

File No. 180039

Committee Item No. 4

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date February 5, 2018

Board of Supervisors Meeting

Date \_\_\_\_\_

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- Port Commission Resolution 18-10
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Completed by: Victor Young Date February 2, 2018

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Lease Agreement - China Basin Ballpark Company, LLC - Pier 48 - Mission Rock Project]

2  
3 **Resolution approving a Lease Agreement between the Port and China Basin Ballpark**  
4 **Company, LLC (“CBBC”) for Pier 48; with a Base Rent of \$55,416.47 per month from**  
5 **April through September and \$2,916.67 per month from October through March, in**  
6 **recognition of increased parking demand by ballpark patrons during the baseball**  
7 **season, with 66% of gross revenues for all parking operations less parking taxes and**  
8 **authorized, substantiated extraordinary expenses, as further defined in the Lease, to be**  
9 **paid by CBBC, for a ten-year term to commence following approval by the Board and**  
10 **the Mayor; for the proposed Mission Rock Project; and adopting findings under the**  
11 **California Environmental Quality Act.**

12  
13 WHEREAS, California Statutes of 1968, Chapter 1333 (“Burton Act”) and Charter,  
14 Sections 4.114 and B3.581 empower the City and County of San Francisco, acting through  
15 the San Francisco Port Commission (“Port”), with the power and duty to use, conduct,  
16 operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction;  
17 and

18 WHEREAS, The Port owns approximately 28 acres of real property along San  
19 Francisco’s Central Waterfront comprised of (1) Seawall Lot 337, bounded by Third Street on  
20 the west, Parcel P20 and Mission Rock Street on the south, Pier 48 to the east, and China  
21 Basin Park on the north; (2) Pier 48; (3) China Basin Park; (4) the marginal wharf between  
22 Pier 48 and Pier 50; and (5) Parcel P20 (collectively, the “Site”); and

23 WHEREAS, From 2007-2010, the Port conducted a community process that evaluated  
24 the unique site conditions and opportunities at the Site and built a public consensus for its  
25

1 future that nested within the policies established for the South Beach/China Basin Waterfront  
2 in the Port's Waterfront Land Use Plan; and

3 WHEREAS, In May 2010, by Resolution No. 10-32, the Port Commission awarded to  
4 Seawall Lot 337 Associates, LLC, a Delaware limited liability company ("Developer"), through  
5 a competitive process, the opportunity to negotiate exclusively for the mixed-use development  
6 of Seawall Lot 337 and Pier 48, and the Port Commission later added China Basin Park, the  
7 marginal wharf between Pier 48 and Pier 50, and Parcel P20 to the development (collectively,  
8 the "Project"); and

9 WHEREAS, Developer is a wholly-owned subsidiary of Giants Development Services,  
10 LLC, which in turn is a wholly-owned subsidiary of San Francisco Baseball Associates, LLC,  
11 the Major League Baseball franchise holder of the San Francisco Giants; and

12 WHEREAS, On March 8, 2013, by Resolution No. 13-10, the Port Commission  
13 endorsed the Term Sheet for the Project; and

14 WHEREAS, In May 2013, by Resolution No. 142-13, the Board of Supervisors found  
15 the Project fiscally feasible under Administrative Code, Chapter 29 and endorsed the Term  
16 Sheet for the Project, which is now known as "Mission Rock"; and

17 WHEREAS, Port and City staff and Developer have negotiated the terms of the  
18 Disposition and Development Agreement ("DDA"), a copy of which is in Board File  
19 No. 180092 and incorporated in this resolution by reference, and related transaction  
20 documents that are incorporated into the DDA and provide the overall road map for  
21 development of the Project, including a Financing Plan, an Infrastructure Plan, a Housing  
22 Plan, a Transportation Plan and a Transportation Demand Management Plan, a Workforce  
23 Development Plan, an LBE Utilization Program, and forms of an interim Master Lease, a  
24 Vertical Disposition and Development Agreement and a Parcel Lease; and

1           WHEREAS, The DDA contemplates the proposed rehabilitation and reuse of Pier 48, a  
2 significant contributing resource to the Port of San Francisco Embarcadero Historic District,  
3 but Developer has not yet identified a long term use for Pier 48 that would result in  
4 rehabilitating the facility; and

5           WHEREAS, Port and Developer have agreed to cooperate on identifying a potential  
6 long term use of Pier 48; and

7           WHEREAS, China Basin Ballpark Company, LLC ("CBBC"), an affiliate of Developer,  
8 currently has a license from the Port to use portions of Pier 48 for parking and special events;  
9 and

10           WHEREAS, Port and CBBC have agreed to terms for an interim lease ("Lease") to  
11 allow the current uses in Pier 48, including parking and special events, to continue; and

12           WHEREAS, The Port Commission approved the Lease on January 30, 2018 under  
13 Port Commission Resolution No. 18-10, and copies of the Lease and Port Commission  
14 Resolution No. 18-10 are in Board File No. 180093, and are incorporated in this resolution by  
15 reference; and

16           WHEREAS, Under the Lease, the Port will lease up to approximately 212,000 square  
17 feet of Pier 48 to CBBC for a term of ten (10) years; and

18           WHEREAS, Under the Lease, CBBC shall pay Base Rent of \$55,416.47 per month  
19 from April through September and \$2,916.67 per month from October through March, in  
20 recognition of increased parking demand by ballpark patrons during the baseball season; and

21           WHEREAS, Under the Lease, CBBC shall pay 66% of its gross revenues for all parking  
22 operations less parking taxes and authorized, substantiated extraordinary expenses, as  
23 further defined in the Lease; and

1           WHEREAS, Under the Lease, CBBC will be responsible for all routine maintenance of  
2 the premises, with the Port and CBBC sharing responsibility for capital repairs needed to  
3 allow the permissible uses to continue; and

4           WHEREAS, Under the Lease, the Port retains all rights related to the use of the aprons  
5 and the berthing of vessels within the waterways adjacent to or around the aprons; and

6           WHEREAS, Under the Lease, the Port has the right to terminate the Lease before  
7 expiration of the term for a Port program or project and for a Pier 48 long-term development  
8 opportunity, as further described in the Lease; and

9           WHEREAS, San Francisco Charter, Section 9.118 requires Board of Supervisors  
10 approval of a real property lease with a term of ten (10) or more years, or having anticipated  
11 revenue to the City of One Million Dollars (\$1,000,000.00) or more when the lease is  
12 executed; and

13           WHEREAS, The actions contemplated in this resolution are within the scope of the  
14 project for which the Board adopted the resolution in Board File No. 171286, affirming the  
15 Planning Commission's certification of the Final Environmental Impact Report for the Seawall  
16 Lot 337 and Pier 48 Mixed-Use Project ("FEIR") and making findings in accordance with the  
17 California Environmental Quality Act (California Public Resources Code section 21000 et  
18 seq.) and Administrative Code Chapter 31, which resolution is incorporated herein by  
19 reference; now, therefore, be it

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

21           FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive  
22 Director of the Port or her designee to execute the Lease as approved by the City Attorney  
23 and in substantially the form on file with the Clerk of the Board of the Supervisors in File  
24 No. 180093; and, be it

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

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

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 18-10**

- WHEREAS, Beginning in 2006, the Port initiated an intensive planning process that has culminated in a project that would restore and redevelop an approximately 28-acre site located along the Central Waterfront comprised of (1) Seawall Lot 337, bounded by Third Street on the west, Parcel P20 and Mission Rock Street on the south, Pier 48 to the east, and China Basin Park on the north; (2) Pier 48; (3) China Basin Park; (4) the marginal wharf between Pier 48 and Pier 50; and (5) Parcel P20 (collectively, the "Site"); and
- WHEREAS, From 2007 to 2010, the Port conducted a community process that evaluated the unique site conditions and opportunities at the Site and built a public consensus for its future that nested within the policies established for the South Beach/China Basin Waterfront in the Port's Waterfront Land Use Plan; and
- WHEREAS, In May 2010, by Resolution No. 10-32, the Port Commission awarded to Seawall Lot 337 Associates, LLC, a Delaware limited liability company ("Developer"), through a competitive process, the opportunity to negotiate exclusively for the mixed-use development of Seawall Lot 337 and Pier 48, and the Port Commission later added China Basin Park, the marginal wharf between Pier 48 and Pier 50, and Parcel P20 to the development (collectively, the "Project"); and
- WHEREAS, Developer is a wholly-owned subsidiary of Giants Development Services, LLC, which in turn is a wholly-owned subsidiary of San Francisco Baseball Associates, LLC, the Major League Baseball franchise holder of the San Francisco Giants; and
- WHEREAS, In March 2013, by Resolution No. 13-10, the Port Commission endorsed the Term Sheet for the Project; and
- WHEREAS, In May 2013, by Resolution No. 142-13, the Board of Supervisors found the Project fiscally feasible under Administrative Code, Chapter 29 and endorsed the Term Sheet for the Project, which is now known as "Mission Rock"; and
- WHEREAS, Port and City staff and Developer have negotiated the terms of the Disposition and Development Agreement ("DDA") and related transaction documents that are incorporated into the DDA and provide the overall road map for development of the Project, including a

Financing Plan, an Infrastructure Plan, a Housing Plan, a Transportation Plan and a Transportation Demand Management Plan, a Workforce Development Plan, an LBE Utilization Program, and forms of an interim Master Lease, a Vertical Disposition and Development Agreement and a Parcel Lease; and

WHEREAS, Under the DDA and other transaction documents, at full build-out, the Project will include: (1) 1.1 million to 1.6 million gross square feet (“gsf”) of new residential uses (an estimated 1,000 to 1,950 new residential units), at least 40% of which will be on-site housing affordable to a range of low- to moderate-income households as described in the Housing Plan in the DDA; (2) 972,000 to 1.4 million gsf of new commercial and office space; (3) 241,000 to 244,800 gsf of active retail and production uses on 11 proposed development blocks on Seawall Lot 337 in buildings that would range in height from 90 to 240 feet, consistent with Section 5 of Proposition D; (4) the rehabilitation and reuse of Pier 48, a significant contributing resource to the Port of San Francisco Embarcadero Historic District; (5) up to approximately 1.1 million gsf of above- and below-grade parking in one or two garages; (6) transportation demand management on-site and payment of impact fees that the Municipal Transportation Agency will use to improve transportation service in the area; (7) approximately 5.4 acres of net new open space for a total of approximately 8 acres of new and expanded open space, including an expansion of China Basin Park, a new central Mission Rock Square, and waterfront access along the shoreline; (8) public access areas, assembly areas, and an internal grid of public streets, shared streets, and utilities infrastructure; and (9) on-site strategies to protect against sea level rise; and

WHEREAS, On October 5, 2017, the Planning Commission (1) reviewed and considered the Final Environmental Impact Report for the Seawall Lot 337 and Pier 48 Mixed-Use Project (“FEIR”) (Case No. 2013-0208E); (2) found the FEIR to be adequate, accurate and objective, thus reflecting the independent analysis and judgment of the Planning Department and the Planning Commission; and (3) by Motion No. 20017, certified the FEIR as accurate, complete and in compliance with the California Environmental Quality Act (“CEQA”), the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code; and

WHEREAS, At the same hearing, the Planning Commission approved the Project and in so doing, adopted findings under CEQA by Motion No. 20018, including a Statement of Overriding Considerations ( the “Mission Rock CEQA Findings”), and adopted a Mitigation Monitoring and Reporting Program (“MMRP”). A copy of the Planning Commission Motions, the Mission Rock CEQA Findings, and the MMRP are on file with the Port



Commission Secretary and may be found in the records of the Planning Department at 1650 Mission Street, San Francisco, CA, and are incorporated in this resolution by reference as if fully set forth herein; and

WHEREAS, The Port Commission has reviewed the FEIR, the MMRP and the CEQA Findings, and finds that the approvals before the Port Commission are within the scope of the FEIR and that no substantial changes in the Project or the circumstances surrounding the Project have occurred and no new information that could not have been known previously showing new significant impacts or an increase in severity in impacts has been discovered since the FEIR was certified; and

WHEREAS, The DDA contemplates the proposed rehabilitation and reuse of Pier 48, a significant contributing resource to the Port of San Francisco Embarcadero Historic District, but Developer has not yet identified a long term use for Pier 48 that would result in rehabilitating the facility; and

WHEREAS, The Port and Developer have agreed to cooperate on identifying a potential long term use of Pier 48; and

WHEREAS, China Basin Ballpark Company, LLC ("CBBC"), an affiliate of Developer, currently has a license from the Port to use portions of Pier 48 for parking and special events; and

WHEREAS, Port and CBBC have agreed to terms for an interim lease (the "Lease") to allow the current uses in Pier 48, including parking and special events, to continue, and a copy of the Lease is on file with the Commission Secretary; and

WHEREAS, Under the Lease, the Port will lease approximately 212,000 square feet of Pier 48 to CBBC for a term of ten (10) years on the terms and conditions described in the staff memorandum to which this resolution is attached; and

WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors approval of a real property lease with a term of ten (10) or more years, or having anticipated revenue to the City of One Million Dollars (\$1,000,000.00) or more when the lease is executed; now, therefore, be it

RESOLVED, That the Port Commission adopts the Mission Rock CEQA Findings as its own and adopts the MMRP. Where applicable, the Port Commission has imposed the measures in the MMRP as conditions in the approval documents for the Project; and be it further

- RESOLVED, That the Port Commission hereby approves the Lease and finds that it is consistent with and furthers the purposes of the common law public trust and the statutory trust under the Burton Act; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director of the Port, or her designee, to execute the Lease, subject to Board of Supervisors' approval, and recommends to the Board of Supervisors approval of the Lease; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director of the Port, or her designee, to enter into any amendments or modifications to the Lease that the Executive Director determines, in consultation with the City Attorney, are in the best interests of the Port, do not materially decrease the benefits to or materially increase the obligations or liabilities of the Port, and are in compliance with all applicable laws.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 30, 2018.***

Amy Quesada

Digitally signed by Amy Quesada  
DN: cn=Amy Quesada, o=Port of San Francisco, ou=Port Executive,  
c=US, email=amy.quesada@portofsanfrisco.com  
Date: 2018.01.31 13:37:08-0800

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Secretary



**CITY AND COUNTY OF SAN FRANCISCO  
MARK FARRELL, MAYOR**

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**MISSION ROCK MASTER LEASE**

**LEASE NO. L-[ ]**

**BETWEEN THE**

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

**AS LANDLORD**

**AND**

**[NAME OF TENANT]**

**AS TENANT**

**DATED AS OF \_\_\_\_\_, 201[ ]**

---

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**KIMBERLY BRANDON, PRESIDENT  
WILLIE ADAMS, VICE- PRESIDENT  
LESLIE KATZ, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER**

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Exhibit XX	Port Special Provisions
Exhibit XX	Rules of Interpretation
Exhibit XX	Form of Memorandum of Lease

Schedule XX Disclosure Summary Sheet

**BASIC LEASE INFORMATION**

<u>Lease Date:</u>	_____, 201[XX]
<u>Lease Number:</u>	_____
<u>Landlord or Port:</u>	<b>CITY AND COUNTY OF SAN FRANCISCO,</b> a municipal corporation, operating by and through the <b>SAN FRANCISCO PORT COMMISSION</b>
<u>Landlord's Address:</u>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate  Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<u>Tenant:</u>	[SWL 337 Associates, a Delaware limited liability company]
<u>Tenant's Contact Person:</u>	Jack Bair
<u>Tenant's Address:</u>	24 Willie Mays Plaza San Francisco, CA 94107 Attention: General Counsel  Telephone: (415) 972-2000 Facsimile: (415) 972-2317 Email: jbair@sfgiants.com
<u>Tenant's Billing Address:</u>	24 Willie Mays Plaza San Francisco, CA 94107 Attention: General Counsel  Telephone: (415) 972-2000 Facsimile: (415) 972-2317 Email: jbair@sfgiants.com
<u>Premises:</u>	As of the Commencement Date, the Premises consists of:  That certain real property known as Seawall Lot 337, consisting of approximately [_____] square feet of paved land generally bounded by Terry A. Francois Boulevard, Mission Rock Street, and Third Street located in the City and County of San Francisco, State of California, together with any and all Improvements, Horizontal Improvements, and Subsequent Construction thereto (the " <b>Initial Premises</b> "). The Initial Premises is more particularly depicted in

	<p><i>Exhibit A</i> attached hereto and made a part hereof. [Legal Description to be confirmed]</p> <p>The Premises is further subject to adjustment as provided in <i>Section 1.4</i> of this Lease.</p> <p>The Premises is further subject to Port’s reservation of rights as provided in <i>Section 1.3</i>.</p>
<u>Expansion Areas:</u>	The Initial Premises may be expanded from time to time in accordance with <i>Section 1.5</i> .
<u>Length of Term:</u>	A maximum of [ <b>conform to DDA term</b> ] unless earlier terminated in accordance with this Lease.
<u>Commencement Date:</u>	The Effective Date of this Lease.
<u>Expiration Date:</u>	[ <b>conform to DDA term</b> ], unless earlier terminated in accordance with this Lease.
<u>Permitted Use:</u>	<p>The Premises will be used solely for the Primary Permitted Uses and Ancillary Permitted Uses described below; provided that throughout the Term, Tenant will, in good faith, balance the various Permitted Uses, as may be required in Tenant's reasonable discretion, taking into account the overall development of the Project, the Horizontal Improvements, the Vertical Improvements and the other revenue producing Permitted Uses.</p> <p>Tenant will primarily use the Premises for the following two (2) uses (collectively, the “<b>Primary Permitted Uses</b>”):</p> <p>(i) development of the Horizontal Improvements, including necessary construction staging, temporary streets in locations determined by Tenant, and a temporary project management office(s); and</p> <p>(ii) so long as development of the Horizontal Improvements is not materially and adversely impacted, parking for bicycles and motor vehicles.</p> <p>The Premises may also be used for the following ancillary uses (collectively, the “<b>Ancillary Permitted Uses</b>”):</p> <p>(i) construction staging in connection with the development of Vertical Improvements, subject to <i>Section 4.3</i>;</p> <p>(ii) Special Events, subject to the procedures set forth in <i>Exhibit XX</i></p> <p>(iii) Activation Uses;</p> <p>(iv) auxiliary uses in connection with Ballpark Events and Special Events, such as temporary wireless and media communication equipment and sale of merchandise, food, and beverages;</p> <p>(v) subject to <i>Section 4.3</i> installation and maintenance of signage;</p>

	(vi) model units and sales/leasing offices relating to Vertical Improvements; and (vii) any other uses authorized by the Port in writing, which authorization may be withheld in Port's sole discretion.
<u>Rent:</u>	As set forth in <i>Exhibit D</i> attached hereto.
<u>Security Deposit:</u>	An amount equal to two (2) months Base Rent.

