port parking operator’s standard form agreement for use of parking spaces within six (6) months following the date such spaces are available for use by the general public (“**Parking Space Offering Period**”), Port will cause its parking operator to make two hundred ten (210) non-exclusive surface parking spaces outside the Premises available at market rate to Tenant (“**Minimum Surface Parking Spaces**”). The Minimum Surface Parking Spaces may be allocated in one parking lot or in a number of parking lots, as determined by Port in its sole and absolute discretion.

Tenant agrees and acknowledges that Port’s obligation hereunder extend only to making the Minimum Surface Parking Spaces available to Tenant through Port’s parking operator(s), but that Port’s obligations do not extend to protecting Tenant against termination of any of its parking rights caused as a result of one or more defaults by Tenant or its Agents, Subtenants, or Invitees under a separate agreement with the parking operator(s). Additionally, if Tenant fails to enter into a written agreement for use of all or any of the Minimum Surface Parking Spaces within the Parking Space Offering Period, then Port and its parking operator(s) will have no

liability if the Minimum Surface Parking Spaces are no longer available for use by Tenant or any of its Agents, Subtenants, or Invitees; provided however, if Tenant or any of its Agents or Subtenants, as applicable, wish to reserve on a non-exclusive basis, any of such spaces after the Parking Space Offering Period, then Tenant, its Agents or Subtenants, as applicable, will have priority over any other user on a waiting list for up to the Minimum Surface Parking Spaces.

Tenant agrees and acknowledges that any or all of the surface parking lot(s) may be developed at any time during the Term. Accordingly, the location of any or all of the Minimum Surface Parking Spaces may be moved, relocated, removed, or reduced at any time upon no less than thirty (30) days notice to Tenant from Port or its parking operator. Additionally, Tenant agrees and acknowledges that if Port elects to develop a multi-story parking structure somewhere within Pier 70, there is potential for loss of any or all of the Minimum Surface Parking Spaces during construction of such parking structure.

(b) **Potential Port Parking Structure.** If Port elects, in its sole discretion, to develop a multi-story parking structure somewhere within Pier 70 at any time during the Term, Port will notify Tenant of Port's election to develop such parking structure ("**Parking Structure Notice**"). Tenant may secure up to 270 parking spaces in such parking structure if Tenant pays for its equitable share of the cost to design, permit, and construct such parking structure (the "**Tenant's Share**"). Tenant will have [XX] days after Tenant's receipt of the Parking Structure Notice to notify Port of Tenant's election to pay Tenant's Share. If Port does not receive notice from Tenant of its election to pay Tenant's Share within such [XX] day period or Tenant notifies Port that Tenant will not pay Tenant's Share, then Tenant will no longer have any rights to secure any parking spaces in the parking structure or any other parking structure that may be developed by Port at Pier 70. If Tenant elects to pay Tenant's Share, the terms and conditions relating to such obligation will be set forth in a separate agreement negotiated between the Parties. Additionally, irrespective of whether Tenant secures any spaces in any parking structure, the parking spaces in such parking structure will be available at market rates.

6. PORT AND CITY PROJECTS; PIER 70 DEVELOPMENT.

6.1. Generally. Tenant acknowledges that during the Term, development may occur at the following locations near the waterfront, in addition to the areas described in **Section 6.2**: various development parcels in Mission Bay, Seawall Lot 337, America's Cup events, Seawall Lot 330, Piers 30-32, and other Port locations (collectively, "**City Projects**"). Tenant is aware that construction of the City Projects and other construction projects of Port tenants, licensees or occupants within or in the vicinity of the Premises and the activities associated with such construction may generate adverse impacts on construction of the Initial Improvements or any Subsequent Construction, use and/or operation of the Premises after construction, or may result in inconvenience to or disturbance of Tenant and its Agents and Invitees. Impacts may include increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions (collectively, "**Construction Impacts**"). Tenant hereby waives any and all Losses against the Indemnified Parties arising out of any inconvenience or disturbance to Tenant, its Agents or Invitees, from Construction Impacts. The Parties will each use reasonable efforts to coordinate its construction efforts with each other and with others engaged in construction on such other projects in a manner that will seek, to the extent reasonably possible, to reduce construction conflicts.

6.2. Pier 70 Development. Tenant acknowledges that the Port Commission endorsed the vision, goals, objectives, and design criteria of the Pier 70 Master Plan. A brief description of the some of the planned development in Pier 70 is as follows, all of which will create Construction Impacts:

(a) **Pier 70 "cove" and "hill" sites.** The Pier 70 Master Plan identifies development opportunities to the west of the Premises (site at south west corner of 20th Street and Illinois Street) and to the north of the Premises. Development of these sites will impede views from the Premises. Prior to finalizing any plans that would materially impact views from

the Premises, Port will provide Developer with copies of the proposed plans and provide Developer opportunity to comment on, and to participate in planning meetings for, the same. If Port reasonably believes it to be necessary, Port shall also commission a preservation architect to analyze the impact of any related new development at the “Cove” and “Hill” sites on the Historic Core.

(b) New 21st Street and Michigan Street. Changes to streets adjacent to the Premises.

(c) New 19th Street. Proposed extension of 19th Street east from Illinois Street that will accommodate heavy truck traffic for the ship repair facility and connect to the reopened Georgia Street.

(d) Crane Cove Park. North of the planned 19th Street extension, Port anticipates commencing and completing construction of Crane Cove Park during the Term of this Lease.

(e) Louisiana Street. At any time during the Lease term, Port will explore alternate permanent configurations, redesign, or path of travel, of or on Louisiana Street, including a one way southbound twenty (20) foot path of travel that would continue to allow truck and emergency vehicle access to the Atrium/Plaza, and may construct an alternate permanent configuration, redesign, or path of travel, of or on Louisiana Street so long as such alternate configuration does not have a materially adverse impact on vehicular circulation and vehicular loading and unloading within the Premises. [Query: Do vehicles need access to the Atrium? If not, should delete reference to Atrium.]

(f) Waterfront Site. Port and Forest City entered into an exclusive negotiation agreement and anticipate entering into a lease and other agreements for the Waterfront Site at some point during the Term of this Lease (collectively, the “**Forest City Agreements**”). The Forest City Agreements will, among other things, permit the construction of new public open space and parks, construction of new buildings, and historic rehabilitation, which construction will take place throughout the term of this Lease. The Waterfront Site is immediately adjacent to certain portions of the Premises and is generally to the east and south of the Premises.

(g) Tenant agrees and acknowledges that it will cooperate with Port, the tenant or operator of the ship repair facility, Forest City, and any future tenants or occupants of Pier 70 (collectively, the “**Pier 70 Parties**”) in the implementation of the Pier 70 Master Plan, which includes the construction of the Waterfront Site and Crane Cove Park. In the event any main electrical lines constructed after the Closing Date by the Pier 70 Parties would result in Tenant losing its electrical connection to the prior main electrical line, Port shall cause the Pier 70 Parties to connect Tenant’s utility lines constructed in connection with the Initial Improvements to such main electrical lines constructed by the Pier 70 Parties.

7. TAXES AND ASSESSMENTS.

7.1. *Payment of Taxes and Other Impositions.*

(a) Payment of Taxes. Subject to Tenant’s rights under *Article 8*, Tenant will pay to the proper authority prior to delinquency, all Impositions levied, assessed, confirmed or imposed on the Premises, on any of the Improvements or Personal Property located on the Premises (excluding the personal property of any Subtenant whose interest is separately assessed), on Tenant’s Leasehold Estate (but excluding any such taxes separately assessed, levied, or imposed on any Subtenant), or on any use or occupancy of the Premises hereunder, to the full extent of installments or amounts payable or arising during the Term whether in effect at the Commencement Date or which become effective thereafter. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43

Article X of the Administrative Code. Tenant will not permit any such Impositions to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such Imposition is payable in installments, Tenant may make, or cause to be made, payment in installments; provide, however, Tenant has the right to contest the validity, applicability or amount of any Imposition in accordance with **Article 8**. In the event of any such dispute, Tenant will Indemnify and hold the Indemnified Parties harmless from and against all losses, damages, costs, or expenses, including Attorneys' Fees and Costs, resulting therefrom.

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

(ii) **Reporting Requirements.** San Francisco Administrative Code Sections 23.38 and 23.39 (or its successor) require that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant will provide such information as may be requested by Port to enable Port to comply with such requirements.

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

(c) **Proof of Compliance.** Within thirty (30) days following Port's written request, Tenant will deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

(d) **Community Facilities Districts; Assessments.** Tenant acknowledges that Port has stated an intention to cause the City to form a community facilities district and a maintenance community facilities district under state or local law to provide financing for the construction, operation, and maintenance of public facilities and infrastructure at Pier 70, a portion of which will benefit the Premises directly. If the Port determines that it is desirable or necessary for the City to levy and collect special taxes and maintenance special taxes against the Premises, Tenant will cooperate with Port to provide information needed to determine the appropriate special tax and maintenance special tax rates that will apply to the Premises, Tenant consents to the imposition of such taxes against the Premises and Tenant agrees to pay its equitable share of any Pier 70 wide infrastructure costs, structured parking facilities or any Pier 70 wide maintenance costs.

7.2. Port's Right to Pay. Unless Tenant is exercising its right to contest in accordance with the provisions of **Article 8**, if Tenant fails to pay and discharge any Imposition (including fines, penalties and interest) prior to delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same; provided that prior to paying any such delinquent Imposition, Port will give Tenant written notice specifying a date that is at least ten (10) days following the date such notice is given after which Port intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify Port that it is contesting such Imposition pursuant to **Article 8**, then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, will be payable by Tenant as Additional Rent.

8. CONTESTS.

Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Imposition, mechanics' lien, or encumbrance (including any arising from work performed or materials provided to Tenant or any Subtenant to improve all or a portion of the Premises) by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Tenant notifies Port of such contest. Tenant must notify Port of the final determination of such contest within fifteen (15) days after such determination. Nothing in this Lease requires Tenant to pay any Imposition, mechanics' lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Imposition, mechanics' lien, or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition, mechanics' lien, or encumbrance to be forfeited to the entity levying such Imposition, mechanics' lien, or encumbrance as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant must comply with such condition as a condition to its right to contest. Tenant is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Tenant must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant is not required to pay any Imposition, mechanics' lien, or encumbrance being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Except as provided in the preceding sentence, Port will not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. Without limiting *Article 21*, Tenant will Indemnify the Indemnified Parties for all Losses resulting from Tenant's contest of any imposition.

9. COMPLIANCE WITH LAWS.

9.1. *Compliance with Laws and Other Requirements.*

(a) Tenant's Obligation to Comply. During the Term, Tenant will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved), (ii) the LDDA (so long as the LDDA remains in effect), (iii) the State Lands Executive Officer Determination (if any, and so long as the State Lands Executive Officer Determination remains in effect), (iv) all applicable requirements for qualification of the Project for Historic Preservation Tax Credits, including compliance with the Secretary's Standards, (v) the Pier 70 Risk Management Plan, (vi) the Mitigation Monitoring and Reporting Program, and (vii) the Traffic Management Plan. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such Permitted Uses, nor do such Permitted Uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Tenant's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws relating to or affecting the Premises.

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this *Section 9.1* to comply with all Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws includes the obligation to make substantial improvements (including any barrier removal work or other work required to all or any portion of the Premises under Disability Laws as a result of Tenant's specific use of the Premises, the Improvements or any Subsequent Construction performed by or

on behalf of Tenant, or substructural repairs 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, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any Law, however extraordinary, relieves Tenant of its obligations hereunder, nor gives Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port. Tenant waives any rights now or hereafter conferred upon it by any 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.

9.2. *Regulatory Approvals.*

(a) Port Acting as Owner of Property. Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises (subject to the Public Trust) and not as a Regulatory Agency with certain police powers. Tenant agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Initial Improvements can be obtained. Tenant agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Initial Improvements will be issued by the appropriate Regulatory Agency, and Tenant understands and agrees that neither entry by Port into this Lease nor any approvals given by Port under this Lease will be deemed to imply that Tenant will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Initial Improvements and/or the Premises, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Tenant, at Tenant's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Initial Improvements. By entering into this Lease, Port is in no way modifying or limiting Tenant's obligations to cause the Premises to be developed, Rehabilitated, Restored, used and occupied in accordance with all Laws. Without limiting the foregoing, Tenant understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Initial Improvements or other matters related to this Lease, and any such advocacy, promotion or lobbying will be done by Tenant at Tenant's sole cost and expense. Tenant hereby waives any claims against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Initial Improvements.

(b) Regulatory Approval; Conditions. Tenant understands that construction of the Initial Improvements and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any Subsequent Construction, may require Regulatory Approvals from Regulatory Agencies, which may include RWQCB, SHPO, NPS, State Lands, the City's Planning Commission and/or Zoning Administrator, SFPUC, and other Regulatory Agencies. Tenant is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section. Tenant will not seek any Regulatory Approval without first obtaining the approval of Port. Throughout the Term, Tenant will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Tenant's efforts to obtain Regulatory Approvals.

Port will cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approvals. However, Tenant will not agree to the imposition of conditions or restrictions in

connection with its efforts to obtain a Regulatory Approval if: (1) Port is required to be a co-permittee under such permit and such conditions and/or restrictions could create any obligations on the part of Port off-Premises or could otherwise encumber, restrict or change the use of Port property (other than the Premises), unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions; or (2) Port is required to be a co-permittee under such permit and the conditions or restrictions could create any obligations on the part of Port on-Premises, or could otherwise encumber, restrict or change the use of the Premises, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions. Port will provide Tenant with its approval or disapproval thereof in writing to Tenant within ten (10) business days after receipt of Tenant's written request, or if Port's Executive Director determines that Port Commission or Board action is necessary, at the first Port and subsequent Board hearings after receipt of Tenant's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and sixty (60) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

Tenant will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-Premises or require off-Premises improvements, removal, or other measures. Tenant has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Tenant will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval. No Port Approval will limit Tenant's obligation to pay all the costs of complying with any conditions or restrictions. Tenant will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Premises.

Without limiting any other Indemnification provisions of this Lease, Tenant will Indemnify the Indemnified Parties from and against any and all Losses which may arise in connection with Tenant's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval or to pursue in good faith the appeal or contest of any conditions of any Regulatory Approval except to the extent that such Losses arise solely from the gross negligence or willful acts or omissions of Port acting in its proprietary capacity.

10. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

10.1. *Operating Standards.* From and after the earlier of (i) completion of the Initial Improvements, or (ii) if a separate Certificate of Occupancy is issued for each or some of the Buildings, as such Certificate of Occupancy is issued, Tenant will maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with the maintenance and operation of a first-class mixed-use office/light industrial/restaurant and/or retail development (as applicable) located in San Francisco and in accordance with **Article 11**. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will provide (or require others to provide), services as necessary and appropriate to the uses to which the Improvements are put, including (a) repair and maintenance of the Improvements, as more fully described in **Article 11**; (b) utility and telecommunications (including internet/Wi-Fi) services to

the extent, if any, customarily provided by equivalent projects located in San Francisco; (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal; (d) landscaping and grounds keeping in outdoor areas within the Premises; (e) security services for the Premises; and (f) maintenance of the Public Access Areas and outdoor areas within the Premises.

10.2. Leasing of Premises. Tenant will engage one or more leasing agents for the leasing of the Premises (“**Leasing Agent**”) at least 120 days prior to issuance of the first final Certificate of Occupancy for any of the Buildings. Tenant will cooperate with Leasing Agent in (i) making every reasonable effort to obtain and retain desirable subtenants for the Premises, and (ii) preparing advertising plans and promotional material to be used to further rentals, approved in advance by Tenant. Immediately as space becomes available, Tenant will assist Leasing Agent in preparing adequate rental listing information, prior to distribution to reputable and active real estate brokers. After a vacancy is listed, Tenant will cooperate with Leasing Agent and with any outside brokers in a manner likely to aid in successfully filling the vacancy. Tenant will permit Leasing Agent to show the Premises during reasonable business hours, subject to the rights of existing subtenants and other users and occupants of the Premises. Tenant will promptly respond to, or refer to Leasing Agent, all inquiries regarding the leasing of the Premises. Tenant agrees to perform whatever service may be required in connection with the negotiation of new subleases, sublease renewals, extensions, modifications or cancellations thereof.

10.3. Reporting of Leasing Activity. From and after the third (3rd) calendar quarter following issuance of the first final Certificate of Occupancy for any of the Buildings, Tenant will provide Port with monthly reports on the status of leasing the Premises (the “**Leasing Activity Report**”) and maintain accurate records as to space leased, optioned, and available to lease to insure the best placement of tenants taking into consideration options to extend and to expand. The Leasing Activity Report is due by the 20th day of each calendar month for the immediately preceding calendar month and will be submitted concurrently with the applicable Monthly Statement.

10.4. Placement of Additional Debt Secured by Permitted Mortgage. Tenant agrees that throughout the Term, it will obtain additional financing from Bona Fide Institutional Lenders in accordance with *Section 39.2(b)*.

10.5. Days of Operation for Restaurant/Retail Businesses. Throughout the Term, any restaurant and/or retail operation in any of the Buildings must be open to the general public and operated in a manner consistent with *Sections 4 and 10.1*.

10.6. Flags. Throughout the Term, a Port flag will fly on each flagpole within the Premises (“**Flagpoles**”). Port will provide the Port flag to Tenant. Tenant will promptly, at no charge, install, raise, lower and remove Port flags at Port’s request. The dimensions of Port flags will be similar to the dimensions of Port flags flown on the roofs of Port buildings in the Central Waterfront. Tenant also may use the Flagpoles to fly other flags on each Flagpole, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag and Port must first reasonably approve the dimensions, color, text, design, and materials for such flag. If Port determines that Tenant’s response to Port’s request to raise or lower Port flags is inadequate, then at Port’s election, Port may exercise its access rights to the Flagpoles to permit Port to adjust the Port flags accordingly, as further described in *Section 1.1(d)*.

Tenant shall have no responsibility to maintain any Port flags. Port shall provide Tenant with replacement Port flags to replace worn Port flags on the Flagpoles. If Port does not provide a replacement flag to replace a worn flag, then Tenant shall provide Port with notice requesting that a replacement flag be provided (“**Replacement Notice**”). If Port reasonably believes the flag in question is not worn sufficiently enough to warrant its replacement, Port shall notify Tenant within five (5) days following receipt of the Replacement Notice, and such flag shall remain in

place and not be replaced. If Port has not timely notified Tenant that Port disputes the need to replace the flag and if Port does not provide Tenant with a replacement flag within thirty (30) days following the Replacement Notice, then Tenant shall deliver to Port a second notice, which notice shall include a statement in bold, all caps and underlined that if Port does not provide Tenant with a replacement flag within ten (10) days of such second notice, then Tenant shall have the right to remove the worn flag. If Port does not provide Tenant with a replacement flag within five (5) days of such second notice, then Tenant shall have the right to remove the worn flag; provided, however, if Port notifies Tenant that Port cannot provide Tenant with a replacement flag due to unavailability of a replacement flag, Tenant shall not remove the worn flag until Port is able to obtain a replacement flag, but in no event shall Port have more than sixty (60) days from delivery of the first Replacement Notice to respond to Tenant. If Tenant removes Port's flag, then Tenant will promptly fly any replacement flag provided by Port to Tenant.

10.7. Exterior Improvements. Other than any Exterior Improvements previously approved by Port, Tenant will not install any Exterior Improvements without Port's prior consent. Tenant will provide to Port the size, height, design, color, dimensions, text (if any), materials, location, and method of installation of the Exterior Improvements to enable Port to evaluate the proposed Exterior Improvement. Within twenty (20) days following Port's receipt of the proposed Exterior Improvement, Port will notify Tenant if Port requires the proposed Exterior Improvement to be reviewed by the WDAC or another Port advisory body, in Port's sole discretion, and Tenant will incorporate Port's requested changes, if any, into the proposed Exterior Improvement so long as such changes do not materially increase Tenant's cost or materially delay installation of the proposed Exterior Improvement. Construction of the Exterior Improvements will be in accordance with **Article 13** (Subsequent Construction).

10.8. 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 the Premises within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This **Section 10.8** is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the Premises. 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 San Francisco 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.).

10.9. Mitigation Monitoring and Reporting Program. In order to mitigate any potential significant environmental impacts of the Initial Improvements and operation of the Premises, Tenant agrees that the development and operation of the Initial Improvements will be

in accordance with mitigation measures set forth in the Mitigation Monitoring and Reporting Program attached as *Exhibit XX*. As appropriate, Tenant will incorporate the Mitigation Monitoring and Reporting Program into any contract for the development and/or operation of the Initial Improvements and the Premises.

10.10. *Traffic Management Plan.* Tenant will comply with the Traffic Management Plan attached hereto as *Exhibit XX* throughout the Term.

10.11. *Pier 70 Risk Management Plan .* Tenant will comply with all applicable provisions of the Pier 70 Risk Management Plan, including requirements to notify all site users, compliance with risk management measures during construction, and inspect, document and report site conditions to Port annually.

10.12. *Failure to Comply.* If Tenant (or any Management Company) fails to comply with the provisions of this *Article 10* within thirty (30) days following notice from Port to Tenant, at any time thereafter, Port may require Tenant to hire a third-party management company to manage and operate the Premises (“**Management Company**”) or replace the existing Management Company. Management Company will manage and operate the Premises in accordance with the terms and conditions of this *Article 10* (other than *Section 10.4*) as if the term “Tenant” applies to Management Company, and a management agreement between Tenant and Management Company (“**Management Agreement**”), which agreement requires Port’s prior approval. Any fee or other charge due Management Company must be commercially reasonable. Tenant must be able to terminate the Management Agreement without cause upon no less than thirty (30) days notice to Management Company. Additionally, any material changes to the Management Agreement will require Port’s prior approval.

11. REPAIR AND MAINTENANCE; FACILITIES CONDITION REPORT; CAPITAL RESERVES.

11.1. *Covenants to Repair and Maintain the Premises.* Throughout the Term, Tenant will maintain and repair, at no cost to Port, the Premises and all Improvements thereon substantially in the condition the Improvements were Completed (as defined in the LDDA) pursuant to the terms and conditions of the LDDA, less reasonable wear and tear, and in compliance with all applicable Laws and the requirements of this Lease; provided, however,. Tenant will with reasonable promptness make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, except as set forth in *Articles 16 or 17*. Tenant will make such repairs with materials, and quality of workmanship, comparable to that as originally installed under the LDDA or this Lease, or, if not commercially available, with materials at least equal in quality, appearance and durability to the materials repaired, replaced or maintained. All such repairs and replacements made by Tenant will be at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Improvements installed at the time of issuance of the Certificate of Completion. For purposes of this Lease, the term “reasonable wear and tear” shall not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant’s failure to comply with the terms and conditions of this Lease.