## MASTER LEASE

**THIS MASTER LEASE** (this “Lease” or “Master Lease”) dated for reference purposes as of the Lease Date set forth in the Basic Lease Information, is by and between **THE CITY AND COUNTY OF SAN FRANCISCO** (the “City”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“Port”), as landlord, and **[SWL 337 ASSOCIATES**, a Delaware limited liability company (“Tenant”). The Basic Lease Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this Lease and will be construed as a single instrument and referred to herein as this “Lease.” In the event of any conflict or inconsistency between the Basic Lease Information and the Lease provisions, the Basic Lease Information will control. All initially capitalized terms used herein are defined in *Article 44* or have the meanings given them when first defined.

**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 and [Seawall 337 Associates, LLC, a Delaware limited liability company] (“Master Developer”), are parties to that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 201\_ (the “DDA”) that governs the mixed-use development of an approximately 28-acre site, known as “Mission Rock Site”, as more particularly described in the DDA as the “Project Site”). :

[insert list of material entitlements] (collectively, the “Project Approvals”)

**C.** The DDA sets forth a parcel disposition process under which Port will enter into ground leases for each of the Development Parcels within the Project Site with a Vertical Developer. The Vertical Developer may be Master Developer, on behalf of itself or through its Affiliates, or, if Master Developer fails to exercise its option to lease such Development Parcel, to third parties selected in accordance with the requirements of the DDA.

**D.** Master Developer has an obligation under the DDA to construct new and upgraded Horizontal Improvements on the Premises in accordance with the Project Approvals, and to create Development Parcels that will be served by the necessary infrastructure for their intended use. In order to provide Master Developer with access to and possession of the Project Site through the completion of the Horizontal Improvements, the Parties wish to enter into this Master Lease, setting for the terms and conditions under which Master Developer will lease the Premises. As provided hereunder, upon conveyance of a Development Parcel, the description of the Premises hereunder will be adjusted to remove the applicable Development Parcel from this Master Lease.

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

**1. PREMISES; DEMISE; LICENSE.**

**1.1. Premises.**

**(a) Lease of Premises; Description.** For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the “Premises” described in the Basic Lease Information as of the Commencement Date hereof.

(b) **Accessibility Inspection Disclosure.** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises has not been inspected by a CASp and Port will have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is required by law:

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

(c) **San Francisco Disability Access Disclosures.** Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in *Article 8* (Compliance with Laws), Tenant further understands and agrees that it is Tenant’s obligation, at no cost to Port, to cause the Premises and Tenant’s use thereof to be conducted in compliance with the Disabled Access Laws and any other federal or state disability access Laws. Tenant will notify Port if it is making any alterations, Improvements, or Horizontal Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

(d) **No Right to Encroach.**

(i) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the “**Encroachment Area**”), then upon written notice from Port (“**Notice to Vacate**”), Tenant will immediately vacate such Encroachment Area and if such Encroachment Area is controlled by Port, pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the then current fair market rent for such Encroachment Area, as reasonably determined by Port (the “**Encroachment Area Charge**”). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period will be prorated based on a thirty (30) day month. In no event will acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease.

(ii) In addition, Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00), which amount will be increased by One Hundred Dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars (\$400.00), which amount will be increased by One Hundred Dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, for each additional Notice to Vacate, if applicable, delivered by Port to Tenant

following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges will be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. **[NOTE: Amounts to increase by \$50 every 5 years after DDA execution]**

(iii) In addition to Port's rights and remedies under this *Section 1.1(d)*, the terms and conditions of the Indemnity and waiver provision set forth in *Article 19* (Indemnification of Port) will also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant will additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and Losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(iv) All amounts set forth in this *Section 1.1(d)* will be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By signing this Lease, each Party specifically confirms the accuracy of the statements made in this *Section 1.1(d)* and the reasonableness of the amount of the charges described in this *Section 1.1(d)*.

## 1.2. *Limitations.*

(a) **Permitted Encumbrances.** The interests granted by Port to Tenant pursuant to *Section 1.1(a)* are subject to (i) the matters reflected in *Exhibit E* (the "Permitted Title Exceptions"), (ii) [CFD and Assessment Matters]; (iii) the existing infrastructure related to the thirty (30) inch and twelve (12) inch outfalls for stormwater drainage (collectively, the "Outfall Infrastructure"), as further described in *Section 1.3(a)*, (iv) the rights and obligations of each party to the Billboard Agreement, as further described in *Section 1.3(b)* and (v) such other matters as Tenant will cause or suffer to arise subject to the terms and conditions of this Lease (collectively, the "Permitted Encumbrances").

(b) **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, 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 15*. 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).

(c) **"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," SUBJECT TO THE TERMS OF THIS LEASE. 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, AND AS FURTHER DESCRIBED HEREIN.

Tenant further acknowledges and agrees that it has been afforded a full opportunity to inspect Port's records relating to conditions in, on, around, under, and pertaining to the Premises. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this *Section 1.2(c)*. Tenant represents and warrants to Port that Tenant has performed a diligent and thorough inspection and investigation in, on, around, under, and pertaining to the Premises, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the Premises including the structural elements, foundation, and all other physical and functional aspects in, on, around, under, and pertaining to the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition in, on, around, under, and pertaining to the Premises, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability in, on, around, under, and pertaining to the Premises for the Improvements and the Horizontal Improvements and Tenant's planned use of the Premises; (iv) title matters, the zoning, land use regulations, and other Laws governing use of or construction in, on, around, under, and pertaining to on the Premises; and (v) all other matters of material significance affecting in, on, around, under, and pertaining to the Premises and its development and use under this Agreement.

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, (ii) the suitability of the Premises for the development of the Improvements and the Horizontal Improvements, the Permitted Uses, value, occupancy or enjoyment of the Premises, title matters, (iii) any Laws applicable thereto, including Environmental Laws or any other matter pertaining to the Premises, any appurtenances thereto or the Improvements or the Horizontal Improvements; provided, however, the foregoing waiver will not apply to Losses arising from or relating to (a) the gross negligence or willful misconduct of the Indemnified Parties, or (b) arising from Pre-Existing Hazardous Materials so long such Pre-existing Hazardous Materials are not Released or Exacerbated.

In connection with the foregoing release, Tenant acknowledges that it is familiar with California Civil Code Section 1542, 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 1.2(c)* 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 1.2(c)*.

Tenant Initials: \_\_\_\_\_

(d) **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.

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

(f) **Unique Nature of Premises.** Tenant acknowledges that: (i) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (ii) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and (iii) there is a risk that sea level rise will increase the cost of operations, maintenance, and repair of the Premises.

**1.3. Reservation of Rights.** Without limiting anything else in this Lease, Port hereby reserves, and Tenant accepts the Premises subject to, the following reservation of rights:

(a) **Access for Maintenance and Repair Easement of Outfall Infrastructure.** [Note: Subject to further discussion.] The Outfall Infrastructure drains Stormwater from the Premises and other nearby Port property. Portions of the Outfall Infrastructure are located within the Premises and will be removed, replaced and/or relocated in connection with the development of the Project. Accordingly, during the Term, Port hereby reserves for itself and its Agents, rights of access over and under the areas more particularly depicted on *Exhibit XX* as Outfall Area #1 and Outfall Area #2 [Note: May need to be expanded] (collectively, the "Outfall Infrastructure Area") for purposes of locating, maintaining, repairing, removing and replacing the Outfall Infrastructure (collectively the "Outfall Work"). Port will use commercially reasonable efforts during performance of any Outfall Work not to unreasonably interfere with the Permitted Uses. The Outfall Work will be performed only after at least ten (10) business days' prior written notice to Tenant (except in the case of emergencies) and Port will use commercially reasonable efforts to adjust the scheduled period of the Outfall Work if it would materially and adversely interfere with the Permitted Uses. In connection with the development of each Phase of the Project, Master Developer will be removing, replacing and/or relocating portions of the Outfall Infrastructure (as applicable, the "Relocated Outfall Infrastructure"). Upon commencement of Master Developer's work on a portion of the Relocated Outfall Infrastructure until the applicable Relocated Outfall Infrastructure is Accepted by Port or other City Agency, as applicable, Port will not perform, nor will it have, any maintenance and repair responsibilities for such portion of such Relocated Outfall Infrastructure.

(b) **Billboard Agreement.** This Lease is subject to the terms and conditions of that certain License No. 16115 between Outfront Media LLC, a Delaware limited liability company ("Billboard Licensee") and Port, dated as of March 30, 2016, as amended from time to time (as amended, the "Billboard Agreement"). Port will deliver a notice of termination to the Billboard Licensee within thirty (30) days after the Commencement Date. Such notice of termination will set forth the termination date, which termination date will be no later than October 1, 2018 (or later as agreed by the Parties if such later date would not materially and

adversely affect the Site Preparation, as reasonably determined by Tenant). Port will not be in default of its obligations under this Lease if the existing Billboard has not been removed from the Premises as of the date Site Preparation commences as long as Port is diligently pursuing the termination of the Billboard Agreement and removal of the Billboard.

(c) **Discuss and include procedures for 3rd Street Bridge construction and construction staging area for such project within the Premises.**

**1.4. Adjustment of Premises for Development.** From time to time during the Term, the legal description of the Premises will be modified in accordance with this *Section 1.4*, and the term “Premises” refers to the property that is subject to this Lease at the time.

(a) **Development Parcels.**

(i) As provided under each Vertical DDA, Port will convey a leasehold interest in Development Parcel to the Vertical Developer in order to convey such leasehold interest in a Development Parcel to a Vertical Developer, Port and Tenant must execute, acknowledge, and record a Partial Release of Master Lease in the form attached hereto as Exhibit [XX] (“**Partial Release of Master Lease**”) for such Development Parcel.

(ii) Port will provide Tenant at least ten (10) business days’ prior notice of the anticipated conveyance date for each Development Parcel (“**Anticipated Conveyance Date**”) and where Tenant should deposit the executed and acknowledged Partial Release of Master Lease. Tenant will deposit into escrow the executed and acknowledged Partial Release of Master Lease at least five (5) business days before the Anticipated Conveyance Date. Tenant’s failure to timely execute, acknowledge and deliver the Partial Release of Master Lease into escrow will be a major default under this Lease and the DDA.

(iii) Once the Partial Release of Master Lease for the applicable Development Parcel is recorded in the Official Records, then Tenant’s leasehold interest in such applicable Development Parcel will be terminated and other than the obligations that survive the expiration or termination of this Lease, this Lease will be terminated as it applies to such Development Parcel.

(b) **Horizontal Improvement Parcels. [Note: Release procedures and mechanism to be revised to reflect final DDA and ICA.]** Upon Acceptance by the City of each work of Horizontal Improvement constructed in accordance with the DDA, Port and Master Developer will execute a Partial Release of Master Lease for the parcels where the Horizontal Improvements are Accepted (each a “**Horizontal Improvement Parcel**”). Once the Partial Release of Master Lease for the applicable Horizontal Improvement Parcel is recorded in the Official Records, then Tenant’s leasehold interest in such applicable Horizontal Improvement Parcel will be terminated and other than the obligations that survive the expiration or termination of the Master Lease, this Master Lease will be terminated as it applies to such applicable Horizontal Improvement Parcel.

**1.5. Premises Expansion.** The Premises will be expanded from time to time in accordance with this *Section 1.5* to include the following areas (each an “**Expansion Area**”):

(a) **China Basin Park. [Note: Subject to further discussion.]** The area immediately north of Terry A. Francois Boulevard (“**TFB**”) to the edge of Mission Creek, generally known as China Basin Park (“**Expansion Area A**”), as further depicted on *Exhibit XX* and described in *Exhibit XX*, is currently licensed by China Basin Ballpark Company, LLC (“**CBBC**”) pursuant to that certain [Permit to Enter and Use Property Permit No. 13214] between Port and China Basin Ballpark, LLC, dated as of [November 26, 1997] (“**CBP License**”). Expansion Area A will be added to the Premises upon satisfaction of all the following conditions:

(i) Tenant has obtained all Regulatory Approvals necessary to support planned Site Preparation activities on or around Expansion Area A, including, but not limited to, grading and deep dynamic compaction;

(ii) Port has terminated the CBP License as of the date the Premises is expanded to include Expansion Area A;

(iii) Tenant's reasonable cooperation and coordination with San Francisco Public Works in connection with the rehabilitation of the 3<sup>rd</sup> Street Bridge (including any staging area within or near the Premises) with the development of the Horizontal Improvements; and

(iv) Port has approved Master Developer's submission of all documents and evidence required to satisfy the conditions of [Section 14.2 of the DDA] as it relates to Expansion Area A.

(b) **Portions of Terry A. Francois Boulevard. [Note: Subject to further discussion.]** Portions of TFB along the entire northern boundary of the Initial Premises continuing along the northern portion of TFB immediately east of the Initial Site (each, an "Expansion Area B"), as further depicted on *Exhibit XX* and described in *Exhibit XX*, will be added to the Premises from time to time during the Term. The number, location and date upon which each Expansion Area B will be added to the Premises will be determined by the Parties. The parties may add an Expansion Area B to the Premises upon satisfaction of all the following conditions:

(i) Tenant has obtained all applicable all Regulatory Approvals required to permanently close Expansion Area B to vehicular and/or pedestrian traffic, as applicable, and the City has vacated the same;

(ii) Tenant has made available to Port tenants, staff, and other users or visitors of the area immediately east of TFB, such as Piers 48, 48½ and 50, Atwater Tavern, and the Piers 48-50 basin, (collectively, the "East TFB Users") throughout the Term, an alternate route through the Initial Premises for continuous vehicular and pedestrian access (other than temporary traffic closures in line with SFMTA's latest edition of [Regulations for Working in San Francisco Streets] or in connection with an emergency necessary to protect the safety and welfare of the public) whether via TFB or other areas of the Premises;

(iii) Presentations to the Ballpark Transportation Coordinating Committee ("BTCC") and Interdepartmental Staff Committee on Traffic and Transportation ("ISCOTT"); and

(iv) Port has approved Master Developer's submission of all documents and evidence required to satisfy the conditions of [Section 14.2 of the DDA] as it relates to the applicable Expansion Area B.

(c) **Channel Wharf. [Note: Subject to further discussion]** The area between Piers 48 and 50 and immediately east of TFB to the edge of the Piers 48-50 basin and generally known as Channel Wharf ("Expansion Area C"), as further depicted on *Exhibit XX* and described in *Exhibit XX*, will be added to the Premises upon satisfaction of all the following conditions:

(i) Port has approved Master Developer's submission of all documents and evidence required to satisfy the conditions of [Section 14.2 of the DDA] as it relates to Expansion Area C; and

(ii) Tenant has obtained all applicable Regulatory Approvals necessary to support planned Site Preparation activities on or around Expansion Area C.

**1.6. License of Terry Francois A Boulevard. [Note: Subject to further discussion]**

From time to time during the Term, Port will grant Tenant temporary, non-exclusive and non-possessory, revocable licenses (each, a "TFB License") over portions of TFB for Site Preparation work or temporary interim improvements (each, a "TFB License Area") from time to time in accordance with this *Section 1.6*. Tenant's use of the TFB License Area will be on all other applicable terms and conditions of this Lease, subject to the further restrictions set forth below:

(a) **License Use.** During the term of each TFB License, Tenant may grant Master Developer use of the applicable TFB License Area for Site Preparation work or temporary interim improvements ("License Work"). Before Tenant commences any License Work, Tenant must satisfy all of the following conditions:

(i) Port has approved Master Developer's submission of all documents and evidence required to satisfy the conditions of [Section 14.2 of the DDA] as it relates to the applicable TFB License Area;

(ii) Provide Port at least ten (10) business days prior notice of commencement of the Site Preparation work;

(iii) Tenant has obtained all applicable Regulatory Approvals necessary to support planned Site Preparation activities on or around the applicable TFB License Area, including closure of the applicable TFB License Area to vehicular and/or pedestrian traffic, as applicable;

(iv) Tenant will provide East TFB Users continuous vehicular and pedestrian access through the Initial Premises via alternate traffic routes designated by Tenant. Tenant shall maintain such access for East TFB Users, subject to temporary traffic closures in line with SFMTA's latest edition of [Regulations for Working in San Francisco Streets] or in connection with an emergency necessary to protect the safety and welfare of the public; and

(v) Tenant has communicated the closure of the TFB License Area to vehicles and pedestrians during performance of Site Preparation work to local community stakeholders including, but not limited to, the East TFB Users. **[Note: include other necessary conditions]**.

(b) **Reopening of TFB License Area.** Following completion of Site Preparation work or temporary interim improvements within an applicable TFB License Area, Tenant, in consultation with Port, will determine whether to remove all equipment and re-open the TFB License Area to vehicular and pedestrian traffic. Tenant will provide periodic updates to CWAG and the East TFB Users on the progress of the Site Preparation work or temporary interim improvements and estimated completion date. **[Note: This section to be further revised after discussion re: phasing, etc. See note above re: expansion of premises for TFB.]**

**1.7. Liquidated Damages for Failure to Provide Access to East TFB Users.** In addition to the other remedies available to Port under this Lease for an Event of Default under *Sections 1.5(b)(ii) or 1.6(a)(iv)*, if Tenant violates *Sections [1.5(b)(ii) and 1.6(a)(iv)]* regarding access for East TFB Users, then from and after the second notice of violation of *Sections [1.5(b) and 1.6(a)]*, Tenant will pay Port an amount equal to Five Thousand Dollars (\$5,000.00) (as adjusted periodically, the "No Access Charge") for each such violation as liquidated damages, which Five Thousand Dollars (\$5,000.00) will be increased by fifteen percent (15%) on the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES, IN THE EVENT TENANT VIOLATES *SECTIONS 1.5(b)(ii) and 1.6(a)(iv)* WITH REGARD TO EAST TFB USERS ACCESS, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS LEASE, THE AMOUNT OF THE NO ACCESS CHARGE IS A REASONABLE

ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Port Initials	Tenant Initials

**1.8. 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.

**2. TERM.**

**2.1. Term.** The effectiveness of this Lease will commence on the Commencement Date as shown in the Basic Lease Information. The Lease will expire at 11:59 p.m. on the Expiration Date set forth in the Basic Lease Information, unless earlier terminated or extended in accordance with the terms of this Lease. The period from the Commencement Date until the final expiration of the Lease is referred to as the “Term.”

**2.2. Port’s Early Termination Right.**

(a) **Generally.** At any time following DDA termination, Port may, in its sole discretion, terminate this Lease even in the absence of an Event of Default in accordance with this *Section 2.2* (“Termination Option”). If Port elects to exercise its Termination Option, then Port will provide Tenant prior notice of its election (“Termination Notice”). If Port exercises its Termination Option, the termination of this Lease will be effective upon the later of (i) the date set forth in the Termination Notice (which will not be less than thirty (30) days following the delivery of the Termination Notice), or (ii) the last Ballpark Event or Special Event that is scheduled (including any notice or advertisement to the public of such event and date) as of the date the Termination Notice is delivered and which is scheduled within the ninety (90) day period following the last Major League Baseball (“MLB”) game played in AT&T Park during the MLB season in which the Termination Notice is delivered. The termination of the Lease in connection with this *Section 2.2* is further conditioned on satisfaction of the following conditions:

(i) If any portion of the Entitlement Sum is outstanding, payment by Port to Tenant of the outstanding amount on or prior to the termination date; and

(ii) If any portion of the Alternative Rent Credit is outstanding, payment by Port to Tenant of the outstanding amount on or prior to the termination date.

(b) **Effect of Termination.** Upon the effective date of termination of this Lease in accordance with this *Section 2.2*, other than the provisions that survive expiration or earlier termination of this Lease, this Lease will terminate.

**3. RENT**

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in *Exhibit D* attached hereto and incorporated herein by this reference.

#### 4. USES.

**4.1. Uses within Premises.** The Premises will be used and occupied only for the Permitted Uses specified in the Basic Lease Information and for no other purpose.

**4.2. Advertising and Signs.** Subject to the prohibition on tobacco and alcohol advertising provided in *Article 42*, Tenant has the right to install (i) any "business sign" (as defined in Planning Code Section 602.3) in connection with any Permitted Use, (ii) any signage relating to the promotion and advertising of the Project ("**Project Signage**") and (iii) Promotional Signage, in each case without the prior written consent of Port acting in its proprietary capacity. Any such signage will comply with all applicable Laws relating thereto and the requirements of the SUD, Design Controls and the requirements of any applicable building permits. Tenant must obtain all Regulatory Approvals required by applicable Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. All rents, fees, or other charges from all signs will be included as part of Rent and paid in accordance with *Exhibit D*. Tenant, at its sole cost and expense, must remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease. Tenant may enter into agreements with other parties for purposes of placing Promotional Signage or Project Signage, and provided that such use complies with all the terms and conditions of this Lease, such use will not be considered a Transfer for purposes of this Lease, but any and all rent, fees, or other charges from Promotional Signage or Project Signage will be included as part of Gross Income.

#### 4.3. Construction Staging.

##### (a) Construction Staging for Horizontal Development.

(i) Subject to *Section 4.3(a)(iii)*, Tenant has the right to use (and to allow its Agents and Invitees to use) portions of the Premises for construction staging, including, without limitation, storage of soil stockpiles, construction materials and equipment, fencing, temporary construction offices as may be reasonably necessary or convenient in connection with the development of Horizontal Improvements.

(ii) It is expressly acknowledged and agreed that Staging Rent will not be payable on account of construction staging activities solely in connection with the development of Horizontal Improvements, and that the provisions of *Section [ ] of Exhibit D*, which require payment of Staging Rent in conjunction with lease or license of construction staging areas to Vertical Developers, are not applicable to construction staging activities solely in connection with the development of Horizontal Improvements.

(iii) Tenant will include in each Phase Submittal the proposed boundary of the area outside the applicable Phase Area that Tenant proposes to use for construction staging for the Horizontal Improvements. Tenant must obtain Port's prior consent, which will not be unreasonably withheld, before using portions of the Premises outside the boundary approved by Port for construction staging of the Horizontal Improvements.

(b) Construction Staging for Vertical Development. Subject to the provisions of *Section [ ] of Exhibit D* regarding payment of Staging Rent, Tenant has the right to Sublease to Vertical Developers, portions of the Premises for construction staging, including, without limitation, storage of soil stockpiles, construction materials and equipment, fencing, and temporary construction offices in connection with the development of the applicable Vertical Improvements.

(c) Comply with Laws. All construction staging must be performed in accordance with applicable Laws, including any operations plan approved by Port and applicable provisions of the Mitigation Monitoring and Reporting Program.

**4.4. Activation Uses.** Subject to the provisions of *Section [ ] of Exhibit D* regarding payment of Activation Area Rent, in addition to the Yard (but in no event more than XXX

square feet), up to an additional Twenty Thousand (20,000) square feet of the Premises may be designated from time to time by Tenant, by notice to Port, as Activation Area(s) and used for Activation Uses. Such Activation Areas may include up to Five Thousand (5,000) square feet of enclosed interior spaces, such as repurposed shipping containers. No Activation Rent will be due on the Yard at its existing location depicted on *Exhibit XX*. Activation Rent will be due on the Yard if it is relocated to other areas of the Premises.

**4.5. Limitations on Uses by Tenant.**

(a) **Prohibited Activities.** Tenant will not conduct or permit on the Premises any of the following activities (in each instance, a “Prohibited Use” and collectively, “Prohibited Uses”):

(i) any activity, or maintaining of any object, which is not within the Permitted Use or not previously approved by Port in writing, in its sole discretion;

(ii) any construction (other than any construction related to Tenant’s replacement of the existing Outfall Infrastructure in connection with the Horizontal Improvements), planting of trees or shrubs, or installation of any structures or buildings on, over, under, or within the Outfall Infrastructure Area;

(iii) any activity which constitutes waste or nuisance to owners or occupants of adjacent properties, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any unusually objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound apparatus which can be heard outside the Premises in violation of applicable Law, provided, that the Construction Impacts reasonably expected for the construction of the Horizontal Improvements will not be considered or deemed a nuisance;

(iv) Subject to the provisions of *Sections 1.5(b)(ii)* and *1.6(a)(iv)* any activity which will in any way injure, obstruct or interfere with the rights of ingress and egress of other owners, tenants, or occupants of adjacent properties who are not TFB Users;

(v) With respect to any East TFB Users, any activity that prevents East TFB Users’ access to the areas east of TFB in violation of *Sections 1.5(b)(ii)* and *1.6(a)(iv)* except to the extent that such activities are conducted within the Permitted Uses hereunder and in accordance with all laws and Regulatory Approvals;

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

(vii) the placement of any Sign on or near the Premises related to 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;

(viii) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids provided, however, the foregoing prohibition does not apply to standard equipment maintenance for office equipment (such as printers, computer, and copiers), equipment used in connection with Tenant’s parking operations (including pay stations used for collecting parking fees or to the charging of electric vehicles and equipment;

(ix) except in connection with the construction of the Horizontal Improvements and the Vertical Improvements, the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;



(x) except in connection with the construction of the Horizontal Improvements and the Vertical Improvements, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials; or

(xi) the washing of any vehicles or equipment (unless such use is reasonably required on a temporary basis to comply with the Mission Rock Mitigation Monitoring and Reporting Program or the Mission Rock Risk Management Plan during construction of the Horizontal Improvements or otherwise done in accordance with an approved Operations Plan.

(b) **Restrictions on Encumbering Port’s Reversionary Interest.** Tenant may not enter into agreements granting licenses, easements or access rights over the Premises (collectively, “Access Rights”) if the same would be binding on Port’s reversionary interest in the Premises without Port’s prior written consent, which consent may be withheld in Port’s sole discretion. Notwithstanding the foregoing, the Parties acknowledge that Master Developer’s obligations to deliver the Horizontal Improvements under the DDA (including the Infrastructure Plan), and the requirements of the Master Utilities Plan, Master Tentative Map and associated conditions of approval will require the dedication or granting of certain Access Rights that may be binding on Port’s reversionary interest in the Premises. Port will not withhold its consent to any Access Rights that are consistent with matters previously approved by Port (including the DDA, Infrastructure Plan and Master Tentative Map) or in the Master Utilities Plan; and will not unreasonably withhold its consent to Access Rights to private parties that are reasonably required for the functioning of the Horizontal Improvements or Vertical Improvements (e.g., private gas easements and private telecommunications easements).

**4.6. Liquidated Damages for Repeat Prohibited Uses and Special Event Violations.**

In addition to the other remedies available to Port under this Lease for an Event of Default under **Section 23.1(f)**, if Tenant uses the Premises in violation of this Lease for a Special Event or for the same type of Prohibited Use and Port has delivered a notice of such violations more than three (3) times within the prior twelve (12) month period, then Tenant will pay Port an amount equal to Two Thousand Five Hundred Dollars (\$2,500.00) (as adjusted periodically, the “Prohibited Use Charge”) for such Prohibited Use or Special Event violation as liquidated damages, which Two Thousand Five Hundred Dollars (\$2,500.00) will be increased by fifteen percent (15%) on the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter. **[Note: \$2,500 will increase annually by 3% from and after the date of DDA execution until execution of this Lease.]**

THE PARTIES HAVE AGREED THAT PORT’S ACTUAL DAMAGES, IN THE EVENT TENANT USES THE PREMISES IN VIOLATION OF THIS LEASE FOR A SPECIAL EVENT OR FOR THE SAME TYPE OF PROHIBITED USE MORE THAN TWO (2) TIMES WITHIN A TWELVE (12) MONTH PERIOD, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS LEASE, THE AMOUNT OF THE PROHIBITED USE CHARGE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Port Initials: _____	Tenant Initials: _____
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## 5. DEVELOPMENT PROJECTS.

**5.1. Generally.** Tenant acknowledges that during the Term, other development projects will be developed or constructed on or near Port property [(such as the development projects at Pier 48, the individual development on the Development Parcels at the [Mission Rock Site], the Chase Center, development at Mission Bay, the rehabilitation of the 3<sup>rd</sup> Street Bridge) and Pier 70, the proposed development of over 5 million square feet on the 29-acre Central Waterfront site at or around 1201 Illinois Street (bounded by Illinois, the Bay, 22nd and 23rd Streets) [ ] also may be constructed in the vicinity of the Premises (collectively, “**Development Projects**”). Tenant is aware that construction of the Development Projects and other construction projects of Port tenants, licensees or occupants or projects of third parties in the vicinity of the Premises and the activities associated with such construction may generate adverse impacts on construction of the Horizontal Improvements, use and/or operation of the Premises after construction, or may result in inconvenience to or disturbance of Tenant and its Agents and Invitees. Said impacts may include increased vehicle and truck traffic, closure of traffic lanes, re-routing of traffic, traffic delays, 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.

**5.2. Cooperation.** Tenant acknowledges and agrees that it will reasonably cooperate with Port, each tenant or developer of the Development Parcels in the Mission Rock Site and Pier 48 and any future tenants or occupants of the Mission Rock Site (collectively, the “**Mission Rock Parties**”) in the development of Mission Rock and Pier 48, at no material out-of-pocket cost to Tenant.

**5.3. Tenant Deliveries Related to Vertical Development .** Subject to satisfaction of all conditions precedent for release of a Development Parcel from the Premises, as set forth in the DDA, no less than five (5) business days prior to the Anticipated Conveyance Date of each Development Parcel, Tenant will deliver into Escrow, the following documents:

(a) a duly executed and acknowledged Partial Release of Master Lease and [Partial Release of DDA];

(b) a duly executed Estoppel Certificate for the benefit of Port, the Vertical Developer and Vertical Developer’s lenders, in the form attached hereto as **Exhibit XX**;

(c) a duly executed ground lessee’s affidavit and, if required by the title insurance company, a mechanic’s lien indemnity (excluding any work performed by Port) reasonably acceptable to Tenant and the title insurance company issuing title insurance on the applicable Development Parcel;

(d) a duly executed VCA reasonably acceptable to both Tenant and Vertical Developer; and

(e) such other documents reasonably requested by Port, or Vertical Developer, to consummate the delivery of the applicable Development Parcel to Vertical Developer.

Upon request from each Vertical Developer, Tenant will also enter into a license on the form attached hereto as **Exhibit XX** to provide Vertical Developer access to the applicable Development Parcel for Vertical Developer to perform due diligence and site investigation prior to the Anticipated Conveyance Date.

## 6. TAXES AND ASSESSMENTS.

### 6.1. *Payment of Taxes and Other Impositions.*

(a) **Payment of Taxes.** Tenant will pay or cause to be paid to the proper authority prior to delinquency, all Impositions assessed, levied, confirmed or imposed on the Premises or any of the Improvements, Horizontal Improvements, or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or on its 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 the Leasehold Estate 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 (including the Horizontal Improvements) thereon. All such taxes must be paid directly to the City's Office of the Treasurer & Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Subject to *Section 6.2*, Tenant will have the right to contest the validity, applicability or amount of any taxes in accordance with *Article 7*. In the event of any dispute, Tenant will Indemnify and hold the Indemnified Parties harmless from and against all Losses, including Attorneys' Fees and Costs, resulting therefrom.

(i) **Acknowledgment of Possessory Interest.** Tenant specifically recognizes and agrees that this Lease creates a possessory interest that is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Office of Assessor-Recorder. Tenant further acknowledges that any Sublease, Transfer or 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 any successive or replacement ordinance) requires 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 City's Office of Assessor-Recorder within sixty (60) days after any such transaction. Within thirty (30) days of request by Port following the date of any transaction that is subject to such reporting requirements, Tenant will provide such information as may reasonably be requested by Port to enable Port to comply with such requirements.

(b) **Other Impositions.** Without limiting the provisions of *Section 6.1(a)*, and except as otherwise provided in this *Section 6.1(b)*, Tenant will pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term, which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Horizontal Improvements or other Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the Leasehold Estate, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of *Article 7*, Tenant will pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any

such Imposition in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, “**Impositions**” means all taxes (including possessory interest, real, personal and Mello-Roos Taxes), assessments, liens, levies, fees, charges, or expenses of every description, levied, assessed, confirmed, or imposed by a governmental or quasi-governmental entity on the Premises, any of the Horizontal Improvements, Improvements or Personal Property located on the Premises, the Leasehold Estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions includes all such taxes, assessments, liens, levies, fees charged 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, including, without limitation, Mello-Roos Taxes under the Mission Rock CFD. The foregoing or subsequent provisions notwithstanding, Tenant will not be responsible for any Impositions arising from or related to, Port’s fee ownership interest in the Premises, Port’s interest as landlord under this Lease, or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Port’s fee interest or transfer thereof.

(c) **Proof of Compliance.** Within a reasonable time following Port’s written request, which Port may give at any time, 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.

**6.2. Acknowledgements and Covenants Regarding Community Facilities Districts and Assessment Matters. [Note: Conform/update with DDA and Financing Plan.]**

(a) **Section 53341.5 Acknowledgment.** Prior to Tenant’s execution and delivery of this Lease, Tenant delivered to Port an acknowledgment (the “**Notice of Special Tax**”) confirming that Tenant has been advised of the terms and conditions of the Mission Rock CFD, including that the Premises is subject to the Mello-Roos Taxes (as defined in *Exhibit XX*). A copy of the executed Notice of Special Tax is attached hereto as *Exhibit XX*.