11.2. *Facilities Condition Report; Capital Reserves.*

“**Capital Deposit Commencement Date**” means the date that is the earlier of the second (2nd) anniversary of the Permanent Financing Date or the sixth (6th) Anniversary Date.

“**Capital Items**” mean replacements, repairs, and/or improvements to the Premises, the foundation and structural integrity of the Buildings, and all Material Systems serving each of the Buildings and other Improvements within the Premises that would be deemed capital assets under general accounting principles consistently applied.

“**Capital Reserve Deposits**” means the deposits into the Capital Reserve Account.

“**Capital Reserve Account**” means a bank account where funds in such account will be used solely to replace, repair, and improve Capital Items within the Premises.

“**Permanent Financing Date**” means the date that Tenant’s permanent financing to replace the construction financing for the Initial Improvements closes.

“**Reserve Re-Set Date**” means, as applicable, the date that is (i) the earlier of the Permanent Financing Date or the fifth (5th) Anniversary Date; and (ii) the date that is ten (10) years thereafter the occurrence of item (i) and every fifteen (15) thereafter during the remainder of the Term. By way of example only, if the first Reserve Re-Set Date is on the fifth (5th) Anniversary Date, the second Reserve Re-Set Date will be on the fifteenth (15th) Anniversary Date, and the third Reserve Re-Set Date will be on the thirtieth (30) Anniversary Date.

“**Take-Out Lender**” is the Bona Fide Institutional Lender that provides the permanent financing to replace the construction financing for the Initial Improvements.

(a) Facilities Condition Report.

(i) *Preparation.* Within ninety (90) days following each Reserve Re-Set Date, Tenant will deliver to Port a facilities condition report (the “**Facilities Condition Report**”), prepared by a qualified team of construction professionals including, without limitation, a structural and mechanical engineer, acceptable to both Parties. The Facilities Condition Report will describe at a minimum the condition and integrity of the Premises, the foundation and structural integrity of each of the Buildings, and all Material Systems serving each of the Buildings and other Improvements within the Premises. Tenant will perform the repairs within the timeframe set forth in the Facilities Condition Report approved by Port. Tenant also will provide with its submittal of the Facilities Condition Report, an anticipated schedule of, budget for, and any financing for, the repairs to the Capital Items identified in the Facilities Condition Report. A Facilities Condition Report prepared in accordance with this **Section 11.2(a)(i)** shall constitute an Operating Expense.

(ii) *Failure to Revise or Submit Report.* If Port reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the Premises, the foundation or structural integrity of the Buildings, or all Material Systems serving each of the Buildings and other Improvements within the Premises, or the timing, budget, and financing, if any, for the required repairs proposed by Tenant is inadequate, then Port will notify Tenant of such deficiency within forty-five (45) days following receipt of the Facilities Condition Report and Tenant will revise the Facilities Condition Report, the budget and schedule, or both, if applicable, to address Port’s concerns within sixty (60) days. If Tenant fails to provide a Facilities Condition Report, a revised Facilities Condition Report, or the budget and schedule (as revised if applicable), to Port within such period of time, Port after giving thirty (30) days’ notice to Tenant will have the right, but not the obligation, to cause the preparation of a Facilities Condition Report by a team of construction professionals of Port’s choice, which cost shall be an Operating Expense.

(b) Capital Reserve Account.

(i) *Take-Out Lender Reserve Requirements.* Tenant will establish and maintain a Capital Reserve Account and make Capital Reserve Deposits to the extent and on the terms and conditions required by Tenant’s Take-Out Lender to pay for replacements, repairs, and improvements of Capital Items within the Premises. Notwithstanding the foregoing, if Tenant’s Take-Out Lender does not require the establishment of such capital reserves, then Tenant will establish and maintain a Capital Reserve Account and make Capital Reserve Deposits pursuant to **Section 11.2(b)(ii)**.

(ii) *No Take-Out Lender Reserve Requirements.* If Tenant’s Take-Out Lender does not require Capital Reserve Deposits into a Capital Reserve Account for Capital Items, Tenant will establish and maintain a Capital Reserve Account with a depository institution

reasonably acceptable to Port from and after the Capital Deposit Commencement Date until the expiration of this Lease. Within sixty (60) days following the Capital Deposit Commencement Date and each Anniversary Date thereafter, Tenant will make a Capital Reserve Deposit. The amount of each Capital Reserve Deposit will be determined as follows: (i) from and after the second (2nd) Anniversary Date until and including the date that is one (1) year immediately prior to the first Reserve Re-Set Date, Tenant will make a deposit equaling One Hundred Fifty Thousand Dollars (\$150,000) into the Capital Reserve Account; and (ii) from and after ninety (90) days after each Reserve Re-Set Date, the amount of each annual Capital Reserve Deposit will be adjusted to reflect the agreed upon schedule, budget, and financing, if any, for the maintenance, repair, or replacement of Capital Items called for in the applicable Facilities Condition Report; provided, however, if the Parties have not reached agreement on the adjustment amount of Capital Reserve Deposit or if the required Facilities Condition Report has not been prepared and approved in accordance with **Section 11.2(a)(i)**, then the Capital Reserve Deposit will be adjusted to equal the greater of (i) the Capital Reserve Deposit in effect immediately prior to such Reserve Re-Set Date, or (ii) one hundred percent (100%) of the amount determined by multiplying the Capital Reserve Deposit in effect immediately prior to such Reserve Re-Set Date by a fraction, the numerator of which is the Current Index and the denominator of which is the Prior Index as shown below:

$$\frac{\text{Current Index}}{\text{Prior Index}} \times \text{Capital Reserve Deposit} = \text{Adjusted Capital Reserve Deposit}$$

until the adjustment amount of Capital Reserve Deposit is agreed to between the parties following approval of the required Facilities Condition Report. Any interest accruing on funds in the Capital Reserve Account will be added to the Capital Reserve Account. Tenant will use the funds in the Capital Reserve Account only for the necessary repair and/or replacement of the Capital Items identified in the Facilities Condition Report.

(c) **Capital Reserve Account Statements.** After the first Capital Reserve Deposit has been made, Tenant’s Monthly Project Cost Statements shall include the last two (2) statements from the depository institution where the Capital Deposit Account is held, showing the then current balance in the Capital Reserve Account and any activity on the Capital Reserve Account that occurred during the immediately prior calendar month. In the event that Tenant has withdrawn funds from the Capital Reserve Account within the immediately prior calendar month, Tenant will include with the delivery of such statement, an explanation for such withdrawal, along with detailed statements (marked paid) relating to the expenditure of such funds. In connection with any such expenditure, Tenant will provide Port with any other documentation related thereto reasonably requested by Port. Tenant hereby grants to Port a lien and security interest in the Capital Reserve Account to secure the performance by Tenant of its obligations to maintain and repair the Capital Items. Tenant will execute, deliver, file and refile, at Tenant’s expense, any instruments, financing statements, continuation statements, or other security agreements that Port may require from time to time to effectuate and evidence the lien granted herein. Tenant hereby warrants and represents that the Capital Reserve Account will be free and clear of all other liens and encumbrances.

11.3. No Obligation of Port; Waiver of Rights. From and after the Commencement Date, Tenant will be solely responsible for the condition, operation, repair, maintenance and management of the Premises, including the Initial Improvements, Subsequent Construction, and any and all other Improvements. Port will not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any Law that would permit Tenant to make repairs or replacements at Port’s expense, or abate or reduce any of Tenant’s obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port’s expense as may be provided by Sections

1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced or restated.

11.4. Port's Right to Repair. In the event Tenant fails to maintain and repair the Premises, the foundation, the structural integrity of the Improvements, the roofs, and building systems (including plumbing, sewer, mechanical, electrical and other utility systems) (collectively, "**Material Systems**") in accordance with **Section 11.1** and such failure is likely to result in deterioration to or damage of a Material System, Port may repair the same at Tenant's cost and expense and Tenant will reimburse Port therefor as provided in this **Section 11.4**. Except in the event of an emergency, Port will first provide no less than fifteen (15) days prior notice to Tenant before commencing any maintenance to or repair of a Material System ("**Port's Repair Notice**"). If Tenant does not commence maintenance or repair of the affected Material System or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the same within such fifteen (15) day period, then Port may proceed to take the required action. If Port elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port pursuant to this **Section 11.4**, Port will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port an administrative fee equal to ten percent (10%) of the total "**hard**" costs of the work. "**Hard**" costs include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. Tenant will pay to Port the amount set forth in the invoice within thirty (30) days after delivery of Port's invoice.

In the event Port notifies Tenant of a failure to maintain and repair the Premises ("**Maintenance Notice**"), Tenant will pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200), as Indexed, upon delivery of the Maintenance Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this **Article 11**, then Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300), as Indexed, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The 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 is 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 11.4** are due within five (5) days following delivery of the applicable Maintenance Notice.

Initials: _____ Tenant

12. INITIAL IMPROVEMENTS.

12.1. Tenant's Obligation to Construct the Initial Improvements. Tenant will construct the Initial Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions in the LDDA. Port's issuance and recordation of a Certificate of Completion pursuant to the LDDA conclusively establishes Tenant's satisfactory completion of such construction, except for completion of any Deferred Items. Any Subsequent Construction will be performed in accordance with **Article 13**.

12.2. Title to Improvements. During the Term, Tenant will own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures, and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures, Tenant's Personal Property and other personal property of Tenant and its Subtenants), will vest in Port without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants have the right at any time during the Term, to remove Personal Property from the Premises; provided,

however, that if the removal of Personal Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Port.

13. SUBSEQUENT CONSTRUCTION.

13.1. *Port's Right to Approve Subsequent Construction.*

(a) Construction Requiring Port's Approval in Port's Sole Discretion. Tenant has the right during the Term to perform Subsequent Construction in accordance with the provisions of this *Article 13*, provided that Tenant cannot do any of the following without Port's prior approval, which approval may be withheld by Port in its sole discretion: **[Note: This section subject to discussion]**

- (i) Construct additional buildings or other additional structures;
- (ii) Increase or decrease the bulk or height of the exterior envelope of any Improvements beyond the bulk or height approved for the Initial Improvements;
- (iii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law);
- (iv) Materially alter the Historic Fabric unless pursuant to the requirements of an approved Regulatory Approval;
- (v) Perform Subsequent Construction that would, cause a decertification of all or a portion of the Premises for Historic Preservation Tax Credits, or that does not comply with the Secretary's Standards;
- (vi) Perform Subsequent Construction to the Public Access Areas that would adversely affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of such Public Access Areas;
- (vii) Materially increase or decrease either the building area or the rentable area by more than ten percent (10%) of any of the Buildings after issuance of the applicable Certificate of Occupancy;
- (viii) Change the colors or materials of the exterior façades of the buildings and the Exterior Improvements approved by Port, unless materials originally installed are not reasonably available or do not meet current code requirements, and Tenant uses materials of equal quality, durability, design standards, and appearance to the materials originally installed, as determined by Port.

(b) Construction Requiring Port's Reasonable Approval. For any Subsequent Construction (other than a Minor Alteration) that is not described in *Section 13.1(a)*, Port's prior approval is required, which approval will not be unreasonably withheld.

(c) Notice by Tenant and Schematic Drawings. Before commencing any Subsequent Construction that requires Port's approval, Tenant will notify Port of such planned Subsequent Construction. Schematic Drawings must accompany such notice. Port may waive the submittal requirement of Schematic Drawings if it determines in its sole discretion that the scope of the Subsequent Construction does not warrant such initial review. With respect to any Subsequent Construction not requiring a building permit, Tenant has no obligation to prepare or provide Port with any Construction Documents related to such work. Within ten (10) business days after receipt of such notice from Tenant related to interior space and within thirty (30) days after receipt of such notice from Tenant related to all other work required Port's approval, Port will approve or disapprove any such Subsequent Construction and inform Tenant whether in Port's sole discretion, design review of the proposed Subsequent Construction by WDAC or another Port advisory body is necessary. If Port determines that design review by WDAC or another Port advisory body is necessary, then the period to approve or disapprove the proposed

Subsequent Construction will be extended by a reasonable time necessary to obtain WDAC's or another Port advisory body's review and recommendation of the proposed Subsequent Construction, and Port's approval of Subsequent Construction may be conditioned upon incorporation by Tenant of those changes recommended by WDAC or another Port advisory body and approved by Port. If Port fails to approve or disapprove the Schematic Drawings which have been revised or supplemented and resubmitted within the times specified within this **Section 13.1(c)**, Tenant will provide Port with notice requesting Port's approval or disapproval of the submitted Schematic Drawings within the following three (3) business days (the "**Second Schematics Approval Notice**"). The Second Schematics Approval Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: "**APPROVAL REQUEST FOR 20th STREET HISTORIC CORE REGULATORY MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN THREE (3) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to approve or disapprove within three (3) business days following receipt of the Second Schematics Approval Notice, Port's failure to respond shall be deemed approval.

(d) **Regulatory Approvals.** Tenant acknowledges that Port's approval of Subsequent Construction (or the fact that Tenant is not required to obtain Port's approval) does not alter Tenant's obligation to obtain all required Regulatory Approvals from Regulatory Agencies, including, where applicable, from Port itself in its regulatory capacity, and to obtain any signed asbestos notification acknowledgement form from Tenant's employees, contractors or Subtenants.

13.2. Minor Alterations. Unless otherwise required under **Section 13.1(a)**, Port's approval will not be required for (a) the installation, repair or replacement of furnishings, fixtures, equipment or decorative improvements within the interior of any of the Buildings which do not materially affect the structural integrity or the Historic Fabric of the applicable Buildings and Improvements and otherwise comply with the Secretary's Standards, (b) recarpeting, repainting, altering the wall coverings or window treatments, or similar alterations within the interior of any of the Buildings which do not materially affect the structural integrity or the Historic Fabric of the applicable Buildings and Improvements and otherwise comply with the Secretary's Standards, or (c) any other Subsequent Construction costing Two Hundred Fifty Thousand Dollars (\$250,000) or less, as Indexed (collectively, "**Minor Alterations**").

13.3. Construction Documents in Connection with Subsequent Construction.

(a) **Preparation of Construction Documents.** Following Port's approval of the Schematic Drawings (unless such requirement has been waived by Port), Tenant will prepare and submit for Port's approval, Preliminary Construction Documents that are consistent with the approved Schematic Drawings and Final Construction Documents that are consistent with the approved Preliminary Construction Documents (collectively, Preliminary Construction Documents and Final Construction Documents are referred to as "**Construction Documents**"). Construction Documents will be prepared by a qualified architect duly licensed in the State or Qualified Engineer, as applicable.

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

13.4. Port Approval of Construction Documents. Port will approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval will state in writing the reasons for disapproval. If Port notifies Tenant that the Construction Documents are incomplete, such notification will constitute a disapproval of such

Construction Documents. If Port disapproves the Construction Documents and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents for Port's approval, Port will review the revised or supplemented Construction Documents to determine whether the revisions or supplements satisfy the objections or deficiencies cited in Port's previous notice of rejection, and Port will approve or disapprove the revisions or supplements to the Construction Documents within thirty (30) days after resubmission. If Port fails to approve or disapprove Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this **Section 13.4**, Tenant will provide Port with a second notice requesting Port's approval or disapproval of the submitted Construction Documents within the following three (3) business days ("Second Construction Documents Approval Notice"). The Second Construction Documents Approval Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: **"APPROVAL REQUEST FOR 20th STREET HISTORIC CORE REGULATORY MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN THREE (3) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve or disapprove within three (3) business days following receipt of the Second Construction Documents Approval Notice, Port's failure to respond shall be deemed approval. If Tenant desires to make any change to the Final Construction Documents after Port's approval, then Tenant will submit the proposed change to Port for its reasonable approval. Port will notify Tenant of its approval or disapproval of the requested change within twenty-one (21) days after submission to Port. Any disapproval will state, in writing, the reasons therefor, and will be made within such twenty-one (21) day period. Notwithstanding any of the foregoing to the contrary, if Port determines that the proposed Subsequent Construction must be approved by the City's Environmental Review Officer, SHPO, or NPS, any approval provided by Port will be subject to obtaining approval from the City's Environmental Review Officer, SHPO, or NPS, as applicable, and the time periods set forth above for Port to reject, approve or conditionally approve the submissions will be extended as necessary to obtain said approval or disapproval.

13.5. Construction.

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

- (i) Port has approved the Final Construction Documents (other than for Minor Alterations);
- (ii) Tenant has obtained and paid for all Regulatory Approvals necessary to commence such construction in accordance with **Article 9**; and
- (iii) Tenant has submitted to Port in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds Five Hundred Thousand Dollars (\$500,000), Tenant will provide to Port, at Tenant's sole cost and expense a payment and performance bond in form acceptable to Port from Tenant's contractor naming Port as co-obligee, in a principal amount equal to one hundred percent (100%) of the estimated costs of Subsequent Construction, and at Tenant's sole election, a personal guaranty from J.R. Orton, III, or a Letter of Credit.

(b) Construction Standards. All Subsequent Construction will be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently to completion and in accordance with good construction and engineering practices and applicable Laws and will be consistent with the Secretary's Standards and the historic register status of the Premises. Tenant will undertake commercially reasonable measures in accordance with good construction practices to minimize damage or disruption caused by such work (including to areas adjoining portions of the Premises and Improvements and the surrounding property), minimize risk of injury to members of the general public, and to make adequate provision for the safety of Persons affected by any Subsequent Construction. Dust, noise and

other effects of such work will be controlled in accordance with any applicable dust control ordinance. Tenant will erect appropriate construction barricades to enclose the areas of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions. In addition, Tenant shall comply with the Pier 70 Risk Management Plan and the Mitigation Monitoring and Reporting Program, as the same may be reasonably amended by Port during the course of any Subsequent Construction.

(c) Compliance with Secretary's Standards. All Subsequent Construction affecting the interior or exterior of the Premises is subject to review by Port (and as applicable, the WDAC) for consistency with the design policies and criteria set forth in the Waterfront Plan, Secretary's Standards, and the Mitigation Monitoring and Reporting Program. Tenant expressly agrees to comply with the Secretary's Standards to Port's satisfaction for all Subsequent Construction affecting the interior and exterior of the Premises.

(d) Reports and Information. During periods of construction, Tenant shall submit to Port written progress reports when and as reasonably requested by Port.

(e) Costs of Construction. Port shall have no responsibility for costs of any Subsequent Construction and Tenant shall pay (or cause to be paid) all such costs.

(f) Rights of Access. During any period of Subsequent Construction, Port (in its proprietary capacity) and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, upon reasonable prior written notice during customary construction hours, subject to the rights of Subtenants, to inspect the progress of Subsequent Construction; provided, however, that Port and its Agents shall conduct their activities in such a way as to minimize interference with Tenant and its operations to the extent feasible. Nothing in this Lease, however, will be interpreted to impose an obligation upon Port to conduct such inspections or impose any liability in connection therewith.

(g) Prevailing Wages. Tenant agrees that any person performing labor in the construction of Subsequent Construction will be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code (and any successor statute), will be subject to the same hours and working conditions, and will 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 Subsequent Construction, a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or any Subsequent Construction.

13.6. Record Drawings .

(a) Record Drawings. With respect to any Subsequent Construction requiring a building permit, Tenant shall furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to such Subsequent Construction within ninety (90) days following completion of the applicable Subsequent Construction. If Tenant fails to provide Record Drawings to Port within such period of time, Port shall give written notice to Tenant requesting such Record Drawings, and if Tenant has not provided the Record Drawings within ninety (90) days after Tenant's receipt of such notice from Port, Port shall have the right, but not the obligation, to cause the preparation of the Record Drawings by an architect of Port's choice, at Tenant's cost. Such cost shall be deemed an Operating Expense. Record Drawings must in the form of full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated Construction Documents, as further described below, and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "**Record Drawings**" means drawings,

plans and surveys showing the Subsequent Construction as built on the Premises and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Tenant fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the cost of preparing such Record Drawings must be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity.

(b) Record Drawing Requirements. Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing shall have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) AutoCad Requirements. The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) Changes in Technology. Port reserves the right to revise the format of the required submittals set forth in this **Section 13.6** as technology changes and new engineering/architectural software is developed.

14. UTILITIES.

14.1. Utility Services. Tenant agrees and acknowledges that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. [Except as provided in **Section 14.2,**] Tenant, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use all of the Buildings and any other portion of the Premises for their intended use, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which all of the Buildings and the Premises are put (it being acknowledged that City (including its SFPUC) is the sole and exclusive provider to the Premises of certain public utility services), and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant also must coordinate with the respective utility service provider with respect to the installation of utilities, including providing advance notice to appropriate parties of trenching requirements.

Tenant will pay or cause to be paid as the same become due, all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance, repair, replacement, and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to

this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent to preserve its rights hereunder that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

14.2. Photovoltaic Panels. Tenant, at its sole and absolute discretion, shall have the right but not the obligation to install or cause to be installed on the roof(s) of Buildings a photovoltaic energy generation facility for the generation and delivery of electrical energy to the Premises and if excess energy is available, potentially to other sites in Pier 70 (the "PV System"). Prior to commencing installation of the PV System, Tenant must obtain all required permits and Regulatory Approvals for the PV System, which may include, among other things, approval by SHPO and requirements to strengthen the roof of the applicable Building(s). The design, construction and installation of the PV System will be done in accordance with *Section 13*.

[NOTE: ODI to confirm]

14.3. Hetch-Hetchy Power. At Port's request, Tenant will purchase all of its electricity (to the extent not provided by the PV System, if applicable) and gas for the Improvements from the City's utility, Hetch-Hetchy Water and Power, at then prevailing market rates for comparable types of load so long as it is reasonably available for Tenant's needs. Tenant's sole remedy for any failure of the City's utility to deliver such utility services or the discrepancy in price as provided herein will be to change providers if such failure continues for a period of more than thirty (30) days, after Tenant's notice thereof to Port, or if such price discrepancy continues for a period of more than ninety (90) days after Tenant's notice thereof to Port.

14.4. Energy Consumption. Tenant acknowledges and agrees that Port has delivered a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Premises no less than 24 hours prior to Tenant's execution of this Lease.