(b) **Facilities and Maintenance CFD.** As material consideration for the Port entering into this Lease, Tenant will comply with all of the covenants and acknowledgements set forth in *Exhibit XX* (Mission Rock CFD and Assessment Matters) attached hereto, which covenants and acknowledgements will be recorded against title to the Premises and survive the expiration or earlier termination of this Lease. (“**Agreement to Comply with Mission Rock CFD and Assessment Matters**”).

**6.3. Port’s Right to Pay.** Unless Tenant is exercising its right to contest in accordance with the provisions of *Article 7*, 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 currently contesting such Impositions pursuant to *Article 7*, 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.

**6.4. Information Required by the County Assessor. [Note: Subject to further discussion.]**

(a) [The County Assessor has notified Port that it requires certain information in order to facilitate completion of Assessor Block Maps, updates to ownership records, and assessment of in-progress construction, completed new construction, sales and other assessable

transfers of property. *Exhibit XXX* lists the information that the County Assessor expects to need in order to perform the foregoing tasks (the “Assessor Information”).

(b) Each Party will provide to the County Assessor any Assessor Information requested in writing by the County Assessor in the format required by the County Assessor (the “Requested Information”) within 90 days of the applicable Party’s receipt of a written request for such Requested Information. Port will have the right to exercise all rights and remedies available at law or in equity to enforce Tenant’s obligation to provide Requested Information on a timely basis, including specific performance. Tenant waives any right to confidentiality under applicable law to the extent necessary for the County Assessor to notify Port of Tenant’s failure to provide the Requested Information on a timely basis and Port to exercise its right to specific performance of Tenant’s obligation.

(c) Promptly following the County Assessor’s request, Port may, from time to time, update the information requirements set forth in *Exhibit XXX* by providing Tenant no less than five (5) business days’ prior notice and a replacement copy of *Exhibit XXX*.]

## 7. CONTESTS.

Subject to *Section 6.2*, Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Impositions, 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. Subject to *Section 6.2*, nothing in this Lease requires Tenant to pay any Impositions, mechanics’ lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Impositions, mechanics’ lien or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Impositions, mechanics’ lien or encumbrance to be forfeited to the entity levying such Impositions, 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 Impositions, 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. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the precedent sentence, costs, expenses, or fees, including Attorneys’ Fees and Costs, in connection with any such proceeding. Without limiting *Article 28*, Tenant will Indemnify the Indemnified Parties for all Losses resulting from Tenant’s contest of any Imposition, mechanics’ lien or encumbrance.

## 8. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS.

**8.1. Tenant’s Obligation to Comply.** Subject to *Section 8.2* hereof, 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 Mission Rock Risk Management Plan, (iii) the DDA, (iv) the Mitigation Monitoring and Reporting Program, [, and (v).....] **[Note: add others as necessary]**. 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.

## 8.2. *Unforeseen Requirements.*

(a) The Parties acknowledge and agree that Tenant's obligation under this *Section 8.2* to comply with all Laws and the other requirements set forth in *Section 8.1* is a material part of the bargained-for consideration under this Lease.

(b) Notwithstanding *Section 8.2(a)*, the Parties acknowledge that the primary purpose of this Lease is for the implementation of the Project under the DDA, including construction of Horizontal Improvements, not for the occupancy, use, repair or maintenance of buildings existing as of the Commencement Date, except as expressly required under the DDA or required or permitted hereunder. Therefore, except as set forth in this *Section 8.2(c)*, 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 the DDA, or gives Tenant any right to terminate this Lease in whole or in part.

(c) Tenant will have no obligation to comply with a change in Law occurring after the Commencement Date that requires substantial improvements to the Property to continue parking operations or hold Special Events, the cost of which is economically infeasible based on the projected revenues from such uses and recognizing the future development of the Project, if, as an alternative, Tenant can take reasonable measures to obviate the applicability of such change in Laws or cease parking operations or holding Special Events; provided, however, Tenant shall Indemnify Port for any Losses suffered by Port as a result of Tenant's failure to comply with such change in Laws.

(d) 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.

## 9. 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 and not as a Regulatory Agency with certain police powers. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Tenant acknowledges and agrees that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Horizontal Improvements or other Improvements can be obtained. Tenant further acknowledges and agrees 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 Horizontal Improvements or other 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 Horizontal Improvements, other 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 Horizontal Improvements or other Improvements. By entering into this Lease, Port is in no way modifying or limiting Tenant's obligations to cause the Premises to be developed, Restored, used and occupied in accordance with all Laws. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease applies only to Port in its proprietary capacity, not in its regulatory capacity. 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 Horizontal Improvements or other 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 (in its regulatory capacity), the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Horizontal Improvements or other Improvements; provided, however, such waiver does not include a waiver of any administrative or other remedy that a third-party permittee would otherwise have under applicable Law against such Regulatory Agency for its election not to issue the applicable Regulatory Approval.

(b) **Regulatory Approval; Conditions.** The provisions of this *Section 9(b)* do not apply to Regulatory Approvals required for development of the Horizontal Improvements pursuant to the DDA, which is governed by the DDA. Tenant understands that Tenant's use and operations on the Premises for the Ancillary Permitted Uses may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, and other Regulatory Agencies. Tenant is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

Port, at no cost to Port, will cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this Lease, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any 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 and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) restrict or change the use of the Premises in a manner not otherwise permitted under this Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Tenant has assumed all obligations and liabilities related to such conditions, restrictions, and/or Port's unreimbursed costs or fees.

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 reasonably determines that Port Commission or Board action is required under applicable Laws, 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 seventy-five (75) 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 in this section. Tenant further acknowledges and agrees that any time limitations

on Port review or approval within this Lease applies only to Port in its proprietary capacity, not in its regulatory capacity.

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 in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Tenant will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. 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.

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 which will be necessary to operate the Premises in accordance with the terms hereof except to the extent that such Losses arise from the gross negligence or willful acts or omissions of an Indemnified Party acting in its proprietary (and not its regulatory) capacity.

#### 10. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

**10.1. Mitigation Monitoring and Reporting Program.** In order to mitigate any potential significant environmental impacts of the Project and operation of the Premises, Tenant agrees that the development and operation of the Project will be in accordance with the applicable mitigation measures set forth in the Mitigation Monitoring and Reporting Program attached as *Exhibit XX*. As appropriate, Tenant will incorporate applicable provisions of the Mitigation Monitoring and Reporting Program into any contract for the development of the Horizontal Improvements and/or operation of the Horizontal Improvements and the Premises.

**10.2. Special Events.** All Special Events must be conducted in accordance with all the conditions set forth in *Exhibit XX*.

#### 10.3. Parking Operations.

(a) Tenant may operate the Premises as a parking lot, including, without limitation, for parking in connection with Ballpark Events and Special Events, parking for Project tenants and residents, and general public parking. Tenant may retain a Parking Operator and enter into an agreement with such Parking Operator for the parking operations on the Premises or any portion thereof, either as a Subtenant or as an Agent of Tenant ("**Parking Operator Agreement**"). Tenant or its Parking Operator may enter into use agreements or licenses with third parties for parking on an hourly, daily, weekly or monthly basis that are not inconsistent with the terms and conditions of this Lease (collectively, "**Parking Use Agreements**;" together with Parking Operator Agreement, "**Parking Agreements**").

(b) **Non-Exclusive; Market Rates.** All parking spaces will be available to the general public at least 8 consecutive hours daily on a non-exclusive basis only and offered at fair market rates on either a daily basis or a monthly basis; provided Tenant will not offer discounted rates for parking other than for parkers involved in the operations of AT&T Park, AT&T Park tenants, or for Giants season ticket holders, and further provided that Tenant may



reserve sections of the Premises from time to time for certain parkers (i.e. ticket holders for suites at AT&T Park), all consistent with CBBC's historical practice.

(c) **Parking Revenues.** All parking revenues will be applied in accordance with *Exhibit D*.

(d) **Prevailing Rate of Wages and Displaced Work Protection Required for Workers.** Tenant will comply fully and be bound by all the requirements of Sections 21C.3 and 21C.7 of the City's Administrative Code. In general, the ordinance requires operators of public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by Port to pay employees working in such facilities not less than the Prevailing Rate of Wages, as defined by ordinance, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work. The ordinance also requires the operator of such facilities to retain for a 90-day transition employment period, the Employees, as defined by the ordinance, who have worked at least 15 hours per week and have been employed by the immediately preceding operator or its subcontractors, if any, for the preceding twelve months or longer at the facility or facilities covered by the agreement with the Port, provided that just cause does not exist to terminate any Employee. The predecessor operator's Employees who worked at least 15 hours per week will be employed in order of their seniority with the predecessor.

(e) **Revenue Control Equipment.** Tenant will comply with Article 22 of the San Francisco Business and Tax Regulations Code, including, without limitation the requirement to install, maintain and use Revenue Control Equipment at the Premises. Tenant will immediately notify Port in writing of any audit, inspection, alleged violation, violation or penalty action taken under such Article by any Enforcing Agency, as defined by Article 22. In addition to any other requirements under this Lease, upon Port's request, Tenant will provide Port a copy of all information submitted to the Tax Collector and any other City department or official to demonstrate Tenant's compliance with Article 22.

(f) **Parking Agreements.** The Parking Operator Agreement must comply with *Sections 10.3(d)* and *10.3(e)* and contains each of the provisions set forth in *Section 18.4* as if the Parking Operator Agreement was a Pre-Approved Sublease except that all references to "Subtenant" in such section refers to the Parking Operator. Tenant may enter into Parking Use Agreements without Port's prior consent, but each Parking Operator Agreement must include a full release and waiver of all claims against the Indemnified Parties and must comply with *Section 10.3(a)* and *10.3(b)*.

**10.4. Mission Rock Risk Management Plan.** Tenant will comply, and will cause its Agents to comply, with all applicable provisions of the Mission Rock Risk Management Plan, a copy of which has been provided to Tenant. Any and all Subleases will require Subtenants (including its Agents) to comply with all applicable provisions of the Mission Rock Risk Management Plan.

**10.5. Access to Deferred Infrastructure Area.** **[Note: Need to conform to DDA/ICA regarding granted access to vertical developer to perform the work.]**

## 11. REPAIR AND MAINTENANCE.

### 11.1. Covenants to Repair and Maintain the Premises.

(a) Tenant is obligated at its sole cost and expense to maintain, repair and replace any Improvements constructed by Tenant on the Premises, reasonable wear and tear excepted and subject further to all Regulatory Approvals.

(b) For purposes of this Lease, the term "reasonable wear and tear" will 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. Port is not obligated to make any repairs,

replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Horizontal Improvements, other Improvements or Subsequent Construction. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

(c) Tenant will have no repair and maintenance obligations with respect to the Outfall Infrastructure; provided, however, the foregoing will not reduce any obligation of Tenant to connect the Outfall Infrastructure with the Horizontal Development; and provided further that Tenant will promptly repair, at its sole cost, any damage to the Outfall Infrastructure caused by the development of the Horizontal Development.

**11.2. Port's Right to Inspect.** Port or the City may make periodic inspections of the Premises to inspect the construction and development of the Horizontal Improvements or as otherwise required or reasonably necessary to determine Tenant's compliance with this Lease, in all cases upon reasonable prior notice to Tenant during regular business hours. During an inspection, Port will comply with Master Developer's onsite safety measures and act reasonably to minimize any interference with Master Developer's construction activities. Port will provide a copy of any inspection reports prepared by Port or its Agents promptly following Master Developer's request, subject to Port's right to withhold documents otherwise privileged or confidential. Port disclaims any warranties, representations, and statements made in any reports, will have no liability or responsibility with respect to any warranties, representations, and statements, and will not be estopped from taking any action (including later claiming that the construction of the Horizontal Improvements is defective, unauthorized, or incomplete) or be required to take any action as a result of any inspection.

**11.3. Right to Repair.** In the event Tenant fails to maintain, repair, and replace the Premises, Horizontal Improvements, or the other Improvements, as applicable, in accordance with **Section 11.1** and such failure is likely to cause imminent physical harm to any Person or constitutes a violation of applicable Law, Port or the City may repair the same at Tenant's cost and expense and Tenant will reimburse Port or the City, as applicable, as provided in this **Section 11.3**; provided, however, with respect to Tenant's failure to maintain and repair the Horizontal Improvements only, Port may call on the Maintenance and Repair Bond, if any, in lieu of expending its own funds for such repairs. Except in the event of an emergency, Port or the City, as applicable, will first provide no less than fifteen (15) days prior notice to Tenant before commencing any maintenance to or repair of any of the foregoing. If Tenant does not commence maintenance or repair of the affected Horizontal Improvements or provide assurances reasonably satisfactory to Port or the City, as applicable, that Tenant will commence maintenance or repair of the same within such fifteen (15) day period, then Port or the City, as applicable, may proceed to take the required action. If Port or the City, as applicable, elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port or the City, as applicable, pursuant to this **Section 11.3**, Port or the City, as applicable, will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port or the City, as applicable, 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 or the City, as applicable, the amount set forth in the invoice within thirty (30) days after delivery of the invoice.

In the event Port notifies Tenant of a failure to maintain and repair in accordance with **Section 11.1** ("**Maintenance Notice**"); Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300), which amount will be increased by one hundred dollars on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, 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 10, then Tenant will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars (\$400), which amount will

be increased by One Hundred Dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, 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. The amounts set forth in this *Section 11.3* are due within five (5) days following delivery of the applicable Maintenance Notice.

Tenant's Initials: \_\_\_\_\_

## 12. HORIZONTAL IMPROVEMENTS.

**12.1. Construction of the Horizontal Improvements.** The DDA will govern the construction of the Horizontal Improvements.

**12.2. Tenant's Obligation to Make Horizontal Improvements Available for Use Prior to Acceptance.** Before Acceptance of the applicable Horizontal Improvements by the City, subject to the immediately following sentence, Tenant will have the right, but not the obligation, to make the Horizontal Improvements that (a) will be operated by the SFPUC, available for SFPUC's use without charge or any fee, and (b) would generally be available for the public's use, such as streets, sidewalks, parks and open space, available for use by all parties, including Vertical Developers, the general public, the City and Port, without charge or any fee. Notwithstanding the foregoing, Tenant will make available for use without charge, all Horizontal Improvements necessary for any [Vertical Improvements] to obtain a temporary certificate of occupancy.

**12.3. Title to Improvements.** Tenant will own all Horizontal Improvements until they are Accepted by the City. Tenant will own during the Term all Subsequent Construction located on the Premises and all appurtenant fixtures, machinery and equipment installed therein (except for subtenant improvements to the extent owned by any subtenant pursuant to such sublease, trade fixtures and other personal property of Subtenants). Upon release of the applicable Horizontal Improvement Parcels that contain parks and open space that are Accepted by Port, title to the Improvements and Horizontal Improvements related to such parks and open space, including appurtenant fixtures (but excluding trade fixtures 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, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant will promptly cause the repair of such damage at no cost to Port.

## 13. SUBSEQUENT CONSTRUCTION.

### 13.1. Port Approval.

(a) **Generally.** Tenant will have the right, from time to time during the Term, to construct Subsequent Construction in accordance with the provisions of this *Article 13*.

(b) **Subsequent 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:

(i) Construct additional buildings or other additional above ground structures on Development Parcels or Dedicated Parcels prior to the applicable parcel's release from the Premises, other than temporary buildings, and structures necessary to advance the Permitted Uses that are Demolished and Removed by Tenant prior to the applicable parcel's release from the Premises; or

(ii) **[Note: Placeholder if there are Public Access Areas]** Other than as reasonably necessary during Subsequent Construction and only on a temporary basis, perform Subsequent Construction to the Public Access Areas that would adversely affect the public access to, or the use or appearance of such Public Access Areas; provided however, any closure of Public Access Areas not necessary to protect the public or property or to reduce the risk of injury to person or the public during Subsequent Construction will require Port's prior consent.

### 13.2. Construction Schedule.

(a) **Performance.** Once commenced, Tenant will prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

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

### 13.3. Construction.

(a) **Commencement of Construction.** Tenant will not commence any Subsequent Construction until Tenant has obtained all building permits, other Regulatory Approvals and Port approvals to the extent required. Additionally, if any performance and/or payment bond, sub-guard insurance (or other insurance product), guaranty, or other security is obtained by or for the benefit of Tenant with respect to the payment of any funds or performance obligations associated with the Initial Improvements or any Subsequent Construction, Tenant will cause to have (1) Port named as a co-obligee to any performance and/or payment bond, and (2) Port named as an additional insured with respect to any sub-guard or other insurance product; provided, however, Port's rights under such bond or insurance product will not be effective, and shall remain subordinate to the rights of Tenant, until the termination of this Lease.

(b) **Construction Standards.** All Subsequent Construction must be performed by duly licensed and bonded contractors or mechanics and must be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

(c) **Reports and Information.** During periods of Construction, Tenant will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by the County Assessor.

(d) **Costs of Construction.** Port will have no responsibility for costs of any Construction and Tenant will pay (or cause to be paid) all such costs.

(e) **Construction Rights of Access.** During any period of Subsequent Construction, Port and its Agents have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work; provided, however, that Port and its Agents will conduct their activities in such a way 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 any liability in connection therewith.

(f) **Prevailing Wages.** Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or part out of public funds. The terms "public work" and "paid for in whole or part out of public funds" as used in this Section are defined in California Labor

Code Section 1720 et seq., as amended. Tenant agrees that any person performing labor for Tenant on any public work at the Premises will be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and 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 County. Tenant will include in any contract for such labor 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 will deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(g) **Compliance with Workforce Development Plan.** Tenant agrees that it will comply with the Workforce Development Plan attached hereto as *Exhibit XX*.

**13.4. Safety Matters.** Tenant, while performing any Subsequent Construction or maintenance or repair of the Horizontal Improvements or Improvements (for purposes of this Section only, "Work"), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises, the Horizontal Improvements, and Improvements and the surrounding property, or the risk of injury to persons or members of the public, caused by or resulting from the performance of its Work. Tenant will erect appropriate construction barricades to enclose the areas of such construction and maintain them until the Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

**13.5. Record Drawings.**

(a) With respect to any Subsequent Construction requiring a building permit (but excluding temporary structures), Tenant will 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 and Port's written notice to Tenant requesting same. Record Drawings must be 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 Final 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 an additional 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 actual, third-party cost of preparing such Record Drawings must be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section limits 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. Tenant is permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Tenant's request, Port will provide Tenant with a release from liability for future use of the applicable materials, in a form acceptable to Tenant and Port.

(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 will 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 13.5* as technology changes and new engineering/architectural software is developed.

#### 14. UTILITY SERVICES.

**14.1. Utility Services.** Tenant acknowledges and agrees 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. Additionally, Tenant's construction of the various utilities infrastructure as part of the Horizontal Improvements required under the DDA is a material bargained for consideration of this Lease. Tenant, at its sole expense (without impacting any reimbursement right Tenant may have under the Financing Plan), must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use the Horizontal Improvements, 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 Horizontal Improvements, Improvements and the Premises are put, 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, abrogates, diminishes, or otherwise affects 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 does 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. Electricity.** [Section XX of the Development Agreement], a copy of which is attached hereto as *Exhibit XX*, will govern Tenant's obligation to procure electricity for the Premises from the San Francisco Public Utilities Commission.

**14.3. 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. The Disclosure Summary Sheet is attached as *Schedule [XX]*.

**14.4. 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. DAMAGE OR DESTRUCTION.**

**15.1. Damage or Destruction.**

(a) **Tenant to Give Notice.** If at any time during the Term, any damage or destruction occurs to all or any portion of the Premises (other than a de minimis portion) from fire or other casualty (each a "Casualty"), Tenant will promptly give telephonic or written notice (including via electronic mail) thereof to Port generally describing the nature and extent of such Casualty.

(b) **No Effect on Lease.** This Lease will not terminate or be forfeited or be affected in any manner by reason of Casualty, and Tenant, notwithstanding any law or statute present or future (including without limitation, California Civil Code Sections 1932(2) and 1933(4)), waives any and all rights to quit or surrender the Premises or any part thereof, Tenant acknowledging and agreeing that the provisions of this *Article 15* will govern the rights and remedies of the parties in the event of a Casualty. Tenant expressly agrees that its obligations hereunder, including the payment of any and all Rent and any other sums due hereunder, will continue as though said Premises, the Horizontal Improvements, and/or other Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind.

(c) **Tenant's Restoration.** Without limiting any obligations under the DDA with respect to Horizontal Improvements damaged or affected by Casualty, Tenant will promptly 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.

(d) **Insurance Proceeds.** Port acknowledges and agrees that, in light of Tenant's obligations under *Sections 15.1(b)* and *15.1(c)*, Port has no claim to receive any portion of insurance proceeds received by Tenant from insurance policies required to be carried by Tenant under this Lease on account of any Casualty unless such portion of insurance proceeds relates to Horizontal Improvements that have been Accepted.

**16. CONDEMNATION.**

**16.1. General; Notice; Waiver.**

(a) **General.** If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties will be determined pursuant to this *Article 16*.

(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 will promptly give written notice of such proceedings or negotiations to the other Party. Such notice will describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) **Waiver.** Except as otherwise provided in this *Article 16*, the Parties intend that the provisions of this Lease will govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this *Article 16*, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under California Code of Civil Procedure Sections 1265.120 and 1265.130, as such section may from time to time be amended, replaced or restated.

**16.2. Total Condemnation.** If there is a Condemnation of the entire Premises or the Leasehold Interest (a “**Total Condemnation**”), this Lease will terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties will 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 and the provisions that expressly survive the expiration or earlier termination of this Lease. Port and Tenant will execute and deliver a termination of Lease or such other document as is reasonably necessary to evidence such termination.

**16.3. Substantial Condemnation, Partial Condemnation.** If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties will be as follows:

(a) **Substantial Condemnation.** If there is a Substantial Condemnation of a portion of the Premises or the Leasehold Estate, this Lease will terminate, at Tenant’s option, (which will be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port). “**Substantial Condemnation**” means where Tenant reasonably determines that, because of the Condemnation, it will be infeasible for Master Developer under the DDA to develop all or any remaining Phase (as defined in the DDA) of the Project substantially in conformance with the Project Approvals, due to either economic or physical construction reasons unless Port and Master Developer amend the DDA, each in their sole discretion.

(b) **Partial Condemnation.** If there is a Condemnation of any portion of the Premises or the Leasehold Estate which does not result in a termination of this Lease under *Section 16.2* or *Section 16.3(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. In the case of a Partial Condemnation, this Lease will remain in full force and effect as to the portion of the Premises (or of the Leasehold Estate) remaining immediately after such Condemnation. Port and Tenant will execute and deliver a partial termination of Lease or such other document as is reasonably necessary to evidence such termination.

**16.4. Awards.** Except as provided in *Sections 16.5* and *16.6*, 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, without limitation, reasonable Attorneys’ Fees and Costs) incurred in the collection thereof (“**Net Awards and Payments**”) will be allocated between Port and Tenant as follows: **[Note: Subject to further discussion.]**

(a) First, to the payment of all unpaid Rent.

(b) Second, in the event of a Partial Condemnation, to pay costs of Restoration incurred by Tenant, in which case, the portion of the Net Awards and Payments allocable to Restoration will be payable to Tenant, a Mortgagee, or trustee in accordance with the requirements governing payment of insurance proceeds set forth in *Section 16.4(c)*;

(c) Third, 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;



(d) Fourth, to any non-affiliate Mortgagee pursuant to a non-affiliate Mortgage as and to the extent provided therein, for payment of all sums secured by its Mortgage that remain outstanding, together with its reasonable out of pocket expenses and charges in collecting the Net Award and Payment, including without limitation, its reasonable attorneys' fees incurred in the Condemnation;

(e) Fifth, to Tenant to the extent that the Net Awards and Payments are attributable to Tenant's Leasehold Estate not including the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date;

(f) Sixth, the balance of the Net Awards and Payment will be divided proportionately between Port, for the value of Port's reversionary interest in the land and Improvements (based on the date the Term would have expired but for the event of Condemnation) and Tenant, for the value of the Horizontal Improvements constructed by Tenant for the remaining unexpired portion of the Term to the original scheduled Expiration Date. Any Net Awards and Payment paid to Tenant in accordance with this Section will be applied as "DRP Proceeds" that Port can contribute under [Section XX of the DDA.]

(g) Notwithstanding anything to the contrary set forth above, 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 value of Port's reversionary interest in the land and Improvements, the Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term of this Lease, will be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment. If less than all of the Premises is condemned, and this Lease is terminated, the fair market value of the remaining Premises and Improvements thereon which become the property of Port upon such termination shall be treated for purposes of this Section as received by Port on account of its share of the Award and the cash payment payable to Port shall be reduced by a like amount and instead paid to Tenant.

**16.5. 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, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease will remain in full force and effect, and the entire Award will be payable to Tenant.

**16.6. Personal Property.** Notwithstanding *Section 16.4*, Port will 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.

## 17. LIENS.

**17.1. 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 the 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 7*), and (iii) Mortgages in accordance with *Article 37*.

**17.2. Mechanics' Liens.** Tenant will keep the Premises and the Leasehold Estate 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 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.

## 18. ASSIGNMENT AND SUBLETTING.

**18.1. Transfers.** Tenant will have the right to Transfer without obtaining Port's consent its entire interest in this Lease to the proposed Transferee in connection with a Transfer of the Master Developer's rights under the DDA pursuant to [Article 6 of the DDA.] Except in connection with a Transfer under the DDA, no other Transfer of Tenant's interest is permitted.

**18.2. No Release of Tenant's Existing Liability or Waiver by Virtue of Consent.** The effectiveness of a Transfer hereunder is not in any way to be construed to 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 before the date of such Transfer.

**18.3. Phase Transferee Sublease.** If the Master Developer assigns all of Master Developer's rights and obligations under the DDA for the development of the Horizontal Improvements with respect to a particular Phase, and such transferee assumes all such rights and obligations ("Phase Transferee") all in accordance with the DDA and pursuant to an assignment and assumption agreement approved by Port in accordance with the DDA ("Phase Assignment and Assumption Agreement"), then Tenant may enter into a Sublease for portions of the Premises applicable to the Phase Assignment and Assumption Agreement ("Phase Sublease") with Port's prior consent which will not be unreasonably withheld. The Parties agree that it will be reasonable for Port to withhold its consent to a Phase Sublease for any of the following reasons:

(a) The proposed area subject to the Phase Sublease extends beyond the applicable Phase Area (other than any construction staging area for the Horizontal Improvements applicable to such Phase);

(b) The term of the Phase Sublease extends beyond completion date set forth in the DDA Schedule of Performance for such Phase (as may be extended in accordance with the DDA);

(c) The Phase Sublease does not require the Phase Transferee to provide all of the documents described in *Section 5.3* within the time frame set forth therein;

(d) The Phase Sublease does not include all of the provisions set forth in *Section 18.4* provided that references in such section to Pre-Approved Sublease will mean the Phase Sublease and Subtenant will mean the Phase Transferee.

**18.4. Pre-Approved Sublease.** Other than any Sublease or other agreement with a Phase Transferee, as further described in *Section 18.3*, Tenant has the right to Sublease portions of the Premises for the Permitted Uses and enter into Parking Operator Agreements without Port's prior consent so long all of the following conditions are satisfied (each a "Pre-Approved Sublease"):

(a) The Pre-Approved Sublease will not adversely and materially impact construction of the Horizontal Improvements or the Vertical Improvements; and

(b) The Pre-Approved Sublease (and any further sub-subleases of the Sublease space) are all subject to the terms and conditions of this Lease, provided that the Subtenant need not be obligated to undertake any obligations with respect to the Subleased space that is Tenant's obligation under such Sublease; and

(c) The term of the Pre-Approved Sublease does not extend beyond the Term of this Lease; and

(d) The Pre-Approved Sublease contains an Indemnification and waiver of claims provision benefitting Port that is substantially and materially the same as *Article 19* except that the term "Tenant" in such provision means "Subtenant;" or "Licensee," as applicable; and

(e) The Pre-Approved Sublease requires 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

(f) Subject to the rights of any Mortgagee, the Pre-Approved Sublease requires Subtenant to pay the 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

(g) The Pre-Approved Sublease requires the Subtenant to provide to Tenant any Books and Records which are needed for Port to verify Gross Revenues or Variable Rent and to otherwise adhere to the requirements in [Sections 3.10 and 3.11] of *Exhibit D* regarding books, records, accounting principles, audit rights and the like; and

(h) The Pre-Approved Sublease requires the Subtenant to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease; and

(i) The Pre-Approved Sublease contains a provision similar to *Article 36* (Right to Enter) requiring Subtenant to permit Port to enter its Subleased space for the purposes specified in *Article 36*; and

(j) The Pre-Approved Sublease contains a provision similar to *Section 30.1* (Tenant Estoppel) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as *Exhibit XX*; and

(k) The Pre-Approved Sublease requires Subtenant to comply with the Special Provisions set forth in *Article 42*; and

(l) The Pre-Approved Sublease contains a provision that if for any reason whatsoever this Lease is terminated, the Sublease will be automatically terminated.

#### **18.5. Non-Disturbance of Phase Transferee and Attornment.**

(a) **Generally.** Subject to the provisions of *Section 18.3 and this Section 18.5*, from time to time upon the request of Tenant, Port will enter into an agreement with a Phase Transferee providing generally, with regard to a given Phase Sublease, that in the event of any termination of this Lease resulting from a Tenant Event of Default, Port will not terminate or otherwise disturb the rights of the Phase Transferee under such Phase Sublease, but will instead honor such Phase Sublease as if such agreement had been entered into directly between Port and such Phase Transferee ("**Non-Disturbance Agreement**").

(b) **Conditions for Issuance of Non-Disturbance Agreement.** Port will enter into a Non-Disturbance Agreement with a particular Phase Transferee if all of the following conditions are satisfied:

(i) Port has approved the Phase Budget applicable to the Phase Sublease;

(ii) The performance by Tenant of its obligations under such Phase Sublease will not cause an Event of Default to occur under this Lease;

(iii) The term of the Phase Sublease does not extend beyond the completion date set forth in the DDA Schedule of Performance for such Phase (as may be extended in accordance with the DDA);

(iv) The Phase Sublease complies with all the conditions (of *Section 18.4*, provided that references in such section to Pre-Approved Sublease will mean the Phase Sublease and Subtenant will mean the Phase Transferee;

(v) The area subject to the Phase Sublease does not extend beyond the boundaries of applicable Phase (other than any construction staging area for the Horizontal Improvements applicable to such Phase, the boundaries of which are approved by Port and Master Developer);

(vi) The Phase Sublease requires the Phase Transferee to provide all of the following into Escrow no less than five (5) business days prior to the Anticipated Conveyance Date of each Development Parcel within the subleased premises:

(1) a duly executed and acknowledged Partial Release of Sublease and if the rights to the applicable Phase were assigned to and assumed by the Phase Transferee, a Partial Release of DDA;

(2) a duly executed Estoppel Certificate for the benefit of Port, the Vertical Developer and Vertical Developer's lenders, in the form attached hereto as *Exhibit XX*;

(3) a duly executed ground lessee's affidavit and, if required by the title insurance company, a mechanic's lien indemnity (excluding any work performed by Port) reasonably acceptable to Phase Transferee and the title insurance company issuing title insurance on the applicable Development Parcel;

(4) if applicable, a duly executed VCA reasonably acceptable to both Tenant and Vertical Developer; and

(5) such other documents reasonably requested by Port, or Vertical Developer, to consummate the delivery of the applicable Development Parcel to Vertical Developer.

Upon request from each Vertical Developer, Subtenant will also enter into a license on the form attached hereto as *Exhibit XX* to provide Vertical Developer access to the applicable Development Parcel for Vertical Developer to perform due diligence and site investigation prior to the Anticipated Conveyance Date.;

(vii) Any Transfer by Phase Transferee of its interest in the Phase Sublease will require Port's prior approval, which approval may be withheld in Port's sole discretion before Completion; of the Shared Public Way and the Parcel D2 Garage, and in its reasonable discretion after Completion of the Shared Public Way and the Parcel D2 Garage.

(viii) The Phase Transferee agrees that in the event this Lease expires, terminates or is canceled during the term of the Phase Sublease, the Phase Transferee will attorn to Port (provided Port agrees not to disturb the occupancy or other rights of the Phase Transferee and to be bound by the terms of the Phase Sublease, except as otherwise set forth in the Non-Disturbance Agreement), and the Phase Sublease will be deemed a direct lease between the Phase Transferee and Port, except that any Subleases entered into by Phase Transferee (or its Affiliates) will be terminated and Port will not be:

(1) liable to the Phase Transferee for any security deposit or prepaid rent or other charges previously paid by such Phase Transferee to Tenant unless such deposits, rent or charges are transferred to Port;

(2) bound by any indemnification obligations or any waivers and releases made by the sublandlord in the Phase Sublease for the benefit of Phase Transferee or any other party;

(3) bound by any requirement or obligation of the Tenant under the Phase Sublease to pay any amount of money to Phase Transferee;

(4) liable to Phase Transferee for any indirect, consequential, incidental, punitive or special damages;

(5) bound by any limitation on Phase Transferee's obligation to indemnify any sublandlord parties based on Phase Transferee's insurance coverage;

(6) bound by any limitation on sublandlord's ability to transfer its interest in the Phase Sublease (including any requirement to deliver prior notice to Phase Transferee or obtain Phase Transferee's prior approval); and

(7) bound by any requirement or obligation to keep records or documents confidential that violates the Public Records Act or the City's Sunshine Ordinance.

(ix) During the continuance of any Tenant Event of Default, Port may, in its sole discretion, withhold or condition its agreement to provide a Non-Disturbance Agreement on the cure of such default as Port may specify either in a notice of default given under *Section 23.1* or in a notice withholding or conditioning its agreement to provide a Non-Disturbance Agreement; and

(x) Concurrently with its request for a Non-Disturbance Agreement from Port, Tenant will submit to Port

(1) an electronic copy of the Phase Sublease in Microsoft Word format (or other comparable format);

(2) a summary of basic terms of the Phase Sublease;

(3) an electronic draft of a Non-Disturbance Agreement in Microsoft Word format (or other comparable format), redlined against the form required by Section 18.4(d);

(4) a statement certifying that the proposed Non-Disturbance Agreement complies with all the conditions and requirements set forth in *Sections 18.3 and 18.4(b)*;

(5) an executed Tenant estoppel certificate substantially in the form attached hereto as Exhibit XX, and Tenant will certify as of the effective date of the Non-Disturbance Agreement that the certifications made by Tenant in the estoppel certificate remains unchanged; and [Note: estoppel certificate must have Tenant certify that attached Sublease and summary of basic terms is true, correct and complete and that there have been no changes in the executed Sublease and summary from the electronic copies previously delivered to Port.]