14.5. Waiver. Tenant hereby waives any benefits of any applicable Law, including the provisions of California Civil Code Section 1932(1) permitting the termination of this Lease due to any interruption or failure of utility services. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

15. ROOFTOP EQUIPMENT.

15.1. Telecommunications Equipment and Satellite Dish. No Satellite Dish may be installed on the Premises without the prior written approval of Port (including approval of WDAC or any other advisory body to Port, if Port determines in its sole discretion that such approval is necessary), which approval will not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, it will be reasonable for Port to withhold its consent if the proposed Satellite Dish would be inconsistent with the Secretary's Standards. Port's approval rights also extend to the size, location, dimensions, color, text (if any), screening, reflectivity, and method of installation of each Satellite Dish. The Parties will cooperate in connection with the location of any Satellite Dish installed pursuant to this *Section 15.1* and the location of any Satellite Dish installed by Port or City pursuant to *Section 15.3* so as to minimize interference with the systems serviced by such Satellite Dish.

15.2. Other Rooftop Equipment. Except as set forth in *Section 15.1* and *Section 14.2*, Tenant may not install any equipment (including photo-voltaic panels) on the roof of any of the Buildings within the Premises without first obtaining Port's review and approval and all required Regulatory Approvals. Tenant will provide to Port the size, location, dimensions, design, color,

text (if any), screening, materials, reflectivity, and method of installation of the rooftop equipment to enable Port to evaluate the proposed rooftop equipment.

15.3. Port Satellite Dish. Tenant agrees, at the request of Port, to permit Port or City to install, at Port's or City's sole cost, Satellite Dish(es) reasonably required for Port's or City's operations, including facilities for City's emergency or 700-Mhz and 800-Mhz City-wide radio system communications facilities (or its successor), on the roof of any of Buildings, provided that Port (i) complies with all Laws and the Secretary's Standards, (ii) obtains all required Regulatory Approvals, and (iii) obtains Tenant's prior approval with respect to the size, location, dimensions, color, text (if any), screening, reflectivity, and method of installation of the Satellite Dish. If the installation of any such Satellite Dish requires the relocation of any photo-voltaic panels or any other Satellite Dish previously installed on the roof of the Premises, such relocation shall be at Port's sole cost and expense, and Port shall promptly repair, at its sole cost, any damage to the Premises or the photo-voltaic panels. All aspects and phases of Port's installation, other equipment, wiring, conduit, roof mount and base, shall at all times be subject to supervision and approval by Tenant, not to be unreasonably withheld, conditioned or delayed. All approval and supervision rights of Tenant are intended solely to protect Tenant's interests. Port shall be responsible for procuring, prior to any installation, and maintaining in force at all times thereafter, any and all Regulatory Approvals as may be required for the lawful installation, use and operation of Port's or City's system. Subject to **Section 1.1(d)**, Port shall be permitted access to the areas on the roof where any such installation is made, as necessary for the installation, repair, maintenance, and replacement thereof. Any access, interruptions or disturbance for the foregoing purposes shall be temporary only. Port's access to the roofs shall not unreasonably interfere with or disturb Tenant's or Subtenants' use and enjoyment of the Premises, shall be subject to the reasonable building security procedures adopted by Tenant, and shall require prior written consent for access occurring during regular business hours (except in cases of emergency). Port's access may be subject to temporary interruption in cases of emergency. Port shall promptly repair and restore any damage to persons or property caused as a result of Port's access to and activities on the roof.

16. DAMAGE OR DESTRUCTION.

16.1. General; Notice; Waiver.

(a) **General.** If at any time during the Term any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "Casualty"), the rights and obligations of the Parties is as set forth in this **Article 16**.

(b) **Notice.** If there is any Casualty (i) which would materially impair use or operation of any material portion of the Improvements for their intended purpose for a period of thirty (30) days or longer, or (ii) the repair of which would exceed in an individual instance the amount of One Hundred Thousand Dollars (\$100,000), or aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000) (which amount includes both hard and soft costs of a Restoration as Indexed annually), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such Casualty, give written notice thereof to Port describing with as much specificity as is reasonable, the nature and extent of the damage from such Casualty ("**Casualty Notice**").

(c) **Waiver.** The Parties intend that this Lease fully govern all of their rights and obligations in the event of any Casualty. Accordingly, Port and Tenant each hereby waive the provisions of Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

16.2. No Release of Tenant's Obligations. Except as set forth in **Section 16.4**, no damage to or destruction of the Premises or any part thereof from any Casualty event shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including the obligation to pay Rent. In the event of any damage or destruction to the Improvements that does

not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Port all Rent at the times and in the manner described in this Lease. If this Lease does not terminate pursuant to this *Article 16*, proceeds of rental interruption or business interruption insurance shall be applied first to unpaid Rent due or coming due before completion of the Restoration and then to costs of Restoring the Premises with any remaining balance to be retained by Tenant. If this Lease terminates pursuant to this *Article 16*, proceeds of rental interruption or business interruption insurance shall be applied first to unpaid Rent coming due before termination of this Lease and then such proceeds shall be distributed pursuant to *Section 16.4(b)*.

16.3. Tenant's Obligation to Restore. Except in the event of an Uninsured Casualty or a Major Casualty for which Tenant elects to terminate this Lease under *Section 16.4*, if all or any portion of the Improvements are damaged or destroyed by Casualty, Tenant shall promptly (allowing for securing necessary Regulatory Approvals), commence and diligently Restore the Improvements to the condition they were in immediately before such Casualty in accordance with then applicable Laws (including any required code upgrades) and Secretary's Standards, without regard to the amount or availability of insurance proceeds, subject to Force Majeure. All Restoration must be performed in accordance with the procedures set forth in *Article 13* relating to Subsequent Construction and must be at Tenant's sole expense. In connection with any Restoration, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Improvements as so redesigned are at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Improvements, and is a first-class project affording similar public benefit as the original Initial Improvements, subject to the Permitted Uses. If insurance proceeds are available for such Restoration and Tenant is obligated to Restore or elects to Restore, then subject to the rights of Mortgagee, Tenant shall have the right to negotiate an insurance settlement for claims in connection with such Restoration, provided however, that Tenant will use commercially reasonable efforts to ensure that such settlement does not materially interfere with or delay Tenant's obligation and ability to pay Rent to Port or otherwise meet its obligations hereunder; and further provided the settlement of any insurance claims in excess of Two Million Dollars (\$2,000,000), as Indexed, is subject to the reasonable approval of Port.

16.4. Termination due to Major Casualty or Uninsured Casualty

(a) Tenant's Election to Terminate. If an event of Major Casualty occurs during the last ten (10) years of the Term or if an event of Uninsured Casualty occurs at any time during the Term (other than as set forth in *Section 16.4(c)*), then within ninety (90) days following Tenant's delivery to Port of the Casualty Notice, Tenant must notify Port of Tenant's election to: (1) commence and complete Restoration of the Improvements, or (2) terminate this Lease (subject to *Section 16.4(b)*). All Restoration must be in accordance with the procedures set forth in *Article 13* relating to Subsequent Construction and shall be at Tenant's sole expense, except as set forth in *Section 16.4(c)*.

"Major Casualty" means damage to or destruction of all or any portion of the Premises to the extent that the hard costs of Restoration will exceed sixty percent (60%) of the hard costs to replace the Premises in their entirety. The calculation of such percentage will be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Casualty.

"Uninsured Casualty" means any of the following: (i) a Casualty event occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under *Article 23* and such costs exceed One Million Dollars (\$1,000,000), as Indexed, or (ii) a Casualty event occurring at any time during the Term which is covered under Tenant's policies of insurance that Tenant is required to carry under *Article 23* but where the cost of Restoration (including the cost of any required code upgrades) will exceed the sum of (A) the net

proceeds of any insurance payable, (B) the amount of any applicable policy deductibles, and (c) One Million Dollars (\$1,000,000), as Indexed. Any Casualty event not insured due to Tenant's failure to maintain the requisite insurance policies under **Article 23** shall not be considered an Uninsured Casualty. As to any Casualty caused by earthquake or flood, the amount of such policy deductible will be deemed to be the lesser of the amount of the policy deductible for non-earthquake or flood damage under Tenant's property insurance policy maintained under **Article 23** as of the date of Casualty, or the actual amount of such policy deductible.

(b) **Conditions to Termination.** As a condition precedent to Tenant's right to terminate this Lease in accordance with **Section 16.4(a)**, there shall be no uncured Tenant Event of Default and Tenant will do all of the following:

(i) Tenant will provide Port the estimated cost of Restoration, and, with respect to the Uninsured Casualty only, the amount by which the estimated cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in **Section 23.1(a)(ii)** exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder); and

(ii) Pay or cause to be paid the following amounts from all insurance proceeds arising from each Casualty promptly following receipt of such proceeds, in the following order of priority:

(1) First, to Port (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any conditions caused by such Casualty that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including any demolition or hauling of rubble or debris;

(2) Second, to Port, for all accrued and unpaid amounts owed to Port, if any, by Tenant;

(3) Third, to each Mortgagee, in order of priority, a portion of the remaining casualty insurance proceeds arising out of or in connection with the Casualty in an amount not to exceed the aggregate amounts that are secured by the applicable Permitted Mortgage then owed to each such Mortgagee; and

(4) Fourth, to Tenant, for any unpaid and outstanding Developer Equity Return and Developer Equity; and

(5) Fifth, to Port and Tenant as follows: the balance of the insurance proceeds will be divided equally between Port and Tenant; and

(iii) Pay to Port any Rent due and payable as of the proposed termination date (to the extent any Rent due and payable remains unpaid after application of insurance proceeds pursuant to **Section 16.4(b)(ii)(2)**); and

(iv) Upon termination in accordance with this **Article 16**, Tenant will deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements.

(c) **Port's Election Upon Notice of Termination.** Notwithstanding **Section 16.4(a)**, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty, then within sixty (60) days after Port's receipt of the Casualty Notice, Port may elect by giving written notice to Tenant, to continue this Lease and pay the amount to Tenant by which the cost of Restoration will exceed the net proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under **Article 23** (or which would have been payable but for Tenant's failure to maintain such insurance) by more than One Million

Dollars (\$1,000,000), as Indexed annually. If Port elects to continue this Lease as set forth in this *Section 16.4(c)*, then notwithstanding Tenant's election to terminate this Lease, this Lease shall not be terminated and Tenant shall be obligated to Restore the Premises in accordance with *Section 16.3*.

16.5. *Date and Effect of Termination.* If Tenant elects to terminate this Lease under *Section 16.4(a)* and Port elects not to continue this Lease under *Section 16.4(c)*, then on the date that Tenant fully complies with all provisions of *Section 16.4(b)* to the satisfaction of Port, this Lease will terminate. Upon such termination, the Parties will be released thereby without further obligations to the other Party as of the effective date of such termination; provided, however, that the Indemnification provisions and any other provisions that explicitly state they will survive expiration or earlier termination of this Lease will survive any such termination. The rights of any Mortgagee to a New Lease and any rights of Tenant or Port to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease.

16.6. *Distribution Upon Lease Termination.* If Tenant is obligated to and fails to Restore the Improvements as provided herein and commits a Tenant Event of Default in failing to Restore the Improvements and this Lease is thereafter terminated due to such Tenant Event of Default, all insurance proceeds held by Port, Tenant and, subject to *Article 39*, any Mortgagee, or not yet collected, shall be paid to and retained by Port, subject to the rights of Mortgagees, if any, under *Article 39*.

16.7. *Use of Insurance Proceeds.*

(a) Restoration. Except in the event of termination of this Lease in accordance with *Section 16.4*, all all-risk coverage insurance proceeds, earthquake and flood insurance proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be first used by Tenant for Restoration of the Premises.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this *Article 16*, if Tenant Restores the Premises and there is a Permitted Mortgage encumbering this Lease, then any insurer paying compensation in excess of One Million Dollars (\$1,000,000), as Indexed, under any all-risk or earthquake insurance policy required to be carried hereunder shall pay such proceeds to Mortgagee that is the holder of the most senior lien against the Improvements or an insurance trustee reasonably acceptable to Port designated by such Mortgagee, in accordance with the Permitted Mortgage. If there is no Permitted Mortgage encumbering this Lease, then the insurance proceeds shall be paid to a trustee (which shall be a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, or an insurance company, designated by Port within twenty (20) days after written request by Tenant, having an office in San Francisco). Unless agreed otherwise by the Parties, and subject to the requirements of such Mortgagee, the insurer shall pay insurance proceeds of One Million Dollars (\$1,000,000), as Indexed or less directly to Tenant for purposes of Restoration in accordance with this Lease. If there is no Permitted Mortgage encumbering the Lease and a trustee is holding the proceeds, Port shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days after such request. If the funds are paid to a trustee in accordance herewith, the trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). Such trustee or Mortgagee shall pay to Tenant, from time to time as the work of Restoration progresses, in amounts designated by certification by architects licensed to do business in the State, showing the application or intended application of such amounts as payment for such Restoration. Payment to Tenant shall not be construed as relieving Tenant from the necessity of promptly Restoring the Premises in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that all Rent due and payable to Port has been paid and no uncured Tenant Event of Default (or Unmatured Tenant Event of Default) exists upon

completion of the Restoration in accordance with the provisions of this **Article 16**, any excess insurance proceeds remaining with the trustee or Mortgagee after completion of the Restoration of the Premises shall be paid to Tenant.

17. CONDEMNATION.

17.1. General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, the rights and obligations of the Parties shall be determined pursuant to this **Article 17**.

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

(c) Waiver. Except as otherwise provided in this **Article 17**, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease in accordance with this **Article 17**, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

17.2. Total Condemnation. If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released without further obligations to the other Party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent, up to the Condemnation Date.

17.3. Substantial Condemnation; Partial Condemnation; Rent Abatement. If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation, this Lease will terminate at Tenant's option (which must be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) in accordance with this **Section 17.3(a)**. "**Substantial Condemnation**" means a Condemnation of (i) less than the entire Premises which renders the Premises untenable, unsuitable or economically unfeasible for the Permitted Uses as reasonably determined by Tenant, or (ii) property located outside the Premises that substantially and materially eliminates access to the Premises where no alternative access can be constructed or made available. Notwithstanding the foregoing, Tenant has no right to terminate this Lease under this **Section 17.3(a)** if (1) the Condemnation is for less than one year (unless such Condemnation occurs during the last five (5) years of the Term), or (2) Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared by Tenant in consultation with Port and a licensed general construction contractor experienced in historic rehabilitation construction projects in San Francisco that at the time of completion of the Restoration, less than five (5) years would remain in the Term) and the cost of such Restoration is more than at least One Million Dollars (\$1,000,000), as Indexed, the portion of the Award fairly allocable to severance damages suffered by Tenant, unless Port (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within thirty (30) days (subject to extension as provided below) after receipt of Tenant's termination notice that Port agrees, at its cost and expense, to pay any amount by which the cost of such Restoration exceeds by at least One Million Dollars (\$1,000,000) the amount of Tenant's severance damages. In either such case, this Lease

will not terminate, and, upon a determination that this Lease will continue based on amount of the Award, Tenant will perform such Restoration, subject to the provisions of *Article 13*. Port's right to exercise the option described in clause (2) above is conditioned upon Port and Tenant reaching an agreement, with respect to the schedule for performance of required work, on the timing of payments of Port's contribution to the costs of such work (to the extent not available from Port's share of the Award), and any other related issues which may be necessary or appropriate for Resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, Port has no right to exercise such right, and such Condemnation will be deemed a Substantial Condemnation for which Tenant may terminate this Lease.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises which does not result in a termination of this Lease under *Sections 17.2 or 17.3(a)* (a "**Partial Condemnation**"), this Lease will terminate only as to the portion of the Premises taken in such Partial Condemnation effective as of the Condemnation Date and this Lease will remain in full force and effect as to the portion of the Premises remaining immediately after such Condemnation. Tenant will promptly commence and complete any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration will be performed in accordance with the provisions of *Article 13*.

(c) Rent Abatement. In the case of a Partial Condemnation, or in the case of a Substantial Condemnation which does not result in a termination of this Lease, the Minimum Rent payable from the Condemnation Date will be equitably reduced in the proportion that the gross square footage of the Premises which is taken in such Partial or Substantial Condemnation, as applicable, bears to the aggregate gross square footage of the Premises immediately prior to such Partial or Substantial Condemnation, as applicable.

17.4. Awards. Except as provided in *Sections 17.5 and 17.6*, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") will be allocated between Port and Tenant as follows:

(a) In the event of a Partial Condemnation, first, to pay costs of Restoration, in which case, the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant, Mortgagees, or trustee in accordance with the requirements governing payment of insurance proceeds set forth in *Section 16.7(b)*;

(b) Second, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Port's reversionary interest in the value of the Improvements (the "**Condemned Land Value**");

(c) Third, to Port for any accrued and unpaid Rent owed by Tenant to Port for periods prior to the Condemnation Date;

(d) Fourth, to each Mortgagee, if any, in order of priority, for payment of all outstanding amounts of the loan secured by such Permitted Mortgage, together with its reasonable out of pocket expenses and charges in collecting the Net Awards and Payments, including without limitation, its reasonable Attorneys' Fees and Costs incurred in the Condemnation;

(e) Fifth, to Tenant in an amount equal to the value of Tenant's leasehold interest in this Lease, not including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term to the original scheduled Expiration Date; and

(f) Sixth, the balance of the Net Awards and Payment shall be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant,

for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.

(g) Notwithstanding anything to the contrary set forth in this **Section 17.4**, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the Condemned Land Value, the value of Port's reversionary interest in the Improvements, Tenant's leasehold interest in this Lease, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, shall be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

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

17.6. Relocation Benefits, Personal Property. Notwithstanding **Section 17.4**, Port shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants.

18. LIENS.

18.1. Liens. Tenant will not create or permit the attachment of, and will promptly discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or Tenant's Leasehold Estate, other than (i) this Lease, permitted Subleases, and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants or are being contested in accordance with **Article 8**), and (iii) Permitted Mortgages.

18.2. Mechanics' Liens. Tenant will keep the Premises and Tenant's leasehold interest free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by Tenant or any of its Agents. Tenant will provide thirty (30) days' advance written notice to Port of any Subsequent Construction to allow Port to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, it will constitute a Tenant Event of Default, and Port will 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 deems proper, including payment of the claim giving rise to such lien. All sums paid by Port (including interest at the Default Rate computed from the date of payment) for such purpose and all expenses incurred by Port in connection therewith must be reimbursed to Port by Tenant within ten (10) days following demand by Port. Port will include with its demand, supporting documentation.

19. SECURITY DEPOSIT.

19.1. Security Deposit. On or before the Commencement Date, Tenant shall pay to Port, in addition to Minimum Rent, the Environmental Financial Performance Deposit (if any) and the Environmental Oversight Deposit (if any), a security deposit (as adjusted from time to time, the "**Minimum Rent Deposit**") for the Premises in an amount equal to Forty Thousand Dollars (collectively, "**Security Deposit**"). From and after the twentieth (20th) Anniversary Date, on or prior to each Adjustment Date and Periodic 10-Year Adjustment Date, as applicable, Tenant will deliver to Port, the difference between the Minimum Rent Deposit currently held by Port and an amount equal to two (2) monthly installments of the then Minimum Rent, as adjusted in accordance with **Section 3.4**.

19.2. Environmental Financial Performance Deposit. On or prior to the commencement of any Sublease that Port reasonably believes increases the potential

environmental liability to Port due to the applicable Subtenant's activities, Tenant will, or cause its Subtenant to, deliver to Port an amount determined by Port to be reasonable security for increased environmental liabilities to Port arising out of the Subtenant's specific use at the Premises (the "**Environmental Financial Performance Deposit**") as additional collateral for the full and faithful performance by Tenant of its obligations under **Article 22** of this Lease. Port's determination of the amount of the Environmental Financial Performance Deposit will be consistent with the Port Commission's adoption of the Environmental Risk Policy and Financial Assurance Requirements for Real Property Agreements on November 13, 2007, pursuant to Resolution No. 07-81, as may be amended or updated from time to time. The Environmental Financial Performance Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, or a measure of Port's damages upon a Tenant Event of Default concerning Tenant's obligations under **Article 22**. In the event Port determines in its sole and absolute discretion that any proposed change(s) to Tenant's (or its Subtenants') operations on the Premises increase Port's risk of Loss, then prior to consenting to any change to Tenant's operations, Port may require Tenant to increase the Environmental Financial Performance Deposit accordingly. Port also has the right to increase every five years the amount of the Environmental Financial Performance Deposit if Port reasonably believes after review of Tenant's and Subtenants' operations that the then current amount is insufficient.

19.3. Environmental Oversight Deposit.

(a) On or before the first Project Cost Cut-Off Date, Tenant will deliver to Port an environmental oversight deposit ("**Environmental Oversight Deposit**") in cash, in an amount equaling Ten Thousand Dollars (\$10,000), as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration of Tenant's and its Subtenants' performance of their respective obligations under **Article 22**; provided, however, the Environmental Oversight Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon a Tenant Event of Default concerning Tenant's obligations under **Article 22**.

(b) Port at its option may demand reimbursement from Tenant within five (5) days following demand, or use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port, for Port's costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("**Environmental Notice**") to Tenant and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Tenant has not begun to cure or comply with the Environmental Notice or is not working actively to cure or comply with the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, Attorneys' Fees and Costs, and inspection, collection, and laboratory analysis of environmental samples and monitoring the Hazardous Material Condition.

(c) If an Environmental Notice is delivered to Tenant, and Tenant has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port at its option may demand payment from Tenant within five (5) days following demand, or apply the sum of Five Hundred Dollars (\$500) (as Indexed) from the Environmental Oversight Deposit, as Additional Rent for each Environmental Notice delivered to Tenant to reimburse Port for its administrative costs.

(d) Tenant must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port properly expends or applies in compliance with this **Section 19.3**. Provided that no Environmental Notices are then outstanding and Port has been reimbursed for its costs related to such Environmental Notices, Port will return the balance of the Environmental Oversight Deposit, if any, to Tenant within thirty (30) days after expiration or earlier termination of this Lease. Port's obligations with respect to the

Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

19.4. General. The Security Deposit must be made in all cash. Tenant agrees that Port may, but will not be required to, apply the Security Deposit in whole or in part to (a) remedy any failure by Tenant to pay Rent as and when due, (b) cure, or attempt to cure, any default by Tenant in the performance of the terms, covenants and conditions of this Lease, (c) repair, or attempt to repair, any damage to the Premises caused by Tenant, its Subtenants, Agents or Invitees, or (d) compensate Port for any expense incurred or damage caused by Tenant, its Subtenants, Agents, or Invitees. Should Port use any portion of the Security Deposit, Tenant must replenish the Security Deposit to the full extent of the required amount within five (5) days following Port's demand. Port will not be required to keep the Security Deposit separate from its general funds. Tenant will not be entitled to any interest on the Security Deposit. The amount of the Security Deposit will not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease. Port may apply the Security Deposit as provided herein without waiving any of Port's other rights and remedies hereunder or at Law or in equity. Upon the expiration or earlier termination of this Lease, Port will return the unused balance of the Security Deposit to Tenant (less any amounts then due and payable from Tenant to Port under this Lease) within thirty (30) days after Tenant surrenders possession of the Premises to Port.

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.

20. ASSIGNMENT AND SUBLETTING.

20.1. Assignment.

(a) Consent of Port. Except as permitted in *Sections 20.1(b), 20.1(h), and 20.1(i)*, Tenant, its successors and permitted assigns will not (i) suffer or permit any Significant Change to occur, or (ii) assign, encumber, hypothecate, pledge, or sell any interest in this Lease either voluntarily or by operation of law (for both (i) and (ii) above, a "Transfer"), without the prior written consent of Port, which consent may be withheld by Port in its sole discretion prior to issuance of the Certificate of Completion. After issuance of the Certificate of Completion, Port will not unreasonably withhold its consent.

(b) Mortgaging of Leasehold. Notwithstanding anything herein to the contrary, Tenant has the right, without Port's consent, to assign, encumber, hypothecate, pledge, or sell its interest in this Lease to Mortgagees or other purchaser at a foreclosure sale under the provisions of a Permitted Mortgage in accordance with *Article 39* and any such assignment, encumbrance, hypothecation, pledge or sale will not be deemed a Transfer so long as such assignment, encumbrance, hypothecation, pledge or sale is effected in accordance with and otherwise complies with the terms and conditions set forth in *Article 39*.

(c) Conditions. Any Transfer is further subject to the satisfaction of all of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof:

(i) Prior to the proposed Transfer date, Developer Equity and Return of Developer Equity have been paid in full or will be paid in full as of the close of escrow for the Transfer, or if there is no escrow, the effective date of the Transfer.

(ii) Any proposed transferee, for itself and its successors and assigns, must expressly assume all of the obligations of (A) Tenant under this Lease, (B) Developer under

the LDDA (if in effect), and (C) Tenant and Developer, as the case may be, under any other agreements or documents entered into by and between Port and Tenant or Developer, as the case may be, relating to the overall Project contemplated under those agreements to the extent of the transferred interest;

(iii) All instruments and other legal documents involved in effectuating the Transfer has been submitted to Port for review and Port has approved such documents;

(iv) There is no Tenant Event of Default or an Unmatured Tenant Event of Default on the part of Tenant, where Tenant or the proposed transferee has not made provisions to cure the default prior the effective date of the Transfer, which provisions are reasonably satisfactory to Port;

(v) There is no Developer Event of Default or an Unmatured Developer Event of Default (as such terms are defined in the LDDA) on the part of Developer under the LDDA (if in effect), where Tenant or the proposed transferee has not made provisions to cure the default, which provisions are reasonably satisfactory to Port;

(vi) The proposed transferee (A) has demonstrated to Port's satisfaction, in Port's sole discretion if the effective date of the Transfer is prior to issuance of a Certificate of Completion, that the proposed transferee is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and Developer's obligations under the LDDA, (B) has demonstrated to Port's reasonable satisfaction if the effective date of the Transfer is after issuance of a Certificate of Completion, that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and Tenant's obligations under any other documents to be assigned, and (C) is subject to the jurisdiction of the courts of the State; and

(vii) Tenant deposits sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer.

(d) Delivery of Executed Assignment. No Transfer made with Port's consent, or as herein otherwise permitted, will be effective unless and until Port receives within thirty (30) days after Tenant entered into a transfer agreement with the transferee, an executed counterpart of such transfer agreement containing an agreement, in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of Tenant's obligations under this Lease, Developer's obligations under the LDDA (if in effect), and Tenant's and Developer's obligations under other assigned documents, until and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease or the LDDA (if in effect), or to assume one or more of Tenant's obligations under this Lease or the LDDA (if in effect), will not relieve such transferee from such obligations or limit Port's rights or remedies under this Lease, the LDDA (if in effect), or under applicable Law).

(e) Assignment and Assumption. Any Transfer or Significant Change Approved or otherwise permitted under **Section 20.1(a)** must be pursuant to an Assignment and Assumption Agreement, in form and substance reasonably satisfactory to Port, under which the transferee assumes and agrees to be bound by all obligations of Tenant under this Lease, including, without limitation, all of the Indemnifications and releases by Tenant in this Lease, Developer's obligations under the LDDA (if in effect), and Tenant's and Developer's obligations under other assigned documents.

(f) No Release of Tenant's Pre-Transfer Liability or Waiver by Virtue of Consent. The consent by Port to a Transfer hereunder is not in any way to be construed to, from and after the date of such assignment, relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder or under the LDDA before the date of such assignment, or relieve any transferee of Tenant from its obligation to obtain the express consent in writing of Port to any further Transfer; provided, however, (i) if Port consents to such Transfer pursuant to this **Section 20.1**, (ii) there are no

Tenant Event of Defaults or Unmatured Tenant Events of Default existing as of the effective date of the Transfer, (iii) Port has received the fully executed and Approved Assignment and Assumption Agreement, (iv) Port has received Port's share of Transfer Proceeds, (v) the Transfer is not in connection with the purpose of taking advantage of Historic Preservation Tax Credits, to the extent the following obligations are expressly Transferred to and assumed by the transferee in the Approved Assignment and Assumption Agreement, Tenant will be released from those obligations under this Lease that arise from and after the effective date of the Transfer.

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

(h) Scope of Prohibitions on Assignment. The prohibitions provided in this *Section 20.1* will not be deemed to prevent Tenant from entering into any Subleases so long as such subletting is done in accordance with *Section 20.5* or from granting a Permitted Mortgage so long as the granting of such Permitted Mortgage is done in accordance with *Article 39*.

(i) Assignment to Accommodate Sale of Historic Preservation Tax Credits. Port's consent will not be required and Port will not be entitled to any of the Transfer Proceeds in the event of one or more Transfers solely for the purposes of applying for and obtaining Historic Preservation Tax Credits, subject to all of the following conditions: (A) at least thirty (30) days prior to such Transfer(s), Tenant furnishes Port with the name of the proposed transferee(s), together with evidence reasonably satisfactory to Port indicating that the proposed Transfer is solely for obtaining Historic Preservation Tax Credits; and (B) the conditions set forth in *Section 20.1(c)* (other than *Sections 20.1(c)(i)* and *20.1(c)(vi)*) have all been met to Port's reasonable satisfaction.

(j) Assignment to Tenant Affiliate.

(i) At any time prior to the issuance of a Certificate of Completion, Port's consent will not be required in the event of a Transfer to a Tenant Affiliate provided (i) J.R. Orton, III Controls the Tenant Affiliate, (ii) J.R. Orton, III continues to provide day-to-day operations management of the Project and construction of the Initial Improvements, and (iii) Tenant gives Port written notice of its intent thereof at least fifteen (15) days before the proposed effective date of such Transfer and copies of all documentation evidencing such Transfer within fifteen (15) days after the effective date of such Transfer to a Tenant Affiliate. If after Transfer to a Tenant Affiliate and prior to issuance of a Certificate of Completion, J.R. Orton, III no longer (x) Controls the Tenant Affiliate, or (y) provides day-to-day operations management of the Project and construction of the Initial Improvements, then at Port's option, such Transfer will be deemed to be a Transfer made in violation of this *Section 20.1(c)(i)* and a Tenant Event of Default without the need for delivery of any notice to Tenant and Port will be entitled to all its remedies available under this Lease, at law or in equity.

(ii) From and after issuance of a Certificate of Completion, Port's consent will not be required in the event of a Transfer to a Tenant Affiliate provided Tenant gives Port written notice of its intent thereof at least fifteen (15) days before the proposed effective date of such Transfer and copies of all documentation evidencing such Transfer within fifteen (15) days after the effective date of such Transfer to a Tenant Affiliate.

20.2. Reserved.

20.3. Port Participation in Transfer Proceeds. Port must receive a portion of the Transfer Proceeds in accordance with *Section 3.7* except in the event of a Transfer to a Tenant Affiliate made in accordance with *Section 20.1(j)*.

20.4. Assignment of Rents. So long as there is not a Permitted Mortgage on the Premises, Tenant shall assign to Port all Rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligations hereunder prior to actual receipt thereof by Tenant; provided, however, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor will promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease. Such assignment is subject to the right of Tenant to collect such rents except during the happening of any Tenant Event of Default under the provisions of this Lease. Port will apply any net amount collected by it from such Subtenants to the payment of Rent due under this Lease and remit any balance to Tenant.

20.5. Subletting by Tenant.

(a) **Subleases.** Tenant will not Sublease any portion of the Premises, including a Sublease to a Tenant Affiliate, without the prior written consent of Port, which consent will not be unreasonably withheld. All Subleases must be in full compliance with all of the terms and provisions of this **Section 20.5**. A Sublease without Port's consent will be voidable by Port, in its sole discretion.

(b) **Pre-Approved Subleases.** Notwithstanding **Section 20.5**, so long as the applicable Sublease is (i) not with a Tenant Affiliate (in other words, an arms-length transaction), and (ii) the Sublease contains provisions whereby the Subtenant agrees to comply with **Sections 4, 9, 20.5(e), 20.5(f), 21, 22, 23, 29, 31, 32.1, 33.3, 35, 38, 41, and 43**, then Tenant is permitted to Sublease all or a portion of each Building without Port's prior consent, up to 100,000 square feet in the aggregate to a single user, Subtenant, or such user or Subtenant's Affiliates (collectively, "**Pre-Approved Subleases**"). Notwithstanding the foregoing, the Port shall have a sublease approval right (subject to **Section 20.5(d)**) for the initial Subleases for all or substantially all of the east and west wings of Building 113

(c) **Request for Sublease.** Except for Pre-Approved Subleases, Tenant must give Port at least ten (10) business days written notice before entering into a proposed Sublease (herein "**Notice of Request to Sublease**") and provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed Subtenant, (b) reasonably adequate evidence that the proposed Subtenant's financial condition and prospects are sufficient to support all of the financial and other obligations of the proposed Sublease, (c) a full description of the terms and conditions of the proposed Sublease, including copies of any and all proposed agreements concerning the proposed Sublease, (d) a description of the proposed use by the proposed Subtenant, (e) the material terms of any proposed Sublease, including all payments to be made or other consideration to be given in connection with the Sublease. Until such time as Tenant has provided to Port all information set forth hereinabove, Tenant's Notice of Request to Sublease will not be deemed to have been served or given. Port will promptly notify Tenant of any deficiencies in the information provided to Port. Tenant will immediately notify Port of any modifications to the proposed terms of the Sublease. Each Notice of Request to Sublease must include a statement in bold that pursuant to **Section 20.5** of the Lease, Port is obligated to promptly notify Tenant of any deficiencies in the information related to the proposed Sublease submitted by Tenant. If Port fails to respond to Tenant's request for Port's review within such ten (10) business day period, then Tenant shall provide a second notice to Port requesting Port's approval (the "**Second Sublease Notice**"). The Second Sublease Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: "**APPROVAL REQUEST FOR 20th STREET HISTORIC CORE SUBLEASE APPROVAL MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN THREE (3) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to approve or disapprove

within three (3) business days following receipt of the Second Sublease Notice, Port's failure to respond shall be deemed approval.

(d) Port's Options. Upon receiving a Notice of Request to Sublease, Port will have the right to do either of the following:

(i) *Consent.* Port may either (1) consent to the proposed Sublease, which consent shall not be unreasonably withheld, or (2) consent to the proposed Sublease, subject to any reasonable conditions upon such Sublease (which reasonable conditions shall be limited to the conditions described in *Section 20.5(d)(ii)*), and such consent and conditions imposed will be in writing.

(ii) *Deny Consent.* Port may deny its consent to the proposed Sublease on the following reasonable grounds: (1) that the proposed Subtenant's financial condition and prospects are insufficient to support all of the financial and other obligations of the proposed Sublease; (2) that the use to which the Premises will be put by the proposed Subtenant is inconsistent with the terms of this Lease; (3) that the nature of the proposed Subtenant's intended or likely use of the Premises would involve an unmitigated risk of the Handling, Release or mishandling of Hazardous Materials and Port reasonably believes that the measures proposed by Subtenant are insufficient to mitigate the risk of Handling or Release of Hazardous Materials by Subtenant, or otherwise materially increase the risk of fire or other casualty; (4) that the Sublease rental rate does not reflect an arm's length transaction; (5) that the Sublease rental rate is below the fair market rent for similar use and type of premises in the Central Waterfront, Dogpatch, and Mission Bay; (6) that Port has not received assurances acceptable to Port in its sole discretion that all past due amounts owing from Tenant to Port (if any) will be paid and all other Tenant defaults (if any) will be cured prior to the effective date of the proposed Sublease; or (7) failure of the Sublease to contain provisions whereby the Subtenant agrees to comply with *Sections 4, 9, 20.5(e), 20.5(f), 21, 22, 23, 29, 31, 32.1, 33.3, 35, 38, 41, 43.*

(e) Required Provisions in Every Sublease. Each and every Sublease must contain all the following provisions:

(i) An Indemnification clause and waiver of claims provision identical to that set forth in *Article 21*; and

(ii) A requirement that under all liability and other insurance policies, "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES**" are additional insureds by written endorsement and acknowledging Port's rights to demand increased coverage to normal amounts consistent with the Subtenant's business activities on the Premises; and

(iii) A provision stating that if for any reason whatsoever this Lease is terminated, such termination will operate to terminate all the existing Subleases entered into by Tenant; and

(iv) A provision directing Subtenant to pay the Sublease rent and other sums due under the Sublease directly to Port upon receiving written notice from Port that a Tenant Event of Default has occurred; and

(v) With respect to any Sublease that permits the Handling of any Hazardous Materials that exceed the limited amounts that are customarily used for janitorial services or in connection with office or restaurant uses, the Sublease will contain provisions permitting Port to assess such Subtenant's operations and activities within, on or near the Premises and to (1) require such Subtenant to deposit an Environmental Financial Performance Deposit in accordance with *Section 19.2*, and (2) if Port reasonably believes it is prudent to implement an Operations Plan for such Subtenant, implement and comply with an Operations Plan reasonably approved by Port; and

(vi) A provision whereby each Subtenant expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease; and

(vii) A provision requiring compliance with *Section 43.15* regarding public transit information.

(viii) A provision similar to *Article 38* to require each Subtenant to permit Port to enter its subleased premises for the purposes specified in *Article 38*.

(f) Copy of Executed Sublease. Tenant will provide Port a true and complete copy of each executed Sublease within thirty (30) days after the execution thereof. Each executed Sublease must contain substantially the same (or more favorable to the landlord) business terms as set forth in the applicable Notice of Request to Sublease.

20.6. *Non-Disturbance of Subtenants, Attornment, Sublease Provisions.*

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Port will enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Port will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Port and such Subtenant (“**Non-Disturbance Agreements**”). All Non-Disturbance Agreements will comply with the provisions of this *Section 20.5*. Port will provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause a Tenant Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term, unless Port approves such longer term with the agreement that in such event, such subleases shall become direct leases with the Port upon the expiration of the Term hereof; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of *Articles 4, 9, 10, 21, 22, 23, 29, 31, 32.1, 33.3, 35, 36, 38, 41, and 43*; (iv) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to Port (provided Port agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and the Sublease shall be deemed a direct lease or license agreement between the Subtenant and Port, except that Port shall not be liable to the Subtenant for any security deposit or prepaid rent or license fees previously paid by such Subtenant to Tenant unless such deposits are transferred to Port; (v) if Tenant is then in default of any of its obligations under this Lease, Port may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as Port may specify either in a notice of default given under *Section 27* or in a notice conditionally approving Tenant’s request for such Non-Disturbance Agreement (and if a Tenant Event of Default then exists, then Port may withhold or condition the giving of a Non-Disturbance Agreement), and (vi) the Subtenant must have delivered to Port an executed estoppel certificate, substantially in the form attached hereto as [*Exhibit XX*].

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement will be substantially in the form of [*Exhibit XX*] and, if not in such form, will be in form and substance agreed upon by Tenant and Port, not to be unreasonably withheld by either party. With each request for a Non-Disturbance Agreement, Tenant will submit a copy of the form, showing any requested interlineations or deletions, and Port will approve or disapprove of the requested changes within twenty (20) days after receipt of such changes (such approval not to be unreasonably withheld or conditioned). Any disapproval by Port will be in writing, and will set forth the specific reasons for Port’s disapproval. Failure by Port to approve or disapprove of specific interlineations, deletions or other modifications requested by a Subtenant within such twenty (20) day period will be deemed to be approval of the requested changes.

20.7. *No Further Amendment, No Further Consent Implied.* No material terms of a Sublease or a Transfer agreement, after approval by Port, will be amended without Port’s prior

written consent. Consent to one Transfer or Sublease will not be construed as consent to a subsequent Transfer or Sublease.

20.8. Fees for Review. Tenant will reimburse Port for its Attorneys' Fees and Costs incurred by Port in connection with the review, investigation, processing, documentation, disapproval and/or approval of any proposed Transfer or Sublease.

20.9. No Release of Tenant. The acceptance by Port of Rent or other payment from any other person will not be deemed to be a waiver by Port of any provision of this Lease or to be a release of Tenant from any obligation under this Lease. Except as set forth in **Section 20.1(f)**, no Transfer or Sublease will in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease.

20.10. Assignment of Sublease Rents. Subject to **Section 39.5**, Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Sublease, except that, until the occurrence of a Tenant Event of Default, Tenant has the right to receive, collect and enjoy such rents. Subtenant will pay the rent and other sums due under any Sublease directly to Port upon receiving written notice from Port that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from any Subtenant, then Tenant will hold such sums in trust for the benefit of Port and will immediately forward the same to Port. Port's collection of such rent and other sums will not constitute an acceptance by Port or attornment by such Subtenant.

20.11. Acknowledgement. Tenant acknowledges and agrees that each of the rights of Port set forth in this **Article 20** is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

21. INDEMNIFICATION OF PORT; WAIVER.

21.1. General Indemnification of the Indemnified Parties. Subject to **Section 21.4**, Tenant agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of Persons or loss or destruction of or damage to property occurring in, on, under, around, or about the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees; (ii) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises or any part thereof by Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees; (iii) any latent, design, construction or structural defect relating to the Improvements, any other Subsequent Construction, or any other matters relating to the condition of the Premises caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants; (iv) any failure on the part of Tenant or its Agents, Invitees, or Subtenants, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws; (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents or Subtenants; (vi) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Subtenants; and (vii) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy.

21.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under **Section 21.1** and subject to **Section 21.4**, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material Condition; (ii) any Handling or Release of Hazardous

Materials in, on, under, around or about the Premises; or (iii) Tenant's Exacerbation of any Hazardous Material Condition.

(b) Tenant's obligations under *Section 21.2(a)* 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 and Costs, 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.

(c) Tenant understands and agrees that its liability to the Indemnified Parties under this *Section 21.2* arises upon the earlier to occur of (a) discovery of any such Hazardous Materials (other than underground Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises, (b) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises, (c) the Exacerbation of any Hazardous Material Condition, or (d) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

21.3. *Scope of Indemnities; Obligation to Defend.* Except as otherwise provided in *Section 21.4*, Tenant's Indemnification obligations under this Lease is 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. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Tenant, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Tenant and continues at all times thereafter until finally resolved. Tenant's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port hereunder and is due and payable from time to time immediately upon Port's request, as incurred.

21.4. *Exclusions from Indemnifications, Waivers and Releases.* Nothing in this *Article 21* relieves the Indemnified Parties from liability, nor will the Indemnities set forth in *Sections 21.1* and *21.2*, the defense obligations set forth in *Sections 21.3* and *21.6*, or the waivers or releases of claims set forth in *Section 21.7* extend to Losses (i) to the extent caused by the sole negligence or willful misconduct of the Indemnified Parties, or (ii) arising from Pre-Existing Hazardous Materials so long such Pre-Existing Hazardous Materials are not Released or Exacerbated by the acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or any of their respective Agents or Invitees. The Indemnified Parties will not be liable under any circumstances for any consequential, incidental, or punitive damages.

21.5. *Survival.* Tenant's Indemnification obligations under this Lease and the provisions of this *Article 21* survive the expiration or earlier termination of this Lease.

21.6. *Defense.* Tenant, at its option but subject to the reasonable consent and approval of Port, will be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases Port will be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port

alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, Port has the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which expense will be due and payable to Port ten (10) days after receipt by Tenant of an invoice therefor.

21.7. Waiver. Subject to **Section 21.4**, as a material part of the consideration of this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (vii) stopped, leaking or defective Material Systems, (viii) Building defects, and (ix) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises including all claims for Losses arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

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 waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the California 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 WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Tenant's Initials _____

Tenant acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

22. HAZARDOUS MATERIALS.

22.1. 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, subject only to the following exceptions, provided that Handling is at all times in full compliance with the Pier 70 Risk Management Plan, all Environmental Laws, and Operations Plan(s), if any: (i) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (ii) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of the Initial Improvements or Subsequent Construction, and which are reported to, and approved by Port prior to any such Handling, (iii) subject to **Section 22.9**, supplies or materials in such limited amounts as are customarily used for general landscaping purposes, (iv) Pre-Existing Hazardous Materials that are required by Law or prudent business practices to be Handled for Remediation purposes, and (v) any janitorial, office, or restaurant supplies, or similar materials in such limited amounts as are customarily used for janitorial services or in connection with office or restaurant uses.

22.2. 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:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under **Section 22.1**;

(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 any investigation, construction, operations, use or any other activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;

(d) Tenant will remove the existing PCB transformers in Building 113 at its sole cost and expense;

(e) Tenant will, as necessary or if required by Regulatory Agencies, Remediate above-ground Hazardous Materials (irrespective of whether they were Pre-Existing Hazardous Materials);

(f) Tenant will be the “**Generator**” of any waste, including hazardous waste, resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises; and

(g) Will comply with all provisions of the Pier 70 Risk Management Plan, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually.

(h) Will comply, and will cause all of its Subtenants that are subject to an Operations Plan, to comply with the Operations Plan applicable to Tenant or such Subtenant.

22.3. Port Responsibility. The Parties agree that Port will be responsible for previously unidentified below ground Hazardous Materials that require additional investigation or Remediation (i) that are not Pre-Existing Hazardous Materials, and (ii) whose presence is not a result of Tenant’s construction, operation, use, or other activities conducted in, on, under, or about the Premises.