(6) all relevant information requested by Port including reasonable financial information establishing the ability of the proposed Phase Transferee to perform its obligations under such Phase Sublease, and relevant information concerning the business character and operating history of the proposed Phase Transferee; provided however, in lieu of submitting the Subtenant's financial information to Port, Tenant may make such information available for review (but not duplication) at Port's office or at Tenant's office in the City of San Francisco.

(xi) Tenant deposits sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Non-Disturbance Agreement (which, for

avoidance of doubt, includes any additional administrative fees, or outside counsel or contractors engaged by Port to review such request for a Non-Disturbance Agreement);

(xii) Phase Transferee agrees that notwithstanding any Non-Disturbance Agreement, the Phase Sublease will terminate as of the Lease termination date (1) if the Lease terminates in the event of Casualty or Condemnation, as further described in *Articles 15 and 16*; or (2) if there is an uncured Phase Transferee event of default, giving effect to any notice and cure period provided therein (which agreement will be evidenced by acceptance of a Non-Disturbance Agreement reflecting the matters described in this Section 18.5(b)(xii)); and

(xiii) If a guarantor guaranties any Phase Transferee obligation under the Phase Sublease, Port will be named as an additional beneficiary to such guaranty; provided, however, Port's rights under such guaranty will not be effective until termination of this Lease; and

(xiv) The applicable Phase Sublease will provide that the Phase Transferee will deliver to Port as of the Master Lease termination date or promptly following request by Port an executed estoppel certificate, substantially in the form attached hereto as Exhibit XX certifying as of the Lease termination date, among other things: (A) that the Phase Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Phase Sublease is not in full force and effect, so stating, (B) which amendments, if any, to the Phase Sublease have been previously approved by Port in writing, including the dates of approval, (C) the dates, if any, to which any rent and other sums payable thereunder have been paid, (D) that the Phase Transferee is not aware of any Tenant defaults under the Phase Sublease which have not been cured, except as to defaults specified in said certificate, and (E) that the Phase Transferee is not aware of any Phase Transferee defaults which have not been cured.

(c) Copy of Phase Sublease. Tenant will provide Port a true and complete copy of the executed Phase Sublease and summary of the Phase Sublease basic terms attached to the Tenant estoppel certificate, in accordance with *Section 18.5(b)(x)(5)* within five (5) business days after the execution thereof, which Phase Sublease will contain substantially the same (or more favorable to the landlord) business terms as in the form of Phase Sublease, statement, and other information previously provided to Port.

(d) 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.

(e) Response Period. Port will respond to any request for a Non-Disturbance Agreement within fifteen (15) business days after receipt of all the materials described in *Section 18.5(b)(x)*. If Port fails to respond to such request within such fifteen (15) business day period, then Tenant will deliver to Port a second notice requesting Port's response ("Second NDA Notice"). The Second NDA Notice must display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following: "APPROVAL REQUEST FOR [INSERT ADDRESS OF LEASED PREMISES]/MISSION ROCK SUBLEASE MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED." If Port fails to respond within five (5) business days after Port's receipt of the Second NDA Notice, then such non-response will be deemed to be approval of such Non-Disturbance Agreement and the applicable Phase Transferee will be entitled to rely on the terms of the applicable Non-Disturbance Agreement, provided, however, if there are any conflicts between the provisions in the Phase Sublease and the deemed approved Non-Disturbance

Agreement, on the one hand, and *Sections 18.4 and 18.5(b)* on the other hand, *Sections 18.4 and 18.5*.

**18.6. Acknowledgements.** Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any claims arising from Port's actions under this *Article 18*.

**18.7. Mortgaging of Leasehold.** Notwithstanding anything herein to the contrary, at any time during the Term, Tenant has the right, without Port's consent, to sell, assign, encumber, or transfer its interest in this Lease to a Mortgagee or other purchaser in connection with a deed in lieu of foreclosure in connection with the exercise of remedies under the provisions of a Mortgage subject to the limitations, rights and conditions set forth in *Article 37*, and, in the event so assigned, the Lease may be further assigned with notice to, but without the consent of, Port.

**18.8. Assignment of Rents.** Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant's obligations hereunder prior to actual receipt thereof by Tenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under *Article 37* until such time as Port has terminated this Lease (subject to the Port's agreement to enter into a new lease with Mortgagee and all other provisions of this Lease protecting Mortgagee's interests in this Lease), at which time the rights of Port in all rents and other payments assigned pursuant to this *Section 18.8* will become prior and superior in right; provided, further, any rents collected by any Mortgagee 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.

**18.9. 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. 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.

## 19. INDEMNIFICATION OF PORT.

**19.1. General Indemnification of the Indemnified Parties.** Subject to *Section 19.4*, 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:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, or under the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, or under the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees in, on, or under the Premises;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Subtenants; and

(g) 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.

**19.2. Hazardous Materials Indemnification.**

(a) In addition to its obligations under *Section 19.1* (General Indemnity) and subject to *Section 19.4*, Tenant agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition existing or occurring during the Term;

(ii) any Handling, Release, or Exacerbation of Hazardous Materials in, on, or under the Premises during the Term; or

(iii) without limiting Tenant's Indemnification obligations in *Section 19.2(a)(ii)*, any Handling or Release of Hazardous Materials outside of the Premises, but in, on, or under the Mission Rock Site, by Tenant or any Related Third Party during the Term. "Related Third Party" means Tenant's Agent, Subtenant, or their respective Agent; or

(iv) failure by Tenant or any Related Third Party to comply with the Mission Rock Risk Management Plan; or

(v) claims by Tenant or any Related Third Party for exposure occurring during the Term to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, or under the Mission Rock Site.

(b) Tenant's obligations under *Section 19.2(a)* includes: (i) actual 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) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or 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 of demand until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Tenant understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this *Section 19.2*, subject to *Section 19.4*, arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, or under the Premises;



- the Premises;
- (ii) the Handling or Release of Hazardous Materials in, on, or under
- the Premises;
- (iii) the Handling or Release of Hazardous Materials in, on, or under areas outside the Premises but within the Mission Rock Site caused by Tenant or a Related Third Party,
- Term; or
- (iv) any occurrence of a Hazardous Material Condition during the
- Term; or
- (v) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

**19.3. Scope of Indemnities; Obligation to Defend.** Except as otherwise provided in **Section 19.4**, Tenant's Indemnification obligations under this Lease are 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 are due and payable from time to time immediately upon Port's request, as incurred.

**19.4. Exclusions from Indemnifications, Waivers and Releases.**

(a) Nothing in this **Article 19** (Indemnities) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in **Sections 19.1 (General Indemnification of Indemnified Parties), 19.2 (Hazardous Materials Indemnification)**, or the defense obligations set forth in **Sections 19.3 (Scope of Indemnities) and 19.6 (Defense)** extend to Losses:

- (i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or
- (ii) from third parties' claims for exposure to Hazardous Materials prior to the Commencement Date.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under this **Section 19.4** is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under this **Section 19.4**. Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under this **Section 19.4** will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant.

**19.5. Survival.** Tenant's Indemnification obligations under this Lease and the provisions of this **Article 19** survive the expiration or earlier termination of this Lease (or, the

partial termination of this Lease with respect to any portion of the Premises released in accordance with *Section 1.4(b)*.

**19.6. Defense.** Tenant will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's choice; provided, that 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 will have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise or settlement which expense is due and payable to Port within fifteen (15) days after receipt by Tenant of a detailed invoice for such expense.

**19.7. Waiver.** 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 arising out of this Lease or relating to the Premises, including (a) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (b) goodwill, (c) business opportunities, (d) any act or omission of persons occupying adjoining premises, (e) theft, (f) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (g) Building defects, (h) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events, and (i) any other acts, omissions or causes arising at any time and from any cause, in, on, or under the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

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 California Civil Code Section 1542, 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.

**20. INSURANCE. [NOTE: SUBJECT TO FURTHER DISCUSSION]**

**20.1. Required Insurance Coverage.** Tenant, at its sole cost and expense, and Tenant's Subtenants or Agents that conduct any Special Event, or, as relevant, install or maintain any Promotional Signage shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) **General Liability Insurance.** Comprehensive or commercial general liability insurance, with limits not less than Twenty Million Dollars (\$20,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, liquor liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Subsequent Construction or Improvement, including construction of the Horizontal Improvements, to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) **Automobile Liability Insurance.** Comprehensive or business automobile liability insurance with limits not less than Five Million Dollars (\$5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) **Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance.** Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury, or illness. In the event Tenant is self-insured for the insurance required pursuant to this *Section 20.1(c)*, it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. In addition, Tenant will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively as applicable with Employer's Liability limit not less than Five Million Dollars (\$5,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) **Personal Property Insurance.** Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Subsequent Construction, in, on, or under the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property or contractors' equipment as applicable.

(e) **Flood Insurance.**

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be in an amount equal to the maximum amount of full replacement cost of the improvements with a deductible 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 carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, 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 full replacement cost of the improvements with a deductible 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 carriers or through the NFIP at commercially reasonable rates

(f) **Pollution Legal Liability.** Tenant, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per claim, for a period of not less than ten (10) years. Each of the State Lands Indemnified Parties will be named as additional insureds under the terms of any such policy. If Tenant procures any such policy for a period that is longer than ten (10) years, Tenant will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are named as additional insureds for such longer period of time.

(g) **Construction Activities.** Insurance required in connection with construction of Horizontal Improvements is as set forth below:

(i) **Contractor Requirements.** Tenant must require its contractors and subcontractors to maintain the following coverages:

(1) Commercial general liability insurance with limits of not less than \$5 million each occurrence on a policy form that is at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01);

(2) Comprehensive automobile liability insurance with a policy limit of not less than \$5 million each occurrence on a policy form that is at least as broad as ISO Form Number CA 0001 covering automobile liability, Code 1 (any auto);

(3) Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1 million each accident, injury, or illness;

(4) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than \$1 million each occurrence, or with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, wreck removal, and damages "In Rem" (the vessel); and

(5) Marine general liability (MGL) (if operating watercraft) with limits not less than \$10 million each occurrence and aggregate basis;

(6) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than \$5 million per occurrence and \$5 million in the aggregate with a deductible not to exceed \$50,000 with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under laws for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage,

emission, or release of any substance of any kind into or on the navigable waters of the United States or the adjoining shorelines.

(7) Contractor's pollution liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per claim.

(ii) Builder's Risk Requirements. In addition, Tenant or General Contractor must carry "Builder's All Risk" insurance on a "Special Form" ("All Risk") Builder's Risk meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any existing structures affected by the work and full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structures. The policy must provide coverage for "soft costs," such as design and engineering fees, code updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed \$100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law; and (C) start up and testing and machinery breakdown including electrical arcing.

(iii) Professional Services Requirements. Tenant must require all providers of engineering and geotechnical professional services under contract with Tenant to provide professional liability coverage with limits not less than Five Million Dollars (\$5,000,000.00) each claim. With respect to all other professional services provided to Tenant for the Horizontal Improvements, Tenant must require all providers of such professional services under contract with Tenant to provide professional liability coverage with limits not less than Two Million Dollars (\$2,000,000.00) each claim. Such insurance will provide coverage during the period when such professional services are performed and for a period of 3 years after issuance of a Certificate of Occupancy for the Horizontal Improvements. This requirement may be met by the use of an extended reporting period.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the Premises, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness 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.

(i) Substitution. Notwithstanding the foregoing, Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this *Article 20* with insurance coverage maintained by one or

more of Tenant's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this *Section 20.1(c)*, as determined by Port.

**20.2. General Requirements.**

**(a) Insurance provided for pursuant to this Section:**

(i) Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better 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 of California;

(ii) As to property insurance required hereunder, such insurance shall name the Tenant as the first named insured. As to liability insurance Tenant shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability, automobile liability, vessel pollution, pollution, Public Boat Dock liability coverages. Any umbrella and/or excess liability insurance will include an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: "**THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.**"

(iii) As to Commercial General Liability and automobile liability insurance, shall 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;

(iv) 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 and damages that are of the type covered under the policies required by *Sections 20.1(a)20.1(b), 20.1(c)*, and *20.1(f)*;

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

**(b) Certificates of Insurance; Right of Port to Maintain Insurance.**

Tenant shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to *Section 20.1*, or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Tenant shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) **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 on, the Premises, Tenant shall require that such policies be endorsed to include the "**CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES**" as additional insureds under the terms of any such policy. Unless otherwise specified in this agreement, Tenant will ensure that all contractors and sub-contractors performing work on the Premises and all operators and subtenants of any portion of the Premises carry adequate insurance coverages.

(d) **Excess Coverage.** All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

**20.3. Release and Waiver.** Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by *Sections 20.1(d)* to the extent that such loss is reimbursed by an insurer.

## 21. HAZARDOUS MATERIALS.

**21.1. Compliance with Environmental Laws.** Tenant will comply and cause its Subtenants their respective Agents and Invitees to comply while in, on, or under the Premises, with all Environmental Laws, Operations Plans (if any), the Mission Rock Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials in, on, or under the Premises, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

**21.2. Tenant Responsibility.** Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during the Term:

- (a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, or under the Premises except as permitted under *Section 21.1*;
- (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 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;
- (e) Will comply with all provisions of the Mission Rock Risk Management Plan with respect to the Premises, 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 and
- (f) 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.

**21.3. 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, (ii) the Mission Rock Risk Management Plan, and (iii) Environmental Laws:

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under **Section 21.1**, Handled, in, on, or under the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term, 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. In addition to Tenant's notice to Port by oral or other means, Tenant must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Tenant's receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Tenant's receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or under the Premises or the environment during the Term, or from any vehicles Tenant, or its Agents and Invitees use during the Term 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, or under the Premises during the Term or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or under the Premises during the Term or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, or under the Premises during the Term; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, 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 concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. 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 concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. 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 21.3(d)** upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises.

(f) Port may from time to time request, and Tenant will be obligated to provide, available 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.

#### **21.4. Remediation Requirement.**

(a) After notifying Port in accordance with **Section 21.3** and subject to **Section 21.4(d)**, 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; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with **Section 21.3**. Except as provided in the previous sentence, Tenant must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, 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 21.4(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 Horizontal Improvements.

(c) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take actions that are reasonably necessary in Port's reasonable 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.

(d) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, or under the Premises, Tenant will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date.

**21.5. Pesticide Prohibition.** Tenant will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in **Section XX**. **[Note: Insert relevant section in Special City/Port Requirements Exhibit].**

#### **21.6. Additional Definitions.**

"**Environmental Laws**" means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other

entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this Lease. “**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), the FOG Ordinance, the [Mission Rock Risk Management Plan] and [insert any additional applicable references].

“**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, (in its regulatory capacity), or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

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

“**Exacerbate**” or “**Exacerbating**” when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause “**Exacerbation**”. “**Exacerbate**” also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant’s operations, Investigations, maintenance, repair, construction of Improvements, Horizontal Improvements, and Alterations under this Lease. “**Exacerbate**” also means failure to comply with the Mission Rock Risk Management Plan. “**Exacerbation**” has a correlative meaning.

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

“**Hazardous Material**” means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted, or otherwise regulated under Environmental Laws as a “**hazardous constituent**”, “**hazardous substance**”, “**hazardous waste constituent**”, “**infectious waste**”, “**medical waste**”, “**biohazardous waste**”, “**extremely hazardous waste**”, “**pollutant**”, “**toxic pollutant**”, or “**contaminant**”, or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any substance that, due to its characteristics or interaction with

one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. **"Hazardous Materials"** also includes any chemical identified in the [ ] [and Mission Rock 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, the State Lands Indemnified Parties, or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation 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 Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, or under the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, or under the Premises during the Term.

**"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, or under the Premises, any Horizontal Improvements, Improvements or any portion of the site or the Horizontal Improvements or Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, or under the Premises or any Horizontal Improvements or Improvements.

**"Mission Rock Risk Management Plan"** means that certain Mission Rock Risk Management Plan dated as of XXXX and prepared by XXXXX.

**"New Hazardous Material"** means a Hazardous Material that is not a Pre-Existing Hazardous Material.

**"Pre-Existing Hazardous Materials"** means any Hazardous Material existing on, in, or under the Premises as of the Effective Date and identified in the [ ] [and] Mission Rock Risk Management Plan.

**"Release"** means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

**"Remediate"** or **"Remediation"** when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, or under 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 application Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of **"remedy"** or **"remedial action"** in California Health and Safety Code Section 25322 and **"remove"** or **"removal"** in California Health and Safety Code Section 25323.

**"State Lands Indemnified Parties"** means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

**22. PORT'S RIGHT TO PAY SUMS OWED BY TENANT.**

**22.1. 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, mechanics' lien or encumbrance with respect to which the provisions of *Articles 6* and *7* apply, or any other sum required to be paid by Tenant which Tenant is contesting in good faith and with due diligence and which would not become a lien on the Property), Port may, at its sole option, but will not be obligated to, upon ten (10) days prior notice to Tenant, pay such sum for and on behalf of Tenant.

**22.2. Tenant's Obligation to Reimburse Port.** If pursuant to *Section 22.1*, 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 are 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 in full by Tenant. Port's rights under this *Article 22* are in addition to its rights under any other provision of this Lease or under applicable Laws. The provisions of this *Section 22.2* will survive the expiration or earlier termination of this Lease.