22.4. Tenant's Environmental Condition Notification Requirements.

The following requirements are in addition to the notification requirements specified in the (i) Operations Plan(s), if any, and (ii) the Pier 70 Risk Management Plan:

(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 22.1**, Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and 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, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provide 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 receive 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, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use 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, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use 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 name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates 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. Tenant must provide Port with copies of any of the documents within the scope of this **Section 22.4(d)** upon Port's request.

(e) Tenant must provide Port with copies of all communications with Environmental Regulatory Agencies, copies of investigation reports conducted by 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 whether any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

22.5. Tenant Requirement to Remediate.

(a) After notifying Port in accordance with *Section 22.4*, subject to *Section 22.3*, Tenant must Remediate, at its sole cost and 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 such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under *Section 22.5(a)*, before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to Subsequent Construction or construction of the Initial Improvements.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises, 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 in any manner related directly or indirectly to Hazardous Materials.

(d) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the Premises, Tenant will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

22.6. Port's Right to Audit. Port has 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 *Article 38*. Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted will not be deemed to be a release of Tenant's obligations under this Lease or the Pier 70 Risk Management Plan.

22.7. Notification of Asbestos and Lead. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises, and, in accordance with the United States Occupational Safety and Health Administration ("OSHA") Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and the Division of Occupational Safety and Health of the California Department of Industrial Relations ("Cal-OSHA") General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in the Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in *Exhibit XX*. Disturbance or removal of lead is regulated by among other Laws, 29 CFR §§ 1910.1025,

1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and San Francisco Building Code § 3423.

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

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of this *Section 22.7* and the notice and reports identified on *Exhibit XX* and understands, after having consulted its legal counsel, that it must make its Agents aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under the Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of claims set forth in *Section 21.7* is given with full knowledge of the presence, or possible presence, of lead and/or asbestos in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possible presence, of lead and/or asbestos in or about the Premises may limit Tenant's ability to construct the Improvements without Tenant first performing abatement of such lead and/or asbestos, as applicable. The presence of lead and/or asbestos in the Premises and the removal or non-removal by Port of all or a portion of such lead and/or asbestos will not, however, (i) entitle Tenant to any claim for Losses, (ii) relieve Tenant of any of its obligations hereunder, including the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises.

Notwithstanding any other provisions of this Lease, Tenant agrees to defend and Indemnify the Indemnified Parties for Tenant's acts or omissions that result in (1) asbestos-related enforcement actions, including both administrative or judicial proceedings; (2) any Losses arising from an alleged violation of Cal-OSHA General Industry Safety Order for asbestos and/or exposures to asbestos; (3) lead-related enforcement actions, including both administrative or judicial proceedings; and (4) any Losses arising from an alleged violation of Cal-OSHA Construction Safety Order for lead and/or exposures to lead.

22.8. 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 may be present on or near the Premises, including naturally occurring asbestos, metals and other contamination commonly found in fill, petroleum, 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: asbestos in buildings, if any, as described in *Exhibit XX*, naturally occurring asbestos, metals and other contamination commonly found in fill, petroleum, and lead-based paint. [Note: To be further reviewed] By execution of this Lease, Tenant acknowledges that the notice set forth in this *Section 22.8* satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this *Section 22.8* to any Subtenant, 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.

22.9. Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the

maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to Port an integrated pest management (“IPM”) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (b) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as Tenant’s primary IPM contact person with Port. 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.

22.10. Survival. Tenant’s obligations under this *Article 22* will survive the expiration or earlier termination of this Lease.

23. INSURANCE.

23.1. Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Except as more specifically provided in this *Section 23.1*, Tenant shall, at no cost to Port, obtain and maintain, and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this *Section 23.1(a)*), the following types and amounts of insurance:

(i) *Builders Risk Insurance.* At all times during construction prior to completion of the Initial Improvements, and during any period of Subsequent Construction costing more than Five Hundred Thousand Dollars (\$500,000), as Indexed, Tenant shall maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance (or its equivalent for any Subsequent Construction, which may include coverage under a property insurance program as referenced under *Section 23.1(a)(ii)*) in the amount equal to the 100% replacement cost value of any existing structures being Rehabilitated or Restored, and 100% of all new construction, including all materials and equipment to be used/incorporated on or about the Premises, and in transit or storage off-site, against all risk or “special form” hazards, and earthquake and flood insurance (subject to *Section 23.1(a)(ii)*) including risks from any and all testing of any equipment, including as named insureds, Port and Tenant, with any deductible not to exceed Two Hundred Fifty Thousand (\$250,000) (except as to earthquake and flood insurance for which the deductible will be in accordance with the requirements of *Section 23.1(a)(ii)*). Such builders risk insurance also shall extend to cover soft costs and loss of business income for any delayed completion period as caused by any of the perils or hazards set forth in and required to be insured pursuant to *Section 23.1(a)(i)*, for a delay period of not less than two (2) years with a limit of not less than One Million Dollars (\$1,000,000). If available at commercially reasonable rates, such builders risk insurance also shall extend to cover the peril of terrorism.

(ii) *Property Insurance; Earthquake and Flood Insurance.*

(1) Upon completion of the Initial Improvements, and upon completion of Subsequent Construction of any additional Improvements, Tenant will maintain, or require to be maintained, property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 (“Causes of Loss Special Form” (or its replacement)), in an amount not less than 100% of the then-current full replacement cost of the Improvements including any foundations, pilings, excavations and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed Two Hundred Fifty Thousand

Dollars (\$250,000) (except as to earthquake and flood insurance). If available at commercially reasonable rates, such insurance shall extend to cover the peril of terrorism. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port shall have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance shall not be subject to *Section 16.7*.

(2) Earthquake Insurance.

(A) During construction of the Initial Improvements, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Initial Improvements or, (ii) the maximum amount that is available at commercially reasonable rates from recognized insurance carriers (with a deductible of up to but not to exceed ten percent (10%)) of the then-current, full replacement cost of the Initial Improvements without sublimits for excavations and footings; provided that earthquake coverage is available at commercially reasonable rates), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates). “**Probable Maximum Loss**” means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined prior to completion of the Initial Improvements and thereafter not less frequently than every ten (10) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port; and

(B) From and after the issuance of a Certificate of Occupancy for the each of the Buildings, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate.

(3) Flood Insurance.

(A) During construction of the Initial Improvements, flood insurance will be in an amount, to the extent available at commercially reasonable rates from recognized insurance carriers (or through the NFIP) equal to the maximum amount of the then-current, full replacement cost of the Initial Improvements (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible of up to but not to exceed ten percent (10%), except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized insurance carriers (or through the NFIP) at commercially reasonable rates; and

(B) From and after the issuance of a Certificate of Occupancy for each of the Buildings, flood insurance will be in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers or through the NFIP, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) *Exceptions for Earthquake and Flood Insurance.* If Tenant determines that earthquake or flood insurance should not be carried on the Improvements because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance) or, in Tenant’s reasonable business judgment, is imprudent, then Tenant will request in writing Port’s consent to the absence or deletion thereof. However, with respect to earthquake or flood insurance during the construction of the Initial Improvements, a request for Port’s consent to such determination by Tenant need not be submitted and Tenant may make such determination in its sole discretion. Any request for Port’s consent required hereunder will include with such request evidence supporting Tenant’s determination of commercial unreasonableness or imprudence as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance

companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco. Port will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Tenant's request. If Port disapproves such request, Port will state the basis for its disapproval. If Tenant disputes Port's disapproval, then Tenant may submit the matter to arbitration in accordance with the dispute Resolution procedure set forth in **Section 24**. If Tenant elects not to carry or to discontinue such coverage with Port's approval (or pursuant to an arbitrator's decision), and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Tenant thereof, and Tenant will add such coverage to its policy as soon as reasonably practicable thereafter; provided, however, that if Tenant disputes Port's determination, such dispute will be submitted to the dispute Resolution procedure set forth in **Section 24**.

(iii) *Commercial General Liability Insurance.* Tenant will maintain, or require to be maintained "**Commercial General Liability**" insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) which includes coverage extending to the Indemnity in **Article 21**, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Fifteen Million Dollars (\$15,000,000) per occurrence and annual aggregate, and Fifteen Million Dollars (\$15,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant will maintain or require to be maintained liquor liability coverage with limits not less than Three Million Dollars (\$3,000,000) and Tenant will require any Subtenant or operator who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage. All such insurance may be provided under a combination of primary and umbrella excess policies and may be provided under policies with a "**claims made**" trigger as provided in **Section 23.1(b)(viii)**.

(iv) *Workers' Compensation Insurance.* During any period in which Tenant has employees, as defined in the California Labor Code, Tenant will maintain or require to be maintained policies of workers' compensation insurance providing statutory limits, including employer's liability coverage with limits not less than One Million Dollars (\$1,000,000) each accident and policy limit by disease (except that such insurance in excess of One Hundred Thousand (\$100,000) each accident may be covered by a so-called "**umbrella**" or "**excess coverage**" policy) covering liability for all persons directly employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

(v) *Boiler and Machinery Insurance.* If any of the following exposures are not covered by the insurance required by **Section 23.1(a)(ii)(1)**, Tenant will maintain, or require to be maintained, boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located in, on, under, around, or about the Premises that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(vi) *Business Automobile Insurance.* Tenant will maintain, or require to be maintained, policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles (including electric carts) to be used by Tenant and its Agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily

injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Five Million Dollars (\$5,000,000) per accident and annual aggregate.

(vii) *Business Income Insurance.* From and after the issuance of a Certificate of Occupancy for any of the Buildings, Tenant will maintain business income insurance, including loss of rents and extra expense caused by any of the perils or hazards set forth in and required to be insured pursuant to **Section 23.1(a)(ii)** covering an interruption period of not less than two (2) years, with a limit of not less than twenty-four (24) months' of Gross Income.

(viii) *Contractor's Pollution Legal Liability Insurance.* Tenant will cause to be maintained during the period of construction of the Initial Improvements and during any periods of Subsequent Construction, that could reasonably be anticipated to involve a Release of Hazardous Materials on or about the Premises, Contractor's Pollution Legal Liability Insurance for any and all Losses caused by pollution conditions, that are sudden, accidental or gradual, resulting from the contractor's operations, or for which contractor is legally liable, in connection with the construction of the Initial Improvements or Subsequent Construction, whether such operations be by Tenant or Tenant's contractors, subcontractors, consultants or suppliers of the contractor. The foregoing policy will contain minimum liability limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate with a deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Initial Improvements or any Subsequent Construction; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Initial Improvements or any Subsequent Construction, including transportation of any Hazardous Materials to or from the project site, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Improvements under the LDDA (if in effect) or any Subsequent Construction under this Lease or in connection with any Remediation obligation of Tenant pursuant to **Article 22** is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a claims-made form. If the foregoing policy is written on a claims made form, then the foregoing policy will be maintained for, or contain an extended reporting period of, at least five (5) years. The foregoing policy definition of "**Covered Operations**" or any other such designation of services or operations performed by Tenant's contractors must include all work or services performed by Tenant's contractors and their respective subcontractors, consultants, or suppliers.

(ix) *Professional Liability.* Tenant will maintain or require to be maintained, project-specific professional liability (errors and omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate, with respect to all professional services, including architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to the construction of the Initial Improvements and any Subsequent Construction with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each claim (the "**lead policy**"). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this **Section 23.1(a)(ix)**, to require that any architects, contractors and sub-contractors performing professional services in connection with the Initial Improvements or any Subsequent Construction carry professional liability insurance

(errors and omissions) in an amount not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Such insurance will provide coverage during the period when such professional services are performed and for a period of (1) three (3) years after issuance of a Certificate of Occupancy for the Initial Improvements and (2) five (5) years for any Subsequent Construction. With respect to Subsequent Construction, Tenant will require that any architect, contractor or subcontractor performing professional services in connection with such Subsequent Construction, carry professional liability insurance (errors and omissions) in an amount not less than One Million Dollars (\$1,000,000) each claim and annual aggregate with any deductible not to exceed Twenty Five Thousand Dollars (\$25,000). Notwithstanding the foregoing requirements set forth in this **Section 23.1(a)(ix)**, professional liability insurance is not required for Subsequent Construction costing less than Five Hundred Thousand Dollars (\$500,000), as Indexed.

(x) *Other Insurance.* Tenant will obtain such other insurance or increase the coverage limits set forth in this **Section 23.1(a)** as is reasonably requested by City's Risk Manager.

(b) General Requirements.

(i) As to all insurance required hereunder, such insurance will be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State;

(ii) As to property insurance required hereunder, such insurance will name Tenant as the first named insured, and will name Port as an insured as its interest may appear. As to general liability, automobile liability, and umbrella or excess liability insurance, such insurance will name as additional insureds by written endorsement: "THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."

(iii) As to all insurance required hereunder, such insurance will be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the date of the issuance of a Certificate of Occupancy for the Improvements. Following consultation with Tenant, Port may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco to carry insurance for facilities of comparable size and use to the Premises in amounts substantially greater than the amounts being carried by Tenant with respect to risks comparable to those associated with the uses of the Premises. If the City's Risk Manager determines that the insurance limits required under this **Section 23.1** may be decreased in light of such commercial practice and the risks associated with the uses of the Premises, Port will notify Tenant of such determination, and Tenant will have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant will promptly deliver to Port a certificate evidencing such new insurance amounts and additional insured endorsements in form satisfactory to Port;

(iv) As to all insurance required hereunder, such insurance will provide that no cancellation, material modification or termination of such insurance will be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Port;

(v) As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. An ISO endorsement CG20 10 11

85 or its equivalent must be added naming the **CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AS ADDITIONAL INSURED**s;

(vi) As to liability, automobile, worker's compensation and property insurance required hereunder, such insurance will provide for waivers of any right of subrogation that the insurer of such party may acquire against each Party hereto with respect to any losses of the type covered under the policies required by *Section 23.1(a)*;

(vii) All insurance will be subject to the approval of Port, which approval will be limited to whether or not such insurance meets the terms of this Lease;

(viii) If any of the policies of liability required hereunder is provided under a claims-made form of policy, Tenant will maintain such coverage continuously throughout the Term, and following the expiration or earlier termination of the Term, Tenant will maintain, or require to be maintained, such coverage without lapse for a period of ten (10) years beyond the expiration or earlier termination of this Lease, or, in the case of construction, for ten (10) years after issuance of a Certificate of Occupancy for each of the Rehabilitated Buildings or Subsequent Construction, as applicable; and

(c) *Certificates of Insurance; Right of Port to Maintain Insurance.* Tenant will furnish Port certificates with respect to the policies required under this *Article 23* and additional insured endorsements in form satisfactory to Port, (i) on or prior to the Commencement Date (to the extent such policy is required to be carried as of the Commencement Date), (ii) for such policies required to be carried after the Commencement Date, on or prior to the date such policies are required, and (iii) with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy. Within thirty (30) days after Port's request, Tenant also will provide Port with copies of each such policy, or will otherwise make such policy available to Port for its review. If Tenant has determined that obtaining earthquake or flood insurance prior to commencement of construction of the Initial Improvements pursuant to *Section 23.1(a)(ii)(4)* is not commercially reasonable, then Tenant will provide Port with such documents evidencing such determination. If at any time Tenant fails to maintain the insurance required pursuant to this *Section 23.1*, or fails to deliver certificates and/or endorsements as required pursuant to this *Section 23.1(c)* then, upon ten (10) days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) days following demand, Tenant will reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) *Insurance of Others.* To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the Premises, Tenant will require that such policies be endorsed to include the **CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS** as additional insureds. Notwithstanding the foregoing, Tenant will require all contractors and sub-contractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars (\$1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than \$1,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the Premises.

23.2. Port Entitled to Participate. Except to the extent inconsistent with the terms of *Article 39*, with respect to property insurance, Port is entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any Loss in excess of Two Million Dollars (\$2,000,000), as Indexed, covered by the insurance required to be carried hereunder; provided, however, that (i) Port's consent will not be unreasonably withheld, and (ii) no consent of Port will be required in connection with any such settlement, compromise or agreement concerning damage to all or any portion of the Improvements if Tenant will have agreed in writing to commence and complete Restoration.

23.3. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses occasioned to the property of each such Party, which losses are of the type covered under the property policies required by *Sections 23.1(a)(i), 23.1(a)(ii), or 23.1(a)(vi)* to the extent that such loss is reimbursed by an insurer.

23.4. No Limitation. The Indemnification requirements under this Lease, the LDDA, or any other Transaction Documents will not be limited by their insurance requirements.

24. DISPUTE RESOLUTION FOR CERTAIN MATTERS.

(a) If Tenant disputes Port's (i) disapproval of Tenant's election to not obtain earthquake insurance or to delete earthquake insurance pursuant to *Section 23.1(a)(ii)(4)* or (ii) request to reinstitute earthquake coverage pursuant to *Section 23.1(a)(ii)(4)*, or (iii) determination that an Expansion Site does not have an Unforeseen Condition, then either party may invoke the provisions of this Section at any time after such Party has made a good faith effort to resolve the disputed matter with the other Party, by delivering written notice to the other Party.

(b) Within twenty (20) days after delivery of notice invoking the provisions of this Section, each Party will provide, by written notice to the other Party, a list of its three preferred arbitrators in order of descending preference along with a description of the qualifications of each such arbitrator and any past or current relationships between the arbitrator and the Party. Each proposed arbitrator must have at least ten (10) years experience in (i) insuring property comparable in size and use to the Premises in California if the dispute is related to earthquake insurance, or (ii) managing and developing commercial real estate projects in San Francisco, including comparable mixed use light industrial/retail/office projects if the dispute is related to whether there is an Unforeseen Condition on any of the Expansion Sites. Such person must be competent, qualified by training and experience, disinterested and independent. Either Party has the right to directly contact any of the arbitrators nominated by the other Party to obtain further information about such arbitrator's qualifications or relationship to the other Party. Within thirty (30) days after delivery of the notice invoking the provisions of this Section, the two Parties will meet and mutually agree upon one arbitrator from among the six (6) nominees, attempting to select the highest-ranking nominee from either list. If they cannot agree within such time then either Party, on behalf of both, may request that appointment of an arbitrator be designated by the American Arbitration Association or similar provider of professional commercial arbitration services, from the six (6) nominees. If either Party fails to provide its list of arbitrators within such twenty (20) day period, the other Party will select the highest ranking arbitrator stated on such Party's list of three (3) nominees.

(c) The scope of the arbitrator's decision under this Section will be limited to whether or not (i) the continuation or reinstatement (as applicable) of earthquake coverage would be considered commercially unreasonable or imprudent under a reasonable judgment standard, or (ii) there is an Unforeseen Condition on any of the Expansion Sites. The appointed arbitrator will make a final, written determination within twenty (20) days of appointment. The fees of the arbitrator and any court or arbitration fees (but not Attorneys' Fees and Costs or other consulting fees incurred by either Party) will be borne equally by both Parties. The determination of the arbitrator will be conclusive and binding on both Parties.

25. DELAY DUE TO FORCE MAJEURE.

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure will not be considered in breach of or in default of its obligations hereunder to the extent of any delay resulting from Force Majeure, and the time fixed for performance of any such obligation will be extended by a period of time equal to the duration of the Force Majeure event; provided, however, that the provisions of this *Article 25* will not apply to Tenant's obligation to pay Rent, Port's share of Transfer Proceeds, or Port's share of Net Refinancing Proceeds. A Party seeking an extension of time pursuant to the provisions of this *Article 25* must give notice to the other Party describing with reasonable particularity the facts and circumstances constituting Force Majeure within the earlier to occur of: (a) a reasonable time (but not more than fifteen (15) days) after knowledge of the beginning of such Force Majeure event, or (b) within ten (10) days after the other Party's demand for performance.

26. PORT'S RIGHT TO PAY SUMS OWED BY TENANT.

26.1. *Port May Pay Sums Owed by Tenant Following Tenant's Failure to Pay.*

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Tenant Event of Default, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition with respect to which the provisions of *Section 7.2* apply), Port may, at its sole option, but will not be obligated to, upon five (5) days prior notice to Tenant, pay such sum for and on behalf of Tenant.

26.2. *Tenant's Obligation to Reimburse Port.* If pursuant to *Section 26.1* Port pays any sum required to be paid by Tenant hereunder, Tenant will reimburse Port as Additional Rent, the sum so paid. All such sums paid by Port is due from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, will bear interest at the lesser of the Default 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. Port's rights under this *Article 26* are in addition to its rights under any other provision of this Lease or under applicable Laws. The provisions of this *Section 26.2* will survive the expiration or earlier termination of this Lease.

27. TENANT EVENTS OF DEFAULT.

The occurrence of any one or more of the following events constitutes a "Tenant Event of Default":

(a) Tenant fails to pay any Rent to Port when due, which failure continues for five (5) days following written notice from Port; provided, however, Port will not be required to give such notice on more than two (2) occasions during any calendar year, and failure to pay any Rent thereafter when due will be deemed a Tenant Event of Default without need for further notice;

(b) A Developer Event of Default or Unmatured Developer Event of Default (as such terms are defined in the LDDA) occurs under the LDDA (so long as it is in effect) and remains uncured but such Tenant Event of Default under this Lease will be deemed cured if the Developer Event of Default or Unmatured Developer Event of Default is cured pursuant thereto;

(c) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, which abandonment is not cured within fifteen (15) days after notice from Port of Port's belief of abandonment;

(d) The Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion, and such Prohibited Use(s) continues for a period of twenty-four (24) hours following written notice from Port;

(e) Tenant fails to comply with the provisions of *Articles 10 and 11* and *Sections 22.1--22.5* and such failure continues for a period of 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;

(f) An event of default occurs under the SSLP Loan, if any, and remains uncured but such Tenant Event of Default under this Lease will be deemed cured if the event of default under such SSLP Loan, if any, is cured pursuant thereto;

(g) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred twenty (120) days;

(h) A writ of execution is levied on the Leasehold Estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred twenty (120) days; provided, however, that the exercise by the most senior Mortgagee of any of its remedies under its Permitted Mortgage shall not, in and of itself, constitute a default under this *Section 27(h)*;

(i) Tenant makes a general assignment for the benefit of its creditors;

(j) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Port; or

(k) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

28. PORT'S REMEDIES.

28.1. *Port's Remedies Generally.* Upon the occurrence and during the continuance of a Tenant Event of Default (but without obligation on the part of Port following the occurrence of a Tenant Event of Default to accept a cure of such Tenant Event of Default other than as required by Law or by this Lease), Port has all rights and remedies provided in this Lease or available at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate); provided, however, notwithstanding anything to the contrary in this Lease, any right to cure and any remedy available to Port regarding any Tenant Event of Default with respect to the obligations set forth in *Section 13.5(g)*, *Article 41* and *Article 43* (collectively, the "**Special City and Port Provisions**") is limited to those rights and remedies provided in the applicable Special City and Port Provisions. All of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

28.2. *Right to Keep Lease in Effect.*

(a) Continuation of Lease. Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations) under which Port may continue this Lease in full force and effect. In the

event Port elects this remedy, Port has the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent when due. Upon the occurrence of a Tenant Event of 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 will be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including Attorneys' Fees and Costs, brokers' fees or commissions, expenses of remodeling the Premises required by the reletting and similar costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port determines in its sole discretion.

(b) No Termination Without Notice. No act by Port allowed by this *Section 28.2*, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a Transfer or termination of a Transfer in accordance herewith, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Port elects to relet the Premises as provided in *Section 28.2(a)*, the rent that Port receives from reletting will be applied to the payment of:

(i) First, all costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing Personal Property, costs in connection with reletting the Premises, or any portion thereof, altering, installing, modifying and constructing tenant improvements required for a new tenant, and costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the payments of any indebtedness other than Rent due hereunder from Tenant to Port;

(iii) Third, Rent due and unpaid under this Lease;

(iv) After deducting the payments referred to in this *Section 28.2(c)*, any sum remaining from the rent Port receives from reletting will be held by Port and applied to monthly installments of future Rent as such amounts become due under this Lease. In no event will Tenant be entitled to any excess rent received by Port. If on a date Rent or other amount is due under the Lease, the rent received by Port as of such date from any reletting is less than the Rent or other amount due on that date, or if any costs incurred by Port in reletting, remain after applying the rent received from such reletting, Tenant will pay to Port such deficiency. Such deficiency will be calculated and paid monthly.

(d) Payment of Rent. Tenant will pay to Port Rent on the dates the Rent is due, less the rent Port has received from any reletting which exceeds all costs and expenses of Port incurred in connection with a Tenant Event of Default and the reletting of all or any portion of the Premises.

28.3. Right to Terminate Lease. Port may terminate this Lease at any time after the occurrence of (and during the continuation of) a Tenant Event of a Default by giving written notice of such termination. Termination of this Lease will thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder will not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing will terminate this Lease. Upon termination of this Lease, Port has the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including the following:

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

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent 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 have been reasonably avoided; plus

(d) Any other amount necessary to compensate Port for all detriment proximately caused by the Tenant Event of Default, or which in the ordinary course of things would be likely to result therefrom; and

“The worth at the time of award” as used in *Sections 28.3(a) and 28.3(b)* will be computed by allowing interest at a rate per annum equal to the Default Rate. “The worth at the time of award” as used in *Section 28.3(c)* will be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

28.4. Interest. Rent not paid when due will bear interest at the Default Rate from the date due until paid.

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

28.6. Appointment of Receiver. From and after a Tenant Event of Default, Port has 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 will constitute an election by Port to terminate this Lease.

28.7. 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 Tenant Event of Default.

28.8. Remedies Not Exclusive. The remedies set forth in this *Article 28* are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law or in equity. Tenant’s obligations hereunder will survive any termination of this Lease.

29. NO WAIVER.

29.1. No Implied Waiver by Port. No failure by Port or Tenant to insist upon the strict performance of any obligation of the other Party 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, will constitute a waiver of such breach or of Party’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 will not be deemed to waive or render unnecessary Port’s consent to or approval of any subsequent act by Tenant. Any waiver by Port or Tenant of any default must be in writing and will not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

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

30. PORT EVENT OF DEFAULT; TENANT REMEDIES.

30.1. Port Event of Default. Port will be deemed to be in default hereunder ("Port Event of Default") only if Port fails to perform or comply with any obligation on its part hereunder and (i) such failure continues for more than the time of any cure period provided herein after written notice thereof from Tenant, or (ii) if no cure period is provided herein, for more than sixty (60) days after written notice thereof from Tenant (provided that, Port shall use reasonable efforts to cure such default within a thirty (30) day period) after receipt of such written notice from Tenant, or (iii) if such default cannot reasonably be cured within such sixty (60) day period, Port does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default.

30.2. Tenant Remedies. Upon the occurrence of a Port Event of Default, which Port Event of Default substantially and materially interferes with the ability of Tenant to conduct the Permitted Uses, Tenant has the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all actual damages incurred by Tenant as a direct result of the Port Event of Default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; provided, however, (i) in no event will Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Port hereunder) or Losses other than Tenant's actual damages as described in the foregoing clause (a), (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by Port hereunder, and (iii) Tenant shall have no remedy of self-help.

31. LIMITATION ON LIABILITY.

31.1. No Recourse Beyond Value of Property. Notwithstanding any other term or provision of this Lease, (a) the liability of Port for its obligations under this Lease or for any claim based upon this Lease, is limited solely to the fair market value of Port's fee interest in the Premises (as encumbered by this Lease) and (b) neither Port nor the Indemnified Parties will be liable under any circumstances for injury or damage to, or interference with Tenant's business, including loss or profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

31.2. *Nonliability of City Officials, Employees and Agents.* No commissioner, officer or employee of the Indemnified Parties will be personally liable to Tenant, or any successor in interest, for any Port Event of Default, and Tenant agrees that it will have no recourse with respect to any obligation of Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

31.3. *Nonliability of Tenant's Members, Partners, Shareholders, Directors, Officers and Employees.* No present or future member, officer, partner, shareholder, director, or employee of Tenant will be personally liable to Port for a Tenant Event of Default or for any amount which may become due to Port or for any obligations under the terms of this Lease.

31.4. *No Liability for Consequential, Incidental or Punitive Damages.* The Indemnified Parties will not be liable under any circumstances for any consequential, incidental, or punitive damages.

32. ESTOPPEL CERTIFICATES.

32.1. *Estoppel Certificate by Tenant.* Tenant will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser, lessee, or mortgagee of Port's interest in the Premises), within thirty (30) days after request, a certificate in substantially the same form as *Exhibit XX*. In addition, if requested by Port, Tenant will attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Port, any successor agency, and any prospective purchaser, lessee or mortgagee of the Premises or any part of Port's interest in the Premises, may rely upon any such certificate therein. Tenant also will use commercially reasonable efforts (including inserting a provision similar to this *Section 32.1* into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to Port, within thirty (30) days after request, an estoppel certificate in substantially the same form as *Exhibit XX* with respect to each such applicable Sublease, but Tenant will not be in default hereunder for failure of any particular Subtenant to deliver such estoppel certificate to Port.

32.2. *Estoppel Certificate by Port.* Subject to Port's receipt of its review costs as set forth in *Section 33.3*, Port will execute, acknowledge and deliver to Tenant (or at Tenant's request, to a prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease), within thirty (30) days after request, a certificate in substantially the same form as *Exhibit XX*. In addition, if requested, Port will attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Tenant, any prospective Mortgagee, or other prospective transferee of Tenant's interest under this Lease may rely upon any such certificate.

33. APPROVALS BY PORT; FEES FOR REVIEW.

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

such instrument on behalf of Port, except as otherwise provided by applicable Law, including the City's Charter.

33.2. *Standard Otherwise Applicable.* Except as expressly provided otherwise or when the Port is acting in its regulatory capacity, the following standards will apply to the Parties' conduct under this Agreement.

(a) **Advance Writings Required.** Whenever a Party's approval or waiver is required: (i) the approval or waiver must be obtained in advance and in writing; and (ii) the Party whose approval or waiver is sought may not unreasonably withhold, condition, or delay its approval or waiver, as applicable.

(b) **Commercial Reasonableness.** Whenever a Party is permitted to make a judgment, form an opinion, judge the sufficiency of the other Party's performance, or exercise discretion in taking (or refraining from taking) any action or making any determination, that Party must employ commercially reasonable standards in doing so. In general, the Parties' conduct in implementing this Lease, including construction of Improvements, disapprovals, demands for performance, requests for additional information, and any exercise of an election or option, must be commercially reasonable.

33.3. *Fees for Review.* Within ten (10) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including Attorneys' Fees and Costs and costs for Port staff time, incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed Transfer, Non-Disturbance Agreement, Mortgage, Refinancing, certificate, or Subsequent Construction. Tenant will pay such costs regardless of whether or not Port consents to such proposal.

34. NO MERGER OF TITLE.

There will be no merger of the Leasehold Estate with the fee estate in the Premises by reason of the fact that the same Person may own or hold (a) the Leasehold Estate or any interest in such Leasehold Estate, and (b) any interest in such fee estate. No such merger will occur unless and until all Persons having any interest in the Leasehold Estate and the fee estate in the Premises will join in and record a written instrument effecting such merger.

35. SURRENDER OF PREMISES.

35.1. *Surrender.* Upon the expiration or earlier termination of this Lease, Tenant will quit and surrender to Port the Premises (a) in good order and condition, ordinary wear and tear excepted and except as provided in *Articles 16* and *17*; (b) clean, free of debris, waste, and Hazardous Materials (other than any underground Pre-Existing Hazardous Materials that have not been Handled, Released, or Exacerbated by Tenant, its Agents, or Invitees), and (c) free and clear of all liens and encumbrances other than the Permitted Title Exceptions or those which are being contested in accordance with *Article 8*. If it is determined by Port that the condition of all or any portion of the Premises is not in compliance with the provisions of this Lease with respect to Hazardous Materials at the expiration or earlier termination of this Lease, then at Port's sole option, Port may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Port in the condition required herein.

On or before the expiration or earlier termination of this Lease, Tenant at its sole cost will remove and repair any damage caused by removal of Signs (both on and off the Premises) or Tenant's Personal Property. Any items not removed by Tenant as required herein will be deemed abandoned and may be stored, removed, and disposed of by Port at Tenant's sole cost and expense, and Tenant waives all claims against Port for any Losses resulting from Port's retention, removal or disposition of such Personal Property; provided, however, that Tenant will be liable to Port for all costs incurred in storing, removing and disposing of such abandoned property or repairing any damage to the Premises resulting from such removal. The Improvements will remain in the Premises as the property of Port. Ordinary wear and tear will

not include any damage or deterioration that could have been prevented by proper maintenance by Tenant or by Tenant otherwise performing all of its obligations under this Lease

35.2. Quitclaim. Upon the expiration or earlier termination of this Lease, the Premises will 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 will 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 will promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effectuate the termination of Tenant’s Leasehold Estate hereunder and to effectuate such transfer or vesting of title to the Premises, the Improvements and Personal Property that Port agrees are to remain within the Premises.

35.3. Survival. Tenant’s obligations under this *Article 35* will survive the expiration or earlier termination of this Lease.

36. HOLD OVER.

Any holding over after the expiration of the Term will not constitute a renewal hereof but will be deemed a month-to-month tenancy and will be upon each and every one of the other terms, conditions and covenants of this Lease, except that Minimum Rent payable for the applicable month will be equal to the higher of: (i) seventy-five percent (75%) of Net Revenues payable for the calendar month immediately prior to the Expiration Date, or (ii) one hundred fifty percent (150%) of the monthly Minimum Rent payable for the month immediately preceding the expiration of the Term. Either Party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other party.

37. NOTICES.

37.1. Notices.

All notices, demands, consents, approvals, and requests that may or are to be given by any Party to the other will be in writing, except as otherwise provided herein. All notices, demands, consents, approvals, and requests to be provided hereunder will be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day) or if mailed, the next business day after being deposited with an overnight courier or two business days after being deposited with the U.S. Postal Service (as evidenced by a postmark date), postage prepaid, in each case, addressed as follows:

<p>Port:</p>	<p>Port of San Francisco Pier 1 San Francisco, CA 94111 Attention: Director of Real Estate (Reference: 20th Street Historic Buildings) Telephone: (415) 274-0400 FAX: (415) 274-0528</p>
<p>With a copy to:</p>	<p>Port of San Francisco Pier 1 San Francisco, CA 94111 Attention: Port General Counsel (Reference: 20th Street Historic Buildings) Telephone: (415) 274-0400 FAX: (415) 274-0494</p>

To Tenant Prior to Certificate of Occupancy:	c/o Orton Development, Inc. 1475 Powell Street, Suite 101 Emeryville, CA 94608 Attn: J.R. Orton III and James Madsen Telephone: (510) 428-0800 FAX: (510) [XXX-XXXXXX]
With a copy to:	Stein & Lubin Transamerica Pyramid 600 Montgomery Street, 14th Floor San Francisco, CA 94111 Attention: Mark D. Lubin Telephone: (415) 981-0550 FAX: (415) 981-4343
To Tenant After Certificate of Occupancy:	c/o Orton Development, Inc. 3049 Research Drive Richmond, CA 94806 Attention: Eddie Orton and James Madsen Telephone: (510) [XXX-XXXXX] FAX: (510) [XXX-XXXXXX]
With a copy to:	Stein & Lubin Transamerica Pyramid 600 Montgomery Street, 14th Floor San Francisco, CA 94111 Attention: Mark D. Lubin Telephone: (415) 981-0550 FAX: (415) 981-4343

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

37.2. Form and Effect of Notice.

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

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

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this *Section 37.2*.

38. ACCESS TO THE PREMISES.

38.1. *Entry by Port.* Subject to the rights of Subtenants, Tenant must permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time and without notice in the event of an emergency) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) inspecting the construction of the Improvements for compliance with the provisions of the LDDA (if in effect), (iii) performing any work on the Premises that Port has right to perform, or (iv) inspecting, sampling, testing, surveying, or monitoring the Premises or any portion thereof, including the Buildings, grounds, and subsurface areas, as Port reasonably deems necessary or appropriate for evaluation of Hazardous Materials, or other physical, geotechnical, or environmental conditions. Nothing herein implies any duty on the part of Port to conduct inspections, but such right of inspection does not relieve Tenant of its independent responsibility to operate, manage, maintain, and repair the Premises and Improvements in accordance with this Lease. Additionally, 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.

Nothing herein implies any duty on the part of Port to perform any work that Tenant is required to perform, nor to place upon Port any obligation or liability for the care, supervision or repair of the Premises; provided, however, Port will use commercially reasonable efforts to minimize interference with the activities of Tenant, its Subtenants and their respective Invitees during any inspection. If Port elects to perform work on the Premises pursuant to this *Article 38*, Port will not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided that Port uses commercially reasonable diligence to minimize the interference that any such work may cause to the activities of Tenant, its Subtenants, or their respective Invitees.

Subject to the rights of Subtenants, Tenant will permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of Port's interest in the Premises, and (ii) during the last eighteen (18) months of the Term for the purpose of leasing the Premises and showing the same to prospective tenants.

38.2. *Notice, Right to Accompany.* Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises, except in an emergency, for the purposes set forth in *Section 38.1* above. Such notice shall be not less than twenty-four (24) hours prior notice. Tenant has the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice is required for Port's entry onto Public Access Areas or other public areas of the Premises during hours such areas are open.

39. LEASEHOLD MORTGAGE.

39.1. *No Mortgage Except as Set Forth Herein.*

(a) Restrictions on Financing. Except as expressly permitted in this *Article 39*, Tenant cannot:

(i) Engage in any financing or other transaction creating any mortgage, deed of trust or similar security interest upon Tenant's Leasehold Estate or Tenant's interest in the Improvements; or

(ii) Place or suffer to be placed upon Tenant's Leasehold Estate or interest in the Improvements hereunder, any lien or other encumbrance other than as permitted by *Section 18.1*; or

(iii) Assign, mortgage, or encumber Tenant's Leasehold Estate by way of any Mortgage without Port's prior consent, which consent may be withheld in its sole and absolute discretion, if (i) the Mortgage would adversely impact any Historic Preservation Tax Credits, (ii) the loan secured by the Mortgage is cross-collateralized with any other debt of Tenant, or (iii) the loan secured by the Mortgage is cross-defaulted against any other debt of Tenant.

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

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this *Article 39* will be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

39.2. Leasehold Liens; Tenant's Obligation to Obtain Additional Financing.

(a) Tenant's Right to Mortgage Leasehold. Subject to *Section 40.1(a)* and receipt by Port of its share of Net Refinancing Proceeds in accordance with *Sections 3.8* and *39.7*, Tenant has the right to assign, mortgage, or encumber Tenant's Leasehold Estate by way of Mortgage(s) to the extent permitted in accordance with this *Article 39*.

(b) Tenant's Obligation to Obtain Additional Financing. Tenant agrees that after issuance of the Certificate of Completion but prior to the Developer Equity Repayment Date, as soon as placement of new or additional debt secured by Tenant's Leasehold is reasonably supported by the value of and Net Revenues generated at the Premises, consistent with generally prevailing underwriting criteria customarily applied by Bona Fide Institutional Lenders for similar size and type of mortgage loans, Tenant will work diligently to obtain new or additional loan(s) from Bona Fide Institutional Lender(s) to be secured by Permitted Mortgage(s) to pay down any outstanding Developer Equity Return or Developer Equity if it is economically beneficial to both Parties taking into account among other factors, the cost associated with the additional debt (including debt service and other related Permissible Financing Costs); provided, however, Tenant agrees that it is economically beneficial to both Parties if the cost associated with the additional debt is less than the cost to Port repaying to Tenant, outstanding Developer Equity and Developer Equity Return. From and after the Developer Equity Repayment Date, if the Parties reasonably believe additional loan(s) from Bona Fide Institutional Lender(s) to be secured by Permitted Mortgage(s) are economically beneficial to both Parties taking into account among other factors, the cost associated with the additional debt (including debt service and other related Permissible Financing Costs), the Parties shall work cooperatively together to obtain such additional loan(s).

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

(d) Only Senior Leasehold Mortgagee and City Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees will only apply to the most senior Mortgagee and the City with regarding to the SSLP Loan, unless such Mortgagees elect not to exercise their respective rights thereunder in which event such rights will apply to the next most senior Mortgagee.

39.3. *Notice of Liens.* Tenant will notify Port promptly of any lien or encumbrance, other than the Permitted Title Exceptions, of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's Leasehold Estate hereunder whether by act of Tenant or otherwise.

39.4. *Purpose of Mortgage.*

(a) Purpose. A Mortgage may be granted only for the purposes of financing the development of the Project, any permanent take-out financing, Refinancing (including to generate Net Refinancing Proceeds) to pay for Capital Items, leasing commissions, or tenant improvements, to pay down Outstanding Developer Equity or Developer Equity Return in accordance with *Section 39.2(b)*, or any Subsequent Construction. With respect to any issuance of corporate debt or other securitized financings, Tenant is not permitted to create any structure that would create an obligation or security of Port.

(b) Certain Assurances. Subject to Port's receipt of its (i) review costs as set forth in *Section 33.3* and (ii) share of Net Refinancing Proceeds, as applicable, in accordance with *Sections 3.8* and *39.7*, Port agrees to give to any holder or proposed holder of a Mortgage a statement, in form and substance reasonably satisfactory to the prospective Mortgagee, consenting to the Mortgage and stating whether such Mortgage is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents ("**Mortgage Confirmation Statement**"). Except as set forth in the Mortgage Confirmation Statement, the Mortgage Confirmation Statement will estop Port from asserting, against either Tenant or such prospective Mortgagee, that such Mortgage (if done in the way described in the Mortgage Confirmation Statement) is not permitted hereunder, but will not create any liability on Port, and will conclusively establish that such Mortgage is permitted hereunder and does not constitute by itself, a default by Tenant. Port will deliver to Tenant the Mortgage Confirmation Statement or notify Tenant of Port's disapproval of the proposed Mortgage (and its reasons for such disapproval) within thirty (30) days following receipt by Port of (i) true, accurate, and complete copies of the financing documents as reasonably requested by Port to permit Port to make the determination whether such Mortgage is permitted hereby and (ii) Port's Attorneys' Fees and Costs incurred, including Port staff time spent, in connection with reviewing the financing documents and preparing the Mortgage Confirmation Statement. In no event, however, will any failure by Tenant or other party to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

39.5. *Interest Covered by Mortgage.* A Permitted Mortgage may attach to any or all of the following interests: (i) Tenant's Leasehold Estate in the Premises and Tenant's interest in the Improvements (or some portion thereof), (ii) Tenant's interest in any permitted Subleases, (iii) any Personal Property, (iv) products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under this Lease. As provided in *Section 39.1(b)* no Mortgage may encumber Port's interest in or under this Lease or Port's fee simple interest in the Premises or Port's personal and other property in, on or around the Premises.

39.6. *Bona Fide Institutional Lender; Other Permitted Mortgagees.* A Mortgage may be given only to (i) a Bona Fide Institutional Lender, (ii) the City and County of San Francisco (or if appropriate, the administrator of the City's seismic loan program), or (iii) any other lender approved by Port in its sole and absolute discretion.

39.7. *Port Participation in Refinance Proceeds.* In accordance with *Section 3.8*, Tenant and all subsequent assignees will pay to Port fifty percent (50%) of Net Refinancing Proceeds.

39.8. *Rights Subject to Lease.*

(a) Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage is subject to each and all of the covenants,

conditions and restrictions set forth in this Lease, the LDDA (if in effect), and to all rights of Port hereunder. None of such covenants, conditions and restrictions is or will be waived by Port by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Port in writing.

(b) Construction and Restoration Obligations. Notwithstanding anything to the contrary contained in this Lease, no Mortgagee, including any such Mortgagee who obtains title to the Leasehold Estate or any part thereof as a result of foreclosure proceedings or action in lieu thereof but excluding (i) any other Person who thereafter obtains title to the Leasehold Estate or any part thereof from or through such Mortgagee, or (ii) any other purchaser at a foreclosure sale (other than such Mortgagee), is obligated by the provisions of this Lease to complete or Restore any damage or destruction to the Improvements, as applicable; provided, however, (A) nothing in this Section or any other provision of this Lease will be deemed or construed to permit or authorize any such Mortgagee to devote the Premises or any part thereof to any uses other than the Permitted Uses or to construct any improvements thereon other than the Improvements provided or authorized in the LDDA or in this Lease, as hereafter amended or extended from time to time, and (B) in the event that Mortgagee obtains title to the Leasehold Estate and chooses not to complete or to Restore any Improvements, it will so notify Port in writing of its election within ninety (90) days following its acquisition of the Leasehold Estate and will sell its Leasehold Estate with reasonable diligence to a purchaser that will be obligated to complete or Restore the Improvements, but in any event Mortgagee will use good faith efforts to cause such sale to occur within one (1) year following Mortgagee's written notice to Port of its election not to complete or Restore the Improvements (the "Sale Period"). If Mortgagee fails to sell its tenancy interest within the Sale Period, such failure will not constitute a default hereunder but Mortgagee will be obligated to complete the Initial Improvements or Restore the Improvements, as applicable. In the event Mortgagee agrees to complete or Restore the Improvements, all such work will be performed in accordance with all the of requirements set forth in the LDDA with respect to the construction of the Initial Improvements or this Lease with respect to Restoration of the Improvements, and Mortgagee must submit evidence reasonably satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligations.