**23. EVENTS OF DEFAULT .**

**23.1. Events of Default.** Subject to the provisions of *Section 23.2*, the occurrence of any one or more of the following events which remain uncured after the passage of time set forth pursuant to this *Article 23* shall constitute an "Event of Default" under the terms of this Lease:

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

(b) [Subject to satisfaction or waiver of all of Master Developer's conditions precedent set forth in the DDA with regard to release of Development Parcels,] Tenant fails to deliver (or cause the Phase Transferee to deliver) all of the executed and if applicable, acknowledged, documents required in *Section 5.3* to be delivered to Port Vertical Developer or into escrow within the time period set forth in such section, and such failure continues for one (1) business day following written notice from Port;

(c) 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;

(d) Tenant fails to comply with a material requirement set forth in *Exhibit XX* for a Special Event and such failure continues for one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such period, Tenant will not be in default of this Lease if Tenant commences to cure such default with such period and diligently and in good faith continues to cure the default;

(e) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, which abandonment is not cured within thirty (30) days after notice from Port of Port's belief of abandonment;

(f) 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 one (1) business day

following written notice from Port; provided, however, if such default cannot reasonably be cured within such period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such period and diligently and in good faith continues to cure the default; provided, further, without limitation of the foregoing, the Parties agree that Tenant's internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(g) Tenant fails to comply with the provisions of *Section 11.1* (Covenant to Repair and Maintain the Premises) within five (5) days following written notice from Port; provided, however, if such default cannot reasonably be cured within such five (5) day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such five (5) day period and diligently and in good faith continues to cure the default; provided, however, without limitation of the foregoing, the Parties agree that Tenant's internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(h) Tenant fails to comply with the provisions of *Article 21* and such failure continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such one (1) business day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such one (1) business day period and diligently and in good faith continues to cure the default; provided, further that the Parties agree that Tenant's internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(i) 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 eighty (180) days;

(j) A writ of execution is levied on the Leasehold Estate which is not released within one hundred eighty (180) 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 eighty (180) days; provided, however, that the exercise by a Mortgagee of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this *Section 23.1(j)*;

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

(l) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation and Improvement Measures that Tenant is required to comply with) 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.

### **23.2. Special Provisions Concerning Mortgagees and Events of Default.**

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this Lease. Port will also accept a cure of an Event of Default by any Tenant investor or a mezzanine lender; provided, however, such parties will not have any additional time to cure any Event of Default.

24. REMEDIES.

24.1. *Port's Remedies Generally.*

(a) Upon the occurrence and during the continuance of an Event of Default under this Lease, except as expressly limited herein, 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), including the right to self-help to the extent provided for herein; provided, however, notwithstanding anything to the contrary in this Lease, any right to cure and any remedy available to Port regarding any Event of Default under the Workforce Development Program, is limited to those rights and remedies provided in the applicable Law for such applicable Special City and Port Provisions; provided, further, Port's right to terminate this Lease for a Tenant Event of Default will be limited to Tenant Event of Defaults described in *Sections 23.1(a), 23.1(c), XXX, 23.1(e), 23.1(f) and 23.1(h)*.

(b) In addition to the foregoing Remedies, (i) Port will have the right to prohibit Tenant's use of the Premises for Special Events if more than XX Event of Defaults under *Section 23.1(d)* occur during any given XX-month period, and [(ii) with respect to an Event of Default due to Tenant's failure to pay Rent, Port will have the remedies set forth in the Financing Plan].

(c) Except as expressly provided herein, 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.

24.2. *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 24.2*, 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 24.2(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 24.2(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.

**24.3. Port's Right to Cure Tenant's Default.** Port, at any time after Tenant commits an Event of Default, may, at Port's sole option, cure the default at Tenant's sole cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, Attorneys' Fees and Costs), all such sums, costs, damages, or liabilities paid by Port will be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, shall bear interest at the lesser of the 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.

**24.4. Termination of Tenant's Right to Possession.** Upon an Event of Default that allows for termination: **[Note: Further discussion regarding bondholders' rights and whether lease could continue at Port's option if DDA is terminated.]**

(a) Before exercising any right to terminate this Lease and Tenant's right to possession of the Premises under *Sections 23.1(a)* (but only with respect to Tenant's failure to pay any Imposition), *XXX, 23.1(f)*, and *23.1(h)*, Port will provide Tenant with a second written notice ("Second Default Notice") and the additional cure period set forth below:

(i) For an Event of Default under *Section 23.1(a)*, Tenant will have five (5) business days following delivery of the Second Default Notice to cure;

(ii) For an Event of Default under *Sections XXX or 23.1(f)*, Tenant will have one (1) business day following delivery of the Second Default Notice to cure; provided, however, if such default cannot reasonably be cured within such one (1) business day period, then Port will not exercise its termination right if Tenant is diligently and in good faith continues to cure the default to completion;

(b) Port may terminate this Lease and Tenant's right to possession of the Premises for the Events of Default described in *Section 24.4(a)* at any time following expiration of the cure periods set forth in *Section 24.4(a)* for the applicable Event of Default by providing Tenant with a written notice of termination.

(c) Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease will not constitute a termination of Tenant's right to possession.

(d) If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following:

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

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

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

(iv) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result therefrom. Efforts by Port to mitigate the damages caused by Tenant's breach of this Lease do not waive Port's rights to recover damages upon termination.

The "worth at the time of award" of the amounts referred to in *Sections 24.4(d)(i) and 24.4(d)(ii)* above will be computed by allowing interest at an annual rate equal to the lesser of the Default Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "worth at the time of award" of the amount referred to in *Section 24.4* will be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

**24.5. 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.

**24.6. 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.

**24.7. 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.

**24.8. Liquidated Damages for Certain Defaults.** In addition to the other remedies available to Port under this Lease for an Event of Default under *Sections 23.1(d) or 23.1(f)*, if Tenant uses the Premises in violation of material Special Event procedure or for the same type of Prohibited Use more than two (2) times within a twelve (12) month period, then Tenant will pay Port the Prohibited Use Charge or Prohibited Special Event Charge as further described in *Section 4.6*, or the No Access Charge as further described in *Sections 1.5(b)(ii) and 1.6(a)(iv)*.

**24.9. Remedies Not Exclusive.** The remedies set forth in this *Article 24* are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by other terms and provisions of this Lease, Law or in equity. Tenant's obligations hereunder will survive any termination of this Lease.

## 25. EQUITABLE RELIEF.

In addition to the other remedies provided in this Lease, either Party is entitled at any time after a default or threatened default by the other Party to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition,



after the occurrence of an event of default by the other Party, the non-defaulting Party is entitled to any other equitable relief which may be appropriate to the circumstances of such event of default.

**26. NO WAIVER.**

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

**26.2. 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 the same is approved as such in writing by Port. Port may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) 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 words of similar import).

**27. DEFAULT BY PORT; TENANT'S REMEDIES.**

**27.1. Default by Port.** Port will be deemed to be in default hereunder 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, or, (ii) if no cure period is provided herein, for more than sixty (60) days after written notice thereof from Tenant (provided that Port will 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.

**27.2. Tenant's Exclusive Remedies.** Upon the occurrence of default by Port described above, Tenant will have the exclusive right (a) to seek equitable relief, including specific performance, 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; or (b) if and only if Master Developer has a right to terminate the DDA on account of the applicable default, and Master Developer elects to terminate the DDA, to terminate this Lease. Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder constitutes Tenant's sole and absolute right and remedy for a default by Port hereunder, and Tenant has no remedy of self-help.

**28. TENANT'S RECOURSE AGAINST PORT.**

**28.1. No Recourse Beyond Value of Property Except as Specified.** Tenant agrees that notwithstanding any other term or provision of this Lease, (a) Tenant will have no recourse with

respect to, and Port will not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease) 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. By Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder, Tenant expressly waives all such liability.

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

**28.3. Nonliability of Tenant's Members, Partners, Shareholders, Directors, Officers and Employees.** No member, officer, partner, shareholder, director, board member, agent, or employee of Tenant will be personally liable to Port, and Port will have no recourse against any of the foregoing, in an Event of Default by Tenant or for any amount which may become due to Port or on any obligations under the terms of this Lease or any claim based upon this Lease.

## 29. LIMITATIONS ON LIABILITY.

**29.1. Waiver of Indirect or Consequential, Incidental, Punitive and Special Damages.** As a material part of the consideration for this Lease, in no event will either Party be liable to the other Party for any consequential, incidental, special and punitive damages arising out of any such Party's default.

**29.2. Limitation on Parties' Liability Upon Transfer.** In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port (or such transferor, as the case may be), but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer; provided, however, that Port (or such subsequent transferor) has transferred to the transferee any funds in Port's (or in the possession of such subsequent transferor) in which Port (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Port (or such subsequent transferor).

## 30. ESTOPPEL CERTIFICATES.

**30.1. Estoppel Certificate by Tenant.** Tenant will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Premises), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as *Exhibit XX* stating to Tenant's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. In addition, if requested, Tenant will attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such

certificate may be relied upon by any Port, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein. Tenant will also insert a provision similar to this Section into each Sublease requiring Subtenants under Subleases to execute, acknowledge and deliver to Port, within twenty (20) business days after request, an estoppel certificate substantially in the form attached hereto as *Exhibit XX* covering the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease, along with a true and correct copy of the applicable Sublease and all amendments thereto.

**30.2. Estoppel Certificate by Port.** Port will execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Mortgagee, prospective Mortgagee, mezzanine lender or a prospective mezzanine lender, prospective purchaser, Phase Transferee, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as *Exhibit XX* stating to Port's actual knowledge after diligent inquiry (or with respect to any estoppel certificates being provided to mezzanine lenders, to the actual knowledge of Port's project manager for this Lease without diligent inquiry) (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (c) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting Party. 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, to its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any Mortgagee, prospective Mortgagee, prospective purchaser, Phase Transferee, or other prospective transferee of Tenant's interest under this Lease.

### **31. APPROVALS BY PORT; STANDARD OF REVIEW; FEES FOR REVIEW.**

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

**31.2. Standard of Review.** Except as expressly provided otherwise or when 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, or grant or withhold its approval or consent, unless otherwise stated in this Lease, 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.

**31.3. Fees for Review.** Unless a different time period is required in this Lease, within thirty (30) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including, without limitation, Attorneys' Fees and Costs and costs of Port staff time incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed Transfer, Mortgage, estoppel certificate, or any other matter under this Lease requiring Port's approval or review excluding any such costs incurred by Port in its regulatory capacity, which costs will be paid separately by Tenant to the extent required by the applicable regulatory requirements. Tenant will pay such reasonable costs regardless of whether or not Port consents to such proposal.

**32. 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 join in and record a written instrument effecting such merger.

**33. QUIET ENJOYMENT.**

Subject to the Permitted Encumbrances, the Premises being in and around construction throughout the Term, Construction Impacts from the adjacent and nearby Development Projects, the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, will lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by Port. Notwithstanding the foregoing, Port has no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment. Tenant's sole remedy with respect to any such existing title defect is to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

**34. SURRENDER OF PREMISES.**

**34.1. End of Lease Term.**

(a) **Conditions of Premises.** Except with respect to those portions of the Premises for which this Lease terminates upon conveyance of Development Parcels to Vertical Developers or the City upon Acceptance of Horizontal Improvements, as applicable, (either case of which will also be governed by the DDA and other Project Approvals), upon the expiration or other termination of the Term of this Lease, Tenant will quit and surrender to Port the Premises (i) in good order and condition, (ii) clean, free of debris, waste, and Hazardous Materials (other than any Pre-Existing Hazardous Materials that have not been Handled, Released, or Exacerbated by Tenant, its Agents, or Invitees), and (iii) free and clear of all liens and encumbrances other than the Permitted Encumbrances. 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. Except as set forth in

*Section 34.1(b)*, the Premises will be surrendered with all Horizontal Improvements, other Improvements, repairs, alterations, additions, substitutions and replacements thereto. Tenant hereby agrees to execute all documents as Port or the City may deem necessary to evidence or confirm any such other termination.

(b) **Demolition of Improvements.**

(i) At the expiration or earlier termination of this Lease, at Port's sole election ("**Demolition Option**"), Port may require Tenant, at Tenant's sole cost, to Demolish and Remove the Improvements, including Horizontal Improvements that have not been Accepted by the City that Port or the City reasonably believe are defective, and surrender the Premises as a vacant parcel of real property. Port will notify Tenant of Port's election to exercise the Demolition Option (i) no later than twenty-four (24) months prior to the expiration of this Lease, or (ii) within ninety (90) days following termination of this Lease due to a Tenant Event of Default.

(ii) If Port exercises the Demolition Option in accordance with *Section 34.1(b)(i)*, then if Port agrees that Tenant will complete the Demolition and Removal after the expiration or earlier termination of this Lease (or promptly thereafter if the Lease is terminated due to a Tenant Event of Default), Port and Tenant will enter into Port's standard license granting Tenant non-possessory access to the Premises in order for Tenant to perform the Demolition and Repair following the expiration or earlier termination of this Lease; provided, however, Tenant will perform the Demolition and Removal in compliance with *Article 13* (Subsequent Construction) and Port may require insurance, bond, guaranty, Indemnification, and other requirements that exceed the coverage amounts or licensee obligations set forth in Port's standard license, that Port determines are reasonably appropriate to protect its interest in light of the risks and liabilities associated with the Demolition and Removal.

(iii) Tenant must commence and complete the Demolition and Removal in a timely manner and with due diligence and care, and complete the same within the time period agreed to between the Parties.

(c) **Subleases.** Upon any termination of this Lease, all Subleases hereunder will automatically terminate.

(d) **Personal Property.** On or before expiration or earlier termination of this Lease, Tenant will remove and will cause all Subtenants to remove, all of their respective trade fixtures, signs and other Personal Property. If the removal of such Personal Property causes damage to the Premises, Tenant will promptly repair such damage, at no cost to Port. 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.

(e) **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, the Horizontal Improvements (if applicable), and Personal Property that Port agrees are to remain within the Premises.

(f) **Survival.** The provisions of this *Section 34.1* will survive the expiration or earlier termination of this Lease.

**35. NOTICES.**

**35.1. Notices.**

All notices, demands, consents, and requests which 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, and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is two (2) days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

<i>To Port:</i>	Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: Deputy Director of Real Estate and Development Re: Mission Rock
<i>With a copy to:</i>	Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: Deputy Director of Real Estate and Development Re: Mission Rock
<i>Master Developer:</i>	
<i>With a copy to:</i>	

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by electronic-mail to the electronic-mail address set forth above (or such other address 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 electronic-mail.

**35.2. Form and Effect of Notice.**

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

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any; and
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto.

In no event will 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 35.2*.

### 36. INSPECTION OF PREMISES BY PORT.

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

**36.2. Entry for Horizontal Improvements.** With respect to the development of Horizontal Improvements, Port and its Agents have the right of entry onto Premises in accordance with [Section 14.8(b) of the DDA] to the extent reasonably necessary to carry out the purposes of the DDA.

**36.3. General Entry.** In addition to its rights pursuant to *Section 36.1*, subject to the rights of any Subtenants, Port and its authorized Agents will have the right to enter the Premises at all reasonable times and upon reasonable notice as stated below for any of the following purposes:

- (a) To perform any necessary maintenance, repairs or restoration to the Premises or to perform any services which Port has the right or obligation to perform in accordance with *Sections 11.2* or *24.2*;
- (b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c) To obtain environmental samples and perform equipment and facility testing.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency for the purposes set forth above. Such notice will be not less than one (1) days' prior notice. Tenant will have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice will be required for Port's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in *Section 36.3(a)*.

**36.4. Emergency Entry.** Port may enter the Premises at any time, without notice, in the event of an emergency. Port will have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, will not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion of the Premises.

**36.5. No Liability.** Port will not be liable in any manner, and Tenant hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in *Article 36* or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

**36.6. Nondisturbance.** Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in this *Article 36* in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

**36.7. Subtenant Agreement.** Tenant will require each Subtenant to permit Port to enter its premises for the purposes specified in *Section 36.1* through *Section 36.4*.

**37. MORTGAGES.**

Tenant will have the right to Mortgage the Leasehold Estate in accordance with the attached *Exhibit XX*.

**38. 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. 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.

**39. ECONOMIC ACCESS.**

Tenant will comply with the Workforce Development Plan attached hereto as *Exhibit XX* (collectively, the "**Workforce Development Plan**"). The Workforce Development Plan is designed to afford opportunities for San Francisco residents to participate in the construction and operation of the Horizontal Improvements. Tenant will comply with the Workforce Development Plan with respect to the operation and leasing of the Premises, and will include in its Subleases, applicable provisions of the Workforce Development Plan in accordance with the same.

**40. REPRESENTATIONS AND WARRANTIES OF TENANT.**

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

(a) **Valid Existence; Good Standing.** Tenant is a [limited liability company] duly organized and validly existing under the laws of the State of [\_\_\_\_\_]. 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 [\_\_\_\_\_].

(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 and upon execution, are legal, valid and binding obligations of Tenant, enforceable against Tenant in accordance with its terms; and do not violate any provision of any agreement or judicial order to which Tenant is a party or to which Tenant is subject.

(c) **No Suspension.** That Tenant has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Tenant has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

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



(e) **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.