39.9. Required Provisions in Every Mortgage. Tenant agrees to have each Mortgage provide: (a) that the Mortgagee will by registered or certified mail give written notice to Port of the occurrence of any event of default under the Mortgage; (b) that Port will be given notice at the time such Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards will be consistent with the provisions of this Lease. Notices to Port must be delivered to the address set forth in **Article 37**.

39.10. Notices to Mortgagee.

(a) Copies of Notices. Whenever Port delivers any notice or demand to Tenant for any Tenant Event of Default, Port will at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the Premises who has previously made a written request to Port for a copy of any such notices in accordance with **Section 39.10(b)**. Port's notice will be sent to the address specified by such Mortgagee in its most recent notice to Port. A delay or failure by Port to provide such notice required by this **Section 39.10(a)** will extend, for the number of days until notice is given, the time allowed to Mortgagee for cure.

(b) Notice From Mortgagee to Port. Each Mortgagee is entitled to receive notices from time to time given to Tenant by Port under this Lease in accordance with **Section 39.10(a)** provided such Mortgagee has delivered a notice to Port in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission, as landlord, and Historic Pier 70, LLC, a

California limited liability company, as tenant (the “Lease”), of tenant’s interest in the Lease demising the property, a legal description of which is attached hereto as *Exhibit XX* and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to tenant by Port be sent to the undersigned at the following address: _____.”

If Mortgagee desires to have Port acknowledge receipt of Mortgagee’s name and address delivered to Port pursuant to this *Section 39.10(b)*, then such request must be made in bold, underlined and in capitalized letters.

39.11. *Mortgagee’s Right to Cure.* If Tenant mortgages this Lease in compliance with the provisions hereof, then, so long as any such Mortgage remains unsatisfied of record, the following provisions will apply:

(a) **Cure Periods.** Each Mortgagee has the right, but not the obligation, at any time prior to termination of this Lease, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided that all such acts must be performed in compliance with the terms of this Lease. Except after Mortgagee acquires Tenant’s interest under this Lease, no such action will constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Subject to compliance with the applicable terms of this Lease, each Mortgagee and its agents and contractors will have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee will be as effective to comply with Tenant’s obligations under this Lease, to cure a default by Tenant under this Lease or a Tenant Event of Default, or to prevent a termination of this Lease, each as the same would have been if done by Tenant. In the case of any notice of default given by Port to Tenant and/or Mortgagee in accordance with *Section 39.10*, Mortgagee has the same concurrent cure periods as are given to Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of fifteen (15) days for monetary defaults and forty-five (45) days for non-monetary defaults after the later to occur of (i) the expiration of Tenant’s cure period, or (ii) the date that Port has served such notice of default upon Mortgagee. Port will accept such performance by or at the instance of Mortgagee as if the same had been done by Tenant. If such non-monetary default cannot reasonably be cured or remedied within such additional forty-five (45) day period, such cure period will be extended at Mortgagee’s request so long as Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure, or if such default cannot be reasonably be cured or remedied by Mortgagee within such forty-five (45) day period without obtaining possession of the Premises (if possession is required to cure or remedy) the cure period will be extended so long as Mortgagee is diligently seeking to obtain possession and thereafter commences the cure or remedy within such period as is reasonable.

(b) **Foreclosure.** Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of a Tenant Event of Default, other than a Tenant Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to a Mortgagee obtaining possession, Port will take no action to effect a termination of this Lease if, within forty-five (45) days after notice of such Tenant Event of Default is given to each Mortgagee, a Mortgagee has (i) obtained possession of the Premises (including possession by a receiver), or (ii) notified Port of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through appointment of a receiver or otherwise) or otherwise acquire Tenant’s interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings. The period from the date Mortgagee so notifies Port until a Mortgagee acquires and succeeds to the interest of Tenant under this Lease or some other party

acquires such interest through Foreclosure is herein called the “**Foreclosure Period.**” A Mortgagee, upon acquiring Tenant’s interest in this Lease, will be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to the completion of foreclosure proceedings. The foregoing provisions of this **Section 39.11(b)** are subject to the following: (A) no Mortgagee will be obligated to continue possession or to continue foreclosure proceedings after a Tenant Event of Default is cured (and Port will accept such cure or performance of such obligation by any party, including Tenant); (B) nothing herein contained will preclude Port, subject to the provisions of this **Section 39.11(b)**, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Tenant Events of Default during the pendency of such foreclosure proceedings; and (C) such Mortgagee will agree with Port in writing to comply during the Foreclosure Period with the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by Mortgagee, including the payment of all sums due and owing hereunder and the use restrictions set forth in **Section 4.2**. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (C) of the preceding sentence, Mortgagee will have the right at any time to notify Port that it has relinquished possession of the Premises to Tenant or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, Mortgagee will have no further liability under such agreement from and after the date it delivers such notice to Port, and, thereupon, Port will be entitled to seek the termination of this Lease (unless such Tenant Event of Default has been cured) and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of **Section 39.11(d)** will apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings will be extended for the period of such prohibition, provided that Mortgagee will (x) have fully cured any Tenant Event of Default due to a default in the payment of money, (y) continue to pay currently such Rent as and when the same become due, and (z) perform all other obligations of Tenant under this Lease to the extent that such obligations are reasonably susceptible of being performed by Mortgagee, including at any time Mortgagee is in possession of the Premises (which Mortgagee will be obligated to use reasonable efforts to obtain), the use restrictions set forth in **Section 4.2**, the operating covenants set forth in **Section 10.1**, and the maintenance and repair obligations set forth in **Section 11.1**.

(c) Construction.

(i) Subject to **Section 39.8(b)**, if a Tenant Event of Default occurs following any damage or destruction but prior to completion of the Initial Improvements or Restoration of the Improvements, as applicable, each Mortgagee, either before or after foreclosure or action in lieu thereof, will not be obligated to complete the Initial Improvements or Restore the Improvements, as applicable, beyond the extent necessary to preserve or protect the Improvements already made, to remove any debris and to perform other reasonable measures to protect the public, unless such Mortgagee expressly assumes Tenant’s obligations to complete the Initial Improvements or Restore the Improvements, as applicable, in accordance with this Lease, by written agreement reasonably satisfactory to Port and submits evidence satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant’s obligation to complete the Initial Improvements or Restore the Improvements, as applicable, in accordance with **Section 39.11(c)(i)**, Mortgagee or any transferee of Mortgagee will not be required to adhere to the existing construction schedule, but instead all dates set forth in the LDDA for the Initial Improvements, if applicable, or this Lease for such Restoration will be extended for the period of

delay from the date Tenant stopped work on the Restoration, to the date of such assumption plus an additional one hundred twenty (120) days or otherwise agreed to period.

(d) New Lease. In the event this Lease is terminated prior to the Expiration Date, except by Major Casualty during the last ten (10) years of the Term, an event of Uninsured Casualty, or Total Condemnation, Port will deliver to each Mortgagee who has previously made a written request to Port for a copy of any such notices in accordance with **Section 39.10(b)** written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. Each Mortgagee will thereupon have the option to obtain a new lease of the Premises (“New Lease”), which option must be exercised by written notice to Port within thirty (30) days after service of such notice that this Lease has been terminated, in accordance with and upon the following terms and conditions:

(i) Port will enter into a New Lease with the most senior Mortgagee giving notice within such thirty (30)-day period, subject to the provisions set forth in this **Section 39.11(d)** and provided that such Mortgagee assumes Tenant’s obligations as sublandlord under any Subleases then in effect; and

(ii) The New Lease will be effective as of the date of termination of this Lease, will be for the remainder of the Term, and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease, except for any requirements or conditions which Tenant has satisfied prior to the termination of this Lease and any new or amended ordinances or policies adopted by Port or the City applicable to real property leases. [Note: Under discussion—there is possibility that Section 27(f) will not be included in a New Lease] Mortgagee will also pay for Port’s reasonable costs and Attorneys’ Fees and Costs for negotiating and documenting the New Lease with Mortgagee. The New Lease will have the same priority as this Lease. Such New Lease will require the Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the New Lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee. Construction of the Initial Improvements and Restoration of the Improvements will be deemed to be an obligation susceptible of being performed by Mortgagee. Upon the execution of the New Lease, Mortgagee will pay to Port any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and will pay all expenses, including Attorneys’ Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease. The provisions of this **Section 39.11(d)** will survive any termination of this Lease (except as otherwise expressly set out in the first sentence of this **Section 39.11(d)**), and will constitute a separate agreement by Port for the benefit of and enforceable by Mortgagee.

(e) Nominee. The rights of Mortgagee under this **Section 39.11** may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, no Mortgagee will acquire title to the Lease through a nominee or designee which is not a Person otherwise permitted to become Tenant hereunder; provided, further that a Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any New Lease executed pursuant to **Section 39.11(d)**, any Sublease then in effect will be assigned and transferred without recourse by Port to Mortgagee. Between the date of termination of this Lease and commencement of the term of the New Lease, so long as Mortgagee enters into a New Lease, Port will not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee, (2) cancel or materially modify any of the existing subleases, management

agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any of the above without the written consent of Mortgagee, which consent will not be unreasonably withheld or delayed. Effective upon the commencement of the term of the New Lease, if permitted by Law or Port holds title to the Personal Property within the Premises, Port will also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, such Personal Property within the Premises.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this **Article 39** will inure only to the benefit of the holders of Permitted Mortgagees.

(h) Consent of Mortgagee. No material modification, termination or cancellation of this Lease will be effective against the most senior Mortgagee unless a copy of the proposed material modification, termination or cancellation has been delivered to such Mortgagee and such Mortgagee has approved the material modification, termination or cancellation in writing, which approval will not be unreasonably withheld, conditioned, or delayed. Any Mortgagee having such approval rights will either approve or disapprove the proposed modification, termination, or cancellation, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain such Mortgagee's approval, in writing, within thirty (30) days after delivery of a copy thereof. The most senior Mortgagee's failure to deliver an approval or disapproval notice within ten (10) days after it receives a second written notice after the applicable time period will be deemed such Mortgagee's approval of the proposed modification, termination, or cancellation. No merger of this Lease and the fee estate in the Premises will occur on account of the acquisition by the same or related parties of the Leasehold Estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its designee or nominee, will become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the Leasehold Estate created hereby, and then only for so long as it remains the owner of the Leasehold Estate and only with respect to the obligations arising during such period of ownership. If a Mortgagee becomes the owner of the Leasehold Estate under this Lease or under a New Lease, (i) except to the extent further limited by other provisions hereof or as otherwise set forth in **Sections 39.8(b) and 39.11(c)**, such Mortgagee will be liable to Port for the obligations of Tenant hereunder only to the extent such obligations arise during the period that such Mortgagee remains the owner of the Leasehold Estate under this Lease or under a New Lease, as applicable, and (ii) in no event will Mortgagee have personal liability under this Lease or New Lease, as applicable, greater than Mortgagee's interest in this Lease or such New Lease, and Port will have no recourse against Mortgagee's assets other than its interest herein or therein.

(j) Limitation on Obligation to Cure. Anything herein contained to the contrary notwithstanding, a Mortgagee, and its designee or nominee (other than Tenant), will have no obligation to cure (i) any Tenant Event of Default occurring pursuant to **Sections 27(c), 27(f)--27(i)**, or (ii) any other non-monetary Tenant Event of Default under this Lease which is not reasonably susceptible of being cured without possession of the Premises; provided, however, such provisions of this Lease will apply to and remain effective on a prospective basis notwithstanding Mortgagee's inability to cure such previous Events of Default.

(k) Further Assurances. Port, through its Executive Director, and Tenant will cooperate in including in this Lease by suitable written amendment from time to time any provision which may be reasonably requested by the most senior Mortgagee to implement the provisions and intent of this **Article 39**, provided, however, that any such amendment will not adversely affect any of Port's rights and remedies under this Lease and Tenant will reimburse Port for all of Port's costs related to reviewing, negotiating and executing any such amendment.

39.12. *Assignment by Mortgagee.* Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the Leasehold Estate hereunder from Tenant to any Mortgagee or its nominee or designee through, or in lieu of, foreclosure or other appropriate proceedings, will not require the consent of Port or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Port will recognize Mortgagee or other transferee in connection therewith as tenant hereunder and such Mortgagee's or other transferee's right to possession of the Premises shall not be disturbed so long as the Mortgagee or other transferee, as applicable, performs all obligations of Tenant under this Lease within the timeframes set forth herein. The right of Mortgagee's transferee (but not the right of Mortgagee) to assign or transfer this Lease or such New Lease will be subject to the restrictions of *Article 20*. In addition, none of the provisions of *Section 20.3*, including Port's right to consent to a Transfer or to participate in Transfer Proceeds, will apply to a foreclosure, but such provisions will be applicable to all subsequent Transfers made thereafter by either the transferee pursuant to foreclosure, unless such subsequent Transfer is also a foreclosure. In the event Mortgagee subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently Transfers its interest under any New Lease and in connection with any such Transfer, Mortgagee takes back a mortgage or deed of trust encumbering such Leasehold Estate to secure a portion of the purchase price given to Mortgagee for such Transfer, then such mortgage or deed of trust will be considered a Permitted Mortgage, and Mortgagee will be entitled to receive the benefit and enforce the provisions of this *Article 39* and any other provisions of this Lease intended for the benefit of Mortgagees who holds a Permitted Mortgage.

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

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

39.15. *Further Assurances for Refinancing.* Port agrees to reasonably cooperate in good faith with any effort by Tenant to obtain and consummate any permitted Refinancing and, in connection therewith, to execute and acknowledge, if necessary, such additional or expanded agreements, certificates or instruments as may be reasonably requested by any Bona Fide Institutional Lender that are consistent with prevailing custom and practice for similar types of loans, so long as doing so will have no adverse effect on any rights or benefits of Port under this Lease or increase Port's liabilities under this Lease. Port's delivery of any such agreements, certificates or instruments shall be subject to payment of Port's Attorneys' Fees and Costs incurred, including Port staff time spent, in connection with reviewing and negotiating any such agreements, certificates or instruments.

40. NO JOINT VENTURE.

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

41. ECONOMIC ACCESS.

It is the policy of the City and County of San Francisco to act to give effect to the rights of every inhabitant of the City and County to equal economic, political and educational

opportunity. Pursuant to the policy, Port and Tenant agree that Tenant will enter into an Equal Opportunity Program attached hereto as **Exhibit XX** (“**Equal Opportunity Program**”), designed to afford opportunities for San Francisco residents to participate in the operation of the Initial Improvements. Tenant will comply with such Equal Opportunity Program, with respect to the operation and leasing of the Premises, and will include such applicable provisions in its Subleases in accordance with the Equal Opportunity Program.

42. REPRESENTATIONS AND WARRANTIES.

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

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

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

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

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

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (1) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (2) any Law applicable to Tenant or its business, or (3) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, there has been no event that has materially adversely affected Tenant’s ability to meet its Lease obligations hereunder, and to the best of Tenant’s knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein will survive any termination of this Lease.

43. SPECIAL CITY AND PORT PROVISIONS.

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. Capitalized or highlighted terms used in this Section and not defined in this Lease will have the meanings ascribed to them in the cited ordinance.

43.1. *Non-Discrimination.*

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the San Francisco 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 will include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of **Section 43.1(a)**. In addition, Tenant will incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and will require all Subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant consents and agrees that, as of the date of this Lease and during the Term, in any of its operations in San Francisco or where the work is being performed for the City, Tenant will not 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 San Francisco Administrative Code.

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

(e) **Penalties.** Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

43.2. *Requiring Health Benefits for Covered Employees.* Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q ("**Chapter 12Q**").

(a) For each Covered Employee Tenant will 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 will have no obligation to comply with *Section 43.2(a)*.

(c) If, within thirty (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 will have the remedies set forth in Section 12Q.5(f). Each of these remedies will 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 will require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and will contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant will notify the Purchasing Department when it enters into such a Sublease or Contract and will certify to the Purchasing Department that Tenant 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 will 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 will not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying Port 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 will keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant will 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 after City’s request, Tenant will provide City with access to pertinent payroll records relating to the number of Tenant’s employees and the terms of such employees’ medical coverage. In addition, City and its Agents may conduct audits of Tenant’s records pertinent to compliance with the HCAO at a time and location mutually agreed upon by City and Tenant, but only after City provides Tenant with ten (10) days written notice of its intent to perform such audit. 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 (or \$50,000 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 in that fiscal year, then all of the Contractor’s or Subcontractor’s Contracts with the City and relating to City-owned property will be thereafter subject to the

HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of the agreements to equal or exceed \$75,000 in that fiscal year.

43.3. *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, to be implemented in accordance with [Sections 1 and 2 of the Equal Opportunity Program], through compliance with the following:

(a) No later than thirty (30) days after full execution of this Lease, Tenant will 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 Port.

(b) Tenant will follow all requirements of the San Francisco Workforce Development System, including notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable.

(c) Tenant will interview qualified applicants and use good faith in hiring applicants. Tenant will maintain good records of recruitment and hiring process, and will 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.

43.4. *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.

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

43.6. *Prohibition of Alcoholic Beverages Advertising.* Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this *Section 43.6*, "alcoholic beverage" will be defined as set forth in California Business and Professions Code Section 23004, and will 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. Additionally, this advertising prohibition does not apply to any restaurant within the Premises or to Tenant or any Subtenant operating a business where the sale, production or consumption of alcoholic beverages is legally permitted and that complies with applicable City sign ordinances. [Note: Discuss further between the Parties temporary advertising by sponsors of or participants in any special events conducted on the Premises]

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

43.8. *Tropical Hardwood and Virgin Redwood Ban.* Port and 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 San Francisco Environment Code, Tenant will not use any items in the construction of Improvements, 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 San Francisco Environment Code, Tenant will be liable for liquidated damages for each violation in an 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.

43.9. *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**" will mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including 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 San Francisco Department of the Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" will mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

43.10. *Notification of Limitations on Contributions.* Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code which prohibits any person who contracts with City for the selling or leasing any land or building to or 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 by a City officer or employee. Negotiations are completed when a contract is finalized and signed by City and the contractor. Negotiations are terminated when City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

43.11. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to requests for proposals, and all other records of communications between 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 this Section covers will be made available to the public upon request.

43.12. *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 City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the Term Tenant will immediately notify Port.

43.13. *Charter Provisions.* This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

43.14. *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. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns will be deemed a material breach of this Lease.

43.15. *Public Transit Information.* Tenant will 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 the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense.

43.16. *Food Service Waste Reduction Ordinance.* Tenant agrees to, and will cause any Subtenant to, comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco 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) liquidated damages for the first breach, two hundred Dollars (\$200) liquidated damages for the second breach in the same year, and five hundred Dollars (\$500) 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 will not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision. Additionally, such amounts may be adjusted by the City from time to time.

43.17. *Waiver of Relocation Assistance Rights.* If Tenant holds over in possession of the Premises following the expiration of this Lease under **Article 36**, Tenant will not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Sections 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 et seq., or under any similar Law, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

43.18. *Labor Representation in Hotel/Restaurant Developments.* The City has adopted an ordinance at Chapter 23, Article VI of the San Francisco Administrative Code (S.F. Admin. Code §§ 23.50—23.56) (the "**Chapter 23 Ordinance**"). The Chapter 23 Ordinance requires employers of employees in projects on public property containing hotels or restaurants and with more than fifty (50) employees to enter into a "**card check**" agreement with a labor organization regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant and Tenant's Subtenants will comply with the requirements of the Chapter 23 Ordinance to the extent applicable to restaurant operations within the Premises.

44. NO LIGHT, AIR OR VIEW EASEMENT.

Any diminution or shutting off of light, air or view by any structure, vehicle, or vessel which may be erected or berthed at or near the Premises will in no way affect this Lease or impose any liability on Port, nor entitle Tenant to any reduction of Rent, nor affect this Lease in any way or Tenant's obligations hereunder.

45. GENERAL PROVISIONS.**45.1. *Time of Performance.***

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

(b) Weekend or Holiday. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next business day.

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

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder.

45.2. *Interpretation of Agreement.*

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

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "include", "including", "such as", or words of similar import, when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Lease will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including California Civil Code Section 1654).

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

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

(g) **Approvals.** Unless otherwise specifically stated in this Lease, wherever a Party hereto has a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned or delayed and such approval or consent will be given in writing.

(h) **Legal References.** Wherever reference is made to a specific code or section of a specific Law, the reference will be deemed to include any amendment, restatement or replacement.

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

45.4. No Third Party Beneficiaries. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in **Article 39** with regard to Mortgagees.

45.5. Real Estate Commissions. Port is not liable for any real estate commissions, brokerage fees or finder’s fees that may arise from this Lease. Tenant and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, Tenant will indemnify Port from any Losses arising out of such claim.

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

45.7. Entire Agreement. This Lease, the LDDA, , and the other Transaction Documents (for so long as the LDDA, , and the other Transaction Documents are in effect, as applicable) constitute the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior drafts or of other agreement will be permitted to contradict or vary the terms of this Lease.

45.8. Amendment. Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

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

45.10. Recordation. This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as **Exhibit XX**. Promptly upon Port’s request following the expiration or earlier termination of this Lease, Tenant will deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Port and the City Attorney, for the purpose of evidencing in the Official Records the termination of Tenant’s interest under this Lease. Port may record such quitclaim deed at

any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

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

45.12. *Further Assurances.* The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise to effectuate the terms of this Lease. The Executive Director of Port is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, licenses, permits, memoranda or similar documents with Tenant, State, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Lease, if the Executive Director determines that the document or agreement is necessary or proper and is in Port's best interests.

45.13. *Attorneys' Fees.* If either Party fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Lease, including Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of the Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

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

46. FEMA DISCLOSURE NOTICE.

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for 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 the City. FEMA has tentatively identified SFHAs along the City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including, but not limited to, parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands and an area adjacent to Islais Creek. Port has submitted comments on the preliminary FIRM to FEMA.

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, which requires the local government to adopt and enforce a floodplain management ordinance to reduce future flood risks. As part of such a 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 passed Ordinance No. 188-08, a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco, and Resolution No. 352-08, authorizing City's participation in NFIP. Specifically, the floodplain management 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.

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://sfgov.org>), File Nos. 080823 (floodplain management ordinance) and 08024 (NFIP participation resolution).

This disclosure is provided for information purposes only, and without representation or warranty of any kind by the City, including, without limitation, Port, with regard to any of the matters discussed in this notice. Tenant is entirely responsible for investigating on its own the consequences of the potential inclusion of the Premises in any future FEMA designated SFHA and the consequences of the City's decision to participate or to not participate in the NFIP.

Tenant acknowledges and agrees that the City's participation or failure to participate in the NFIP shall not give rise to any rights, causes of action, or remedies under this Lease, including, but not limited to any termination or rent abatement right.

47. DEFINITIONS.

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

“**20th Street Historic Buildings**” is defined in *Recital B*.

“**ACMs**” is defined in *Section 22.7*.

“**Additional Rent**” means any and all sums (other than Minimum Rent, Participation Rent, and Port's share of Transfer Proceeds, or Net Refinancing Proceeds) that may become due or be payable by Tenant under this Lease, including any Late Charge and interest at the Default Rate.

“**Adjustment Date**” is defined in *Section 3.4*.

“**Adjustment Period**” is defined in *Section 3.4*.

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

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

“**Anniversary Date**” means each anniversary of the Commencement Date during the Term, unless the actual Commencement Date is not the first day of a month, in which case, each Anniversary Date shall be determined as if the Commencement Date were the first day of the first full month after the actual Commencement Date.

“**Approve**” or “**Approval**” means a Party's consent to or approval of a request, action, or other matter, and, when appropriate in the context, may mean a Regulatory Approval. “**Approved**” and “**Approving**” have correlative meanings.

“**Attorneys' Fees and Costs**” means reasonable attorneys' fees (including, if applicable, fees and reasonable costs of the City Attorney), costs, expenses and disbursements, including expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute Resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

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

“**Board**” means the Board of Supervisors of the City and County of San Francisco.

“**Bona Fide Institutional Lender**” means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, an investment banking or merchant banking firm, or other lender, all of which, at the time a Mortgage is recorded in favor of such entity, has assets of at least Five Hundred Million Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency), or (ii) an Historic Preservation Tax Credit investor that has given a loan to Tenant to optimize or utilize effectively the Historic Preservation Tax Credits.

“**Books and Records**” is defined in *Section 3.11*.

“**Buildings**” mean all or any of the historic buildings located within the Premises, commonly identified as building number 101, 102, 104, 113, 114, 115, 116, and 14, and shown on Exhibit [A-2].

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

“**business day**” means Monday through Friday that is not a City holiday.

“**Cal-OSHA**” is defined in *Section 22.7*.

“**Capital Items**” is defined in *Section 11.2*.

“**Capital Reserve Account**” is defined in *Section 11.2(b)*.

“**Capital Reserve Deposit**” is defined in *Section 11.2*.

“**Cash Consideration**” is defined in *Section 3.7(a)*.

“**Casualty**” is defined in *Section 16.1(a)*.

“**Casualty Notice**” is defined in *Section 16.1(b)*.

“**CEQA**” means the California Environmental Quality Act.

“**Certificate of Completion**” is defined in the LDDA.

“**Certificate of Occupancy**” means a certificate of completion, “signed-off” job card or any other Regulatory Approval permitting legal occupancy. As used herein, Certificate of Occupancy does not include a temporary permit for the use of premises for short term.

“**Certified Total Project Cost**” means

“**City**” means the City and County of San Francisco, a municipal corporation. City shall refer to the City operating by and through its Port Commission, where appropriate. All references to City shall include Port unless inappropriate in context.

“**City Attorney**” means the City Attorney of the City and County of San Francisco.

“**City Projects**” is defined in *Section 6.1*.

“**Commencement Date**” is defined in *Article 2*.

“**Condemnation**” means the taking of all or any part of any property, or the right of possession thereof, for any public or quasi-public purpose by any lawful governmental power or authority, by exercise of the right of eminent domain, condemnation, inverse condemnation, or appropriation. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

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

“**Condemned Land Value**” is defined in *Section 17.4(b)*.

“**Construction Documents**” is defined in *Section 13.3(a)*.

“**Construction Impacts**” is defined in *Section 6.1*.

“**Control**” means the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person, and Controlled and Controlling have correlative meanings. “**Common Control**” means that two Persons are both Controlled by the same other Person.

“**Core Benefits**” is defined in *Section 43.1(c)*.

“**Costs of Transfer**” is defined in *Section 3.7(a)*.

“**County Assessor**” means the Assessor-Recorder of the City and County of San Francisco.

“**Current Index**” is defined in *Section 3.4*.

“**DBI**” means the City and County of San Francisco Department of Building Inspections.

“**Default Rate**” is defined in *Section 3.15*.

“**Deferred Items**” means (i) uncompleted customary punch list items, (ii) landscaping, or (iii) exterior finishes (to the extent Tenant can demonstrate to Port’s reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) that remain after Port’s issuance of a Certificate of Completion.

“**Deferred Port Transaction Costs**” means Port’s Transaction Costs that were not reimbursed by Developer to Port as of the Effective Date, including any “Deferred Transaction Costs” as defined in and pursuant to the ENA, and which amount equals [\$_____], plus Transaction Costs incurred by Port during the LDDA Term [**Confirm same as LDDA definition prior to execution of LDDA**].

“**Developer Equity**” is defined in Section XX.

“**Developer Equity Cap**” is defined in Section XX.

“**Developer Equity Repayment Date**” is defined in Section XX.

“**Developer Equity Return**” is defined in Section XX.

“**Developer Equity Return Rate**” is defined in Section XX.

“**Disability Laws**” 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.

“**ENA**” is defined in *Recital E*.

“**Environmental Financial Performance Deposit**” is defined in *Section 19.2*.

“**Environmental Laws**” means any present or future federal, state or local Laws or policies relating to Hazardous Material (including the Handling, Release, or Remediation) or to human health and safety, industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises. “**Environmental Laws**” include the City’s Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste) and the Fats, Oils and Grease Control Ordinance. “**Environmental Laws**” include the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region, dated as of [_____, 201XX] and recorded in the Official Records.

“**Environmental Notice**” is defined in *Section 19.3(b)*.

“**Environmental Oversight Deposit**” is defined in *Section 19.3(a)*.

“**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 RWQCB, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, 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.

“**Equal Opportunity Program**” is defined in *Article 41*.

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

“**Executive Director**” means the Executive Director of Port or his or her designee (except as used in the notice provisions with respect to Tenant).

“**Expiration Date**” is defined in *Article 2*.

“**Exterior Improvements**” means any improvements, furnishings, fixtures, or equipment located on the exterior facades of buildings or in the exterior areas of the Premises, which may include mechanical equipment, Satellite Dishes, public art, statues, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, Signs, kiosks, flagpoles, canopies, awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, and paving or other surface treatments.

“**Facilities Condition Report**” is defined in *Section 11.2*.

“**FEMA**” is defined in *Article 46*.

“**Final Certificate of Occupancy**” means the final certificate of occupancy issued for the last Rehabilitated Building that is part of the Initial Improvements.

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

“**FIRMs**” is defined in *Article 46*.

“**Flagpoles**” is defined in *Section 10.6*.

“**FOG Ordinance**” means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth

prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City's sewer system by food service establishments.

"Force Majeure" is defined in the LDDA for the period prior to issuance of the Certificate of Completion. From and after issuance of the Certificate of Completion, **"Force Majeure"** means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of such Party, including acts of nature or of the public enemy, war, invasion, insurrection, riots, any general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Improvements, fires, floods, earthquakes, tidal waves, epidemics, quarantine, restrictions, freight embargoes, unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between a Party and its contractors or work performed on behalf of such Party); inability to obtain materials or reasonably acceptable substitute materials (provided that such Party has ordered such materials on a timely basis and such Party is not otherwise at fault for such inability to obtain materials). The following are excluded from the definition of Force Majeure (i) failure to obtain financing or failure to have adequate funds, (ii) sea level rise; and (iii) any event that does not cause an actual delay.

"Foreclosure" means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

"Foreclosure Period" is defined in *Section 39.11(b)*.

"Forest City" is defined in *Recital D*.

"Forest City Agreements" is defined in *Section 6.2*.

"Gross Revenues" is defined in *Section 3.5(a)*.

"Handle" when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. **"Handled"** and **"Handling"** have correlative meanings.

"Hazardous Materials" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes any material or substance defined as a **"hazardous substance,"** or **"pollutant"** or **"contaminant"** under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**"CERCLA,"** also commonly known as the **"Superfund"** law), as amended (42 U.S.C. §§ 9601 et seq.), or under Section 25281 or Section 25316 of the California Health & Safety Code; any **"hazardous waste"** is defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. **"Hazardous Materials"** also includes any chemical identified as a **"constituent of concern"** in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

"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 relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any

amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

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

"HCAO" is defined in *Section 43.2*.

"Historic Preservation Tax Credits" means the 20% federal income tax credits for historic rehabilitation, pursuant to Internal Revenue Code §§ 38 and 47, and 16 U.S.C.A. §§ 470 et seq. and applicable and successor regulations.

"Impositions" means all taxes (including possessory interest, real and personal taxes), assessments, liens, levies, fees, charges or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character.

"Improvements" means all physical construction on the Premises (and off the Premises where designated in the LDDA's Scope of Development), the Initial Improvements, all Buildings, structures, fixtures, building systems (such as plumbing, sewer, electrical, mechanical and other utility systems), any Subsequent Construction, and other improvements erected, built, Rehabilitated, placed, installed, constructed, located upon or within the Premises on or after the Commencement Date.

"Indemnified Parties" means City, including all of its boards, commissions, departments, agencies and other subdivisions, including Port, all of the elected officials, Agents of the City, including Port, and all of their respective heirs, legal representatives, successors and assigns, and each of them.

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

"Index" is defined in *Section 3.4(a)*.

"Indexed" means the sum of the number to be adjusted plus the product of the number to be adjusted multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the Index is available at any given time; except that, for any number that is to be Indexed annually under this Lease, the number to be adjusted will be multiplied by the percentage increase, if any, in the Index from the first day of the 13th month preceding the adjustment date to the first day of the month immediately preceding the adjustment date.

"Initial Environmental Deposit" is defined in *Section 19.2*.

"Initial Improvements" means all Improvements to be built on the Premises (and off the Premises where designated in the LDDA's Scope of Development) in accordance with, and as described in, the LDDA.

"Initial Site" is defined in *Section 1.1(a)*.

"Investigate" or **"Investigation"** when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation shall include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Initial Published Index" is defined in *Section 3.4(a)*.

“**Invitees**” when used with respect to Tenant means the customers, patrons, invitees, guests, licensees, assignees and Subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of Subtenants; when used with respect to Port means the invitees, guests and licensees of Port.

“**IPM**” is defined in *Section 22.9*.

“**Late Charge**” is defined in *Section 3.16*.

“**Law**” or “**Laws**” means any one or more present and future laws, ordinances, rules, regulations, permits, codes, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not foreseen, unforeseen or in the present contemplation of the Parties, including all consents or approvals (including Regulatory Approvals) required to be obtained from or issued by, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including any subsurface area, the use thereof and of the buildings and Improvements thereon.

“**LDDA**” is defined in *Recital I*.

“**Lease**” means this lease, as it may be amended from time to time.

“**Leasehold Estate**” means Tenant’s leasehold estate created by this Lease.

“**Leasing Activity Report**” is defined in *Section 10.3*.

“**Leasing Agent**” is defined in *Section 10.2*.

“**Loss**” or “**Losses**” when used with reference to any Indemnity means any and all claims, demands, losses, liabilities (including direct or vicarious liabilities), damages (including foreseeable and unforeseeable, incidental and consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including reasonable Attorneys’ Fees and Costs and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

“**Maintenance Notice**” is defined in *Section 11.4*.

“**Major Casualty**” is defined in *Section 16.4(a)*.

“**Management Agreement**” is defined in *Section 10.12*.

“**Management Company**” is defined in *Section 10.12*.

“**Material Systems**” is defined in *Section 11.4*.

“**Memorandum of Lease**” means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records, in the form of Exhibit XX.

“**Minimum Rent**” is defined in *Section 3.2*.

“**Minimum Rent Commencement Date**” is defined in *Section 3.2*.

“**Minor Alterations**” is defined in *Section 13.2*.

“**Mitigation Monitoring and Reporting Program**” means all of the mitigation and improvement measures set forth in the Community Plan Exemption for the Project and described in *Exhibit XX*.

“**Monthly Statement**” is defined in *Section 3.9(a)*.

“**Mortgage**” means a mortgage, deed of trust, or similar security instrument of Tenant’s leasehold interest under this Lease that is recorded in the Official Records.

“**Mortgage Confirmation Statement**” is defined in *Section 39.4(b)*.

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

“**NFIP**” is defined in *Article 46*.

“**Net Awards and Payments**” is defined in *Section 17.4*.

“**Net Refinancing Proceeds**” is defined in *Section 3.8(a)*.

“**Net Revenues**” is defined in *Section 3.5(a)*.

“**New Lease**” is defined in *Section 39.11(d)*.

“**Non-Cash Consideration**” is defined in *Section 3.7(a)*.

“**Non-Disturbance Agreements**” is defined in *Section 20.6(a)*.

“**Noise Ordinance**” means Article 29 of the San Francisco Police Code or its successor.

“**Notice of Request to Sublease**” is defined in *Section 20.5(c)*.

“**Notice to Cease Prohibited Use**” is defined in *Section 4.2*.

“**NPS**” means the National Park Service.

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

“**Operations Plan**” means for Tenant and any Subtenant, as applicable, that Handles Hazardous Materials within, on, or near the Premises, an operations plan reasonably approved by Port regarding Tenant or such Subtenant’s Handling of Hazardous Materials within, on, or near the Premises and to manage Hazardous Materials risks associated with such industrial/commercial operations. Any Operations Plan previously approved by Port may be amended from time to time with the prior consent of Port.

“**Orton**” or “**ODI**” means Orton Development, Inc., a California corporation.

“**OSHA**” is defined in *Section 22.7*.

“**PACMs**” is defined in *Section 22.7*.

“**Partial Condemnation**” is defined in *Section 17.3*.

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

“**Participation Rent**” is defined in *Section 3.5(c)*.

“**Periodic 10-Year Adjustment Date**” is defined in *Section 3.4(a)*.

“**Permissible Financing Costs**” means debt service and other customary financing costs incurred in connection with obtaining, negotiating and closing any Refinancing, and all interest costs and other customary payments made by Tenant pursuant to the terms thereof, including all application fees, transaction costs, professional fees (only with respect to the sale of Historic Preservation Tax Credits or issuance of industrial revenue bonds), due diligence costs, reasonable legal fees, and title, appraisal, and survey costs actually incurred and paid or reimbursed by Tenant.

“**Permitted Mortgage**” is a Mortgage in compliance with the provisions of *Article 39* and approved by Port.

“**Permitted Title Exceptions**” is defined in *Section 1.1(e)*.

“**Permitted Uses**” is defined in *Section 4.1*.

“**Person**” means any individual, partnership, corporation (including any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

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

“**Pesticide Ordinance**” is defined in *Section 22.9*.

“**Pier 70**” is defined in *Recital B*.

“**Pier 70 Master Plan**” is defined in *Recital B*.

“**Pier70 Environmental Site Investigation Report**” means the “Environmental Site Investigation Report, Pier 70 Master Plan Area, San Francisco, California” prepared by Treadwell & Rollo and dated January 13, 2011.

“**Pier 70 Remedial Action Plan**” means the “Feasibility Study and Remedial Action Plan, Pier 70 Master Plan Area, San Francisco, California” prepared by Treadwell & Rolo and as approved by the RWQCB on August 9, 2012, as amended and as interpreted by Regulatory Agencies with jurisdiction.

“**Pier 70 Risk Management Plan**” means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, and as interpreted by Regulatory Agencies with jurisdiction. The Pier 70 Risk Management Plan is attached hereto as *Exhibit XX*.

“**Port**” means the City and County of San Francisco, acting by and through the San Francisco Port Commission.

“**Port Representative**” is defined in *Section 3.12*.

“**Port’s Repair Notice**” is defined in *Section 11.4*.

“**Port’s Sign Guidelines**” are set forth in *Exhibit XX*.

[“**Pre-Approved Subleases**” is defined in *Section 20.5(b)*.]

“**Pre-Existing Hazardous Materials**” means any chemical identified as a “constituent of concern” in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

“**Preliminary Construction Documents**” means dimensioned, scaled preliminary drawings with floor plans, elevations, sections, perspective renderings, electrical, mechanical and plumbing plans, outline specifications for materials, finishes and methods of construction, and equipment plans, to the extent applicable to the proposed Subsequent Construction.

“**Premises**” is defined in *Section 1.1(a)*.

“**Prime Rate**” means the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks, as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source.

“**Prior Index**” is defined in *Section 3.4*.

“**Prohibited Uses**” is defined in *Section 4.2*.

“**Project**” means construction of the Initial Improvements, including historic Rehabilitation and structural and seismic upgrading of the Buildings, creation of public access areas, installation of utilities and other improvements, all as further described in the LDDA, including the Scope of Development.

“**Public Access Areas**” is defined in *Section 4.5*.

“**Public Trust**” means the tidelands public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act set forth in the Burton Act.

“**Qualified Engineer**” means a qualified, California registered structural engineer.

“**Record Drawings**” is defined in *Section 13.6(a)*.

“**Refinancing**” is defined in *Section 3.8(a)*.

“**Refinancing Proceeds**” is defined in *Section 3.8(a)*.

“**Regulatory Agency**” and “**Regulatory Agencies**” means any local, regional, state or federal governmental agency or political subdivision having jurisdiction over the Premises, including City, any Environmental Regulatory Agency, State Lands, City’s Planning Commission and/or Zoning Administrator, DBI, SFPUC, WDAC, and Port’s Chief Harbor Engineer.

“**Regulatory Approval**” means any authorization, approval, endorsement, determination of trust consistency, amendment of any existing plans, or permit required or issued by any Regulatory Agency.

“**Rehabilitate**” and “**Rehabilitation**” means the repair or alteration of an historic building that does not damage or destroy the Historic Fabric.

“**Release**” when used with respect to Hazardous Material means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about any existing improvements or any Improvements constructed under this Lease or the LDDA by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof, or into the environment. “Released” has a correlative meaning.

“**Remediate**” or “**Remediation**” when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, transport, dispose, contain, treat, stabilize, monitor, remediate, remove, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment, 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 includes those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

“**Rent**” is defined in *Section 3.1*.

“**Restaurant**” means restaurants and cafes, and, subject to the Port’s consent, licensed kiosks and carts.

“**Restoration**” and “**Restore**” means the restoration, replacement, renovation, reconstruction, repair, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws (including the Secretary’s Standards and any measures set forth in the Mitigation Monitoring and Reporting Program regarding the rehabilitation of historic buildings) then applicable. All Restoration shall be conducted in accordance with the provisions of *Article 13*. “**Restore**” and “**Restored**” have correlative meanings.

“**Retail**” means restaurants, specialty retail uses (as distinguished from major department stores, “big box” retail, large non-maritime “destination” stores) or purely neighborhood-serving retail uses that sell goods or services that are consistent with the public trust doctrine.

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

“**Sale Period**” is defined in *Section 39.8(b)*.

“**Satellite Dish**” means an antennae, telecommunication, or transmission device for transmitting and/or receiving signals.

“**Schematic Drawings**” means conceptual drawings in sufficient detail to describe a development proposal.

“**Secretary’s Standards**” mean the Secretary of the Interior’s Standards for the Treatment of Historic Properties which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> and the Guidelines for Rehabilitating Historic Buildings.

“**Security Deposit**” is defined in *Section 19.1*.

“**SFPUC**” means the San Francisco Public Utilities Commission.

“**SHPO**” means the California State Historic Preservation Officer.

“**Sign**” means any sign, whether free-standing or affixed to a structure, flag, advertisement, poster, or banner.

“**Significant Change**” means (i) any change in the direct or indirect ownership of the developer under the LDDA or Tenant, that results in a change in Control of such developer or Tenant, as applicable, or (ii) at any time prior to the issuance of a Certificate of Completion, J.R. Orton, III no longer provides day-to-day operations management of the developer under the LDDA and Tenant, or is no longer actively involved in the construction of the Initial Improvements.

“**Special City and Port Provisions**” is defined in *Section 28.1*.

“**SSLP Loan**” means that certain loan provided by the City’s Mayor’s Office of Housing and Community Development or such other City entity responsible for administering the Seismic Safety Loan Program to finance a portion of the seismic retrofitting costs for Buildings [113 and/or 104].

“**State**” means the State of California.

“**State Lands**” means the California State Lands Commission.

“**State Lands Executive Officer Determination**” means for any of the Historic Buildings where non-Public Trust uses are contemplated, the Executive Officer of State Lands has made a written determination that Restoration and preservation of each such Historic Building cannot be feasibly financed with available Public Trust uses, and that the non-Public Trust uses or this Lease are part of an overall program that furthers Public Trust purposes.

“**Sublease**” means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with

the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

“**Sublease Rent**” means rent or fee actually received by Tenant (excluding rents or fees for the reimbursement of any operating expenses, insurance or taxes) pursuant to all Subleases.

“**Subsequent Construction**” means all additions, expansions, Restoration, alterations or modifications of any Improvements or any construction of additional Improvements following completion of the Initial Improvements pursuant to the LDDA.

“**Substantial Condemnation**” is defined in *Section 17.3(a)*.

“**Subtenant**” means any Person leasing, using, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

“**Tenant**” means Historic Pier 70, LLC and its permitted successors and assigns to this Lease. Historic Pier 70, LLC is also the “Developer” under the LDDA and related transaction documents.

“**Tenant Event of Default**” is defined in *Article 27*.

“**Term**” is defined in *Article 2*.

“**Total Condemnation**” is defined in *Section 17.2*.

“**Transaction Costs**” is defined in the LDDA.

“**Transaction Documents**” is defined in the LDDA.

“**Transfer**” is defined in *Section 20.1(a)*.

“**Uninsured Casualty**” is defined in *Section 16.4(a)*.

“**Unmatured Tenant Event of Default**” means any default that, with the giving of notice or the passage of time, or both, would constitute a Tenant Event of Default.

“**Waterfront Plan**” means the Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element, for the approximately 7-1/2 miles of waterfront property under Port jurisdiction.

“**Waterfront Site**” is defined in *Recital B*.

“**WDAC**” means the Waterfront Design Advisory Committee authorized under Planning Code Section 240.

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

Port:

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

By: _____

Monique Moyer, Executive Director

Tenant:

HISTORIC PIER 70, LLC,
a California limited liability company

By: _____

J.R. Orton III, Manager

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

By: _____

Grace Park, Deputy City Attorney

Lease authorized by:

Port Commission Resolution No. 14-33 on May 13, 2014
Board of Supervisors Resolution No. [_____] (CEQA & Lease) on [_____] , 2014
Board of Supervisors Resolution No. [_____] (GO Bond) on [_____] , 2014