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

(g) **Financial Matters.** Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, (v) no federal or state tax liens have been filed against Tenant, and (vi) there is no material adverse change in Tenant's financial condition and Tenant is meeting its financial obligations as they mature.

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

#### 41. MITIGATION AND IMPROVEMENT MEASURES.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project will be in accordance with the Mitigation and Improvement Measures attached to this Lease as *Exhibit XX*. Tenant will incorporate such Mitigation and Improvement Measures into any contract for the operation of the Improvements and Horizontal Improvements.

#### 42. SPECIAL PROVISIONS.

Tenant will comply with the Port and City Special Provisions attached hereto as *Exhibit XX*.

#### 43. GENERAL.

##### 43.1. Time of Performance.

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

(b) **Weekend or Holiday.** A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working 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, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to Force Majeure.

##### 43.2. 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.

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

**43.4. No Third-Party Beneficiaries.** This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in *Article 37* with regard to Mortgagees.

**43.5. Real Estate Commissions.** Port is not liable for any real estate commissions, brokerage fees or finder’s fees which may arise from this Lease or any Sublease. Tenant and Port each represents that neither has engaged any broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, through either Party, the

Party through whom such claim is made agrees to Indemnify the other Party (including the Indemnified Parties) from any Losses arising out of such claim.

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

**43.7. Entire Agreement.** This Lease (including the Exhibits) constitutes the entire agreement between the Parties with respect to the subject matter set forth therein, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement will be permitted to contradict or vary the terms of this Lease.

**43.8. Amendment.** Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties. If Master Developer seeks an amendment to the DDA pursuant to [Section 3.4 thereof,] and such amendment requires a corresponding amendment to this Lease, [then the provisions of Section 3.4 thereof shall be deemed incorporated herein by reference.]

**43.9. 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.

**43.10. Recordation.** This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as *Exhibit XX*. Promptly upon Port's request following the expiration of the Term or any other 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 public records the termination of Tenant's interest under this Lease. Port may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

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

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

**43.12. 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.

#### **44. DEFINITION OF CERTAIN TERMS.**

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section [to be cross-checked and finalized with final lease drafts]:\*\*\*

“**Access Rights**” as defined in *Section 4.5(b)*.

“**Acceptance**” means, with respect to any Horizontal Improvement, the acceptance by the Port or City of such Horizontal Improvement in accordance with the applicable procedures set forth in the DDA. “**Accept**” and “**Accepted**” have correlative meanings.

“**Acquisition Agreement**” means [agreement for acquisition of Horizontal Improvements.]

“**Activation Areas**” means one or more areas within the Project, designated from time to time pursuant to *Section 4.5*, within which Tenant has the right to conduct Activation Uses.

“**Activation Rent**” is defined on *Exhibit D*.

“**Activation Uses**” means retail, food and beverage uses, including service of alcoholic beverages, sales or information centers for the Project or any buildings or uses conducted within the Project, open space, pedestrian areas, cultural programming, entertainment events and opportunities for active recreation and public gathering, any of which may be conducted within interior spaces or in the open air.

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

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

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

“**Agreement to Comply with Mission Rock CFD and Assessment Matters**” as defined in *Section 6.2(b)*.

“**Ancillary Permitted Uses**” as described in the Basic Lease Information.

“**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 will be determined as if the Commencement Date were the first day of the first full month after the actual Commencement Date.

“**Anticipated Conveyance Date**” as defined in *Section 1.4(a)(ii)*.

“**As Is With All Faults**” as defined in *Section 1.2(c)*.

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

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

“**Ballpark Events**” means baseball games and other full-venue events taking place in AT&T Park.

“**Base Rent**” as defined in *Exhibit D*.

“**Bond**” is defined in the Basic Lease Information.

“**CASp**” is defined in *Section 1.1(b)*.

“**Casualty**” is defined in *Section 15.1(a)*.

“**Channel Wharf Parcel**” means [\_\_\_\_\_].

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

“**City Fiscal Year**” means the period beginning on July 1 of any year and ending on the following June 30.

“**Commencement Date**” as defined in the Basic Lease Information.

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

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

“**Construction Impacts**” as described in *Section 5.1*.

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

“**DDA**” is defined in *Recital E*.

[“**Dedicated Parcel**” as defined in the Housing Plan attached to the DDA.]

[“**Dedicated Parcel Completion Date**” as defined in the Housing Plan attached to the DDA.]

“**Default Rate**” means 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.

“**Demolition and Remove**” means the demolition of the Improvements (and if applicable, the Horizontal Improvements) and the removal and disposal of all debris in accordance with all Laws. “**Demolition and Removal**” have a correlative meaning.

“**Demolition Option**” as defined in *Section 34.1(b)(i)*.

“**Design for Development**” means the [Mission Bay South]Design for Development approved by the Port Commission and the Planning Commission, as amended from time to time.

“**Development Parcel**” means a buildable parcel in the SUD.

“**Development Projects**” is defined in *Section 5.1*.

“**Encroachment Area**” is defined in *Section 1.1(d)*.

“**Encroachment Area Charge**” is defined in *Section 1.1(d)*.

“**Environmental Laws**” is defined in *Section 21.6*.

“**Environmental Regulatory Action**” is defined in *Section 21.6*.

“**Environmental Regulatory Agency**” is defined in *Section 21.6*.

“**Environmental Regulatory Approval**” is defined in *Section 21.6*.

“**Event of Default**” as defined in *Section 23.1*.

“**Exacerbate**” is defined in *Section 21.6*.

“**Executive Director**” means the Executive Director of the Port or his or her designee.

“**Exempt Parcel**” means, depending on the context: (i) any assessor’s parcel of a real property interest that is exempt from property taxation under California law; and (ii) any assessor’s parcel of a real property interest that is exempt from Mello-Roos Taxes under an RMA. “**Exempt Parcel**” excludes any parcel that: (1) the Port or any other Regulatory Agency acquires by gift, devise, negotiated transaction, or foreclosure; (2) the Port acquires under the DDA; or (3) is in private use for taxable purposes. “**Final Construction Documents**” means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws and the Interagency Cooperation Agreement.

“**Final Map**” means a final Subdivision Map meeting the requirements of the Subdivision Code and the Map Act, subject to amendments made by the DA Ordinance.

“**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**” means events which result in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s control, including, but not restricted to: (i) domestic or international events disrupting civil activities, such as war, acts of terrorism, insurrection, acts of the public enemy, and riots; (ii) acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties; (iii) epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions; (iv) inability to secure necessary labor, materials, or tools (but only if the Party claiming delay has taken reasonable action to obtain them on a timely basis) due to any of the above events, freight embargoes, lack of transportation, or failure or delay in delivery of utilities serving the Premises; (v) Administrative Delay, Environmental Delay, or Down Market Delay (in each case as defined in the DDA); and (vi) in the case of Tenant, any delay resulting from a defect in Port’s title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act. [NOTE: Conform to DDA definition]

“**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.

“**Generator**” is defined in *Section 21.2(d)*.

“**Handle**” is defined in *Section 21.6*.

“**Hard costs**” is defined in *Section 11.3*

“**Hazardous Material**” is defined in *Section 21.6*.

“**Hazardous Material Claim**” is defined in *Section 21.6*.

“**Hazardous Material Condition**” is defined in *Section 21.6*.

“**Horizontal Improvements**” means any improvements constructed or to be constructed by the Master Developer pursuant to the DDA.

“**Horizontal Improvement Parcel**” is defined in *Section 1.4(b)*.

“**Impositions**” is defined in *Section 6.1(b)*.

“**Improvements**” means all buildings, structures, fixtures and other improvements erected, built, placed, installed, constructed, renovated, or rehabilitated, located upon or within the Premises on or after the Commencement Date. Notwithstanding the foregoing, for the purposes of this Lease, the term “Improvements” excludes the Horizontal Improvements.

“**Indemnified Party**” and “**Indemnified Parties**” means the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port; all of the Agents of the California State Lands Commission, the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

“**Indemnify**” means indemnify, protect and hold harmless. “**Indemnification**” has a correlative meaning.

“**Indemnifying Party**” is defined in *Section 19.6*.

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

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

“**Infrastructure CFD**” means the City and County of San Francisco Community Facilities District No. [ ] (Mission Rock Public Improvements).

“**Infrastructure Plan**” means the Infrastructure Plan attached to the DDA.

“**Investigate**” or “**Investigation**” are defined in *Section 21.6*.

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

“**Known Pre-Existing Hazardous Materials**” is defined in *Section 21.6*.

“**Law**” or “**Laws**” means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus,

agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings, Horizontal Improvements, and Improvements thereon. "Laws" include the Mitigation and Monitoring Program and the Mission Rock Risk Management Plan.

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

"Lease Year" means the one (1) year period commencing as of the Commencement Date and every year thereafter. **[Confirm]**

"Leasehold" or "Leasehold Estate" means Tenant's leasehold estate created by this Lease.

"Live/Work" as described in *Section 4.5(a)(vi)*.

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

"Maintenance Notice" is defined in *Section 11.3*.

"Major Special Events" means a Special Event of 3 or more days (excluding set up and take down) or an event with 5,000 or more attendants daily.

"Master Developer" is defined in *Recital B*.

"Master Tentative Map" means \_\_\_\_\_.

"Master Utilities Plan" is defined in the DDA.

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

"Mello-Roos Taxes" means special taxes that the City levies in a City Fiscal Year on Taxable Parcels in the Mission Rock CFD in accordance with the RMA, including delinquent special taxes collected at any time by payment or through foreclosure.

"Minor Special Events" means a Special Event of 1 or 2 days (excluding set up and take down) with fewer than 5,000 attendants daily.

"Mission Rock CFD" is a term used to refer to CFD No. XXXX, if and when formed.

"Mitigation Monitoring and Reporting Program" means the Mitigation Monitoring and Reporting Program that the Port Commission adopted by Resolution No. [ ] and attached hereto as *Exhibit XX*.

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

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

"Mortgagor" is defined in *Section XX*.

"Net Awards and Payments" is defined in *Section 16.4*.



“New Hazardous Materials” is defined in *Section 21.6*.

“Notice of Special Tax” is defined in *Section 6.2(a)*.

“Notice to Vacate” is defined in *Section 1.1(d)*.

“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 XXX]

“Outfall Infrastructure” is defined in *Section 1.2(a)*.

“Outfall Infrastructure Area” is defined in *Section 1.3(a)*.

“Outfall Work” is defined in *Section 1.3(a)*.

“Partial Condemnation” is defined in *Section 16.3(b)*.

“Parking Operations” means all parking on the Premises, including parking in connection with Ballpark Events, Special Events and commuter parking.

“Parking Operations Agreement” is defined in *Section XX*.

“Parking Operator” means a person who enters into a Parking Operations Agreement with Tenant.

“Partial Release of Master Lease” as defined in *Section 1.1(b)(i)(1)* and further depicted in *Exhibit XX*.

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

“Percentage Rent” is defined in *Exhibit D*.

“Permitted Encumbrances” is described in *Section 1.2(a)*.

“Permitted Title Exceptions” is defined in *Section 1.2(a)*.

“Permitted Transfer” means a Transfer to a Permitted Transferee.

“Permitted Transferee(s)” means any transferee of the Master Developer’s interest in the DDA permitted or approved in accordance with the DDA.

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

“Person” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

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

“Pesticide Ordinance” is defined in *Section 21.5*.

“Phase” means one of the integrated stages of horizontal and vertical development for the Project Site as shown in the Phasing Plan.

“Phase Area” means the Development Parcels and other land in the Project Site that are to be developed in a Phase.

“**Phasing Plan**” means DDA Exh A4, which shows the order of development of the Phases and the Development Parcels in each Phase Area, subject to revision under DDA art. 3 (Phase Approval).

“**Phase Submittal**” means Developer’s application for Port Commission approval of a proposed Phase under [DDA art. 3 (Phase Approval)].

“**Port**” means the San Francisco Port Commission.

“**Pre-Approved Sublease**” is defined in *Section 18.2*.

“**Pre-Existing Hazardous Materials**” is defined in *Section 21.6*.

“**Premises**” is defined in the Basic Lease Information and *Section 1.1*.

“**Prevailing party**” is defined in *Section 43.11*.

“**Primary Permitted Use**” is defined in the Basic Lease Information.

“**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.

“**Prohibited Use**” or “**Prohibited Uses**” as defined in *Section 4.5(a)*.

“**Project**” means the [Mission Rock] project as generally described in the Project Approvals.

“**Project Approvals**” is defined in *Recital B*.

“**Promotional Signage**” means signage containing advertising or promotional messages relating to events, subtenants or otherwise relating to the Premises, which signage is intended to be visible primarily to persons on the Premises.

“**public work**” is defined in *Section 13.3(f)*.

“**reasonable wear and tear**” is defined in *Section 11.1(b)*.

“**Record Drawings**” is defined in *Section 13.5(a)*. “**Regulatory Agency**” means any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, RWQCB, and the Army Corps of Engineers.

“**Regulatory Approval**” means any authorization, approval or permit required by any Regulatory Agency.

“**Related Third Party**” is defined in *Section 21.6*.

“**Release**” is defined in *Section 21.6*.

“**Remediate**” or “**Remediation**” is defined in *Section 21.6*.

“**Rent**” means the sum of Base Rent (including all adjustments), Variable Rent, and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

“**Restoration**” means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. (“**Restore**” and “**Restored**” shall have correlative meanings.)

“**RMA**” is an acronym for the Rate and Method of Apportionment.

“**RWQCB**” shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

“**Security Deposit**” is defined in the Basic Lease Information.

“**Site Preparation**” means physical work to prepare and secure the Project Site for installation and construction of Horizontal Improvements, such as demolition of existing structures, excavation and removal of contaminated soils, fill, grading, deep dynamic compaction, and construction fencing and other security measures, and temporary Improvements for interim uses before vertical development begins.

“**Special Event**” means exhibitions or presentations of sporting events, exhibitions and tournaments, concerts, musical and theatrical performances and other forms of live entertainment, public ceremonies, private and public gatherings, recreation, athletic events, filming, fairs, carnivals, commemorations, market places, shows, fundraising events or other public or private exhibitions and activities related thereto and includes setup/load in and demobilization/load out; parking for Special Events; temporary improvements; installation of tents and structures; administrative and security functions and other amenities and facilities to accommodate such Special Events.

“**State**” shall mean the State of California.

“**Staging Rent**” is defined on *Exhibit D*.

“**State**” means the State of California.

“**Sublease**” means any lease, sublease, license, concession, or other agreement (including, without limitation, a Sublease to Port) by which Tenant leases, subleases, demises, licenses, or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

“**Subsequent Construction**” means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration, or modification of any Improvements, or any construction of additional Improvements. “**Subsequent Construction**” does not include any Horizontal Improvements.

“**Substantial Condemnation**” is defined in *Section 16.3(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.

“**SUD**” means Planning Code Section 249.XX establishing the [ \_\_\_\_\_ ] Special Use District, as it may be amended from time to time.

“**Taxable Parcel**” means an assessor’s parcel of real property or other real estate interest created by each Phase Final Map that is not an Exempt Parcel, which may include leased space occupied for private use in an Exempt Parcel.

“**Tenant**” is identified in the Basic Lease Information, and its permitted successors and assigns.

“**Term**” is defined in *Section 2*.

“**Total Condemnation**” is defined in *Section 16.2*.

“**Transfer**” means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) Tenant sells, assigns, encumbers, subleases, or otherwise transfers any of its interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) Tenant dissolves, merges, consolidates, or otherwise reorganizes, or sells, assigns, encumbers, or otherwise transfers cumulatively or in the aggregate 50 percent or more (25 percent or more if publicly traded) of its equity interests or business assets, such as goodwill, inventory, and profits; or

(d) any subtenant, assignee, or other Transferee of Tenant sells, assigns, encumbers, sub-subleases, or otherwise Transfers any of its interest in its Sublease or premises.

Notwithstanding the foregoing, as used herein, the term “**Transfer**” does not include (i) Special Events; or (ii) any hypothecation, encumbrance or mortgage of this Lease, or pledge of the ownership interests in Tenant, made in accordance with *Article 37*. [Conform to DDA]

“**Vertical DDA**” is defined in the DDA.

“**Vertical Developer**” is defined in the DDA.

“**Vertical Improvements**” is defined in the DDA.

“**Work**” is defined in *Section 13.4*.

“**worth at the time of award**” is defined in *Section 24.4*.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

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

Tenant

[INSERT NAME OF TENANT],

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Port

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

By: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Lease authorized by:

-Port Board of Directors Resolution No. [ ]  
-Board of Supervisors Resolution No. [ ]

**EXHIBIT XXXX**  
**PROCEDURES FOR SPECIAL EVENTS**

**To Follow**

## EXHIBIT D

### RENT

#### 3. RENT.

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

#### **3.2. *Parking Rent.***

(a) **Base Rent.** From and after the Commencement Date and continuing thereafter throughout the Term until the earlier of the opening of the Parcel D2 Garage or the expiration or earlier termination of this Lease, Tenant will pay to Port, in advance on the first day of each calendar quarter during the Term, without further notice or demand and without abatement, offset, rebate, credit or deduction for any reason whatsoever, annual base rent equal to \$2,040,000, as adjusted in accordance with *Section 3.2(b)* (as adjusted from time to time, "**Base Rent**"). The Base Rent will be paid in quarterly installments, in advance on the first (1<sup>st</sup>) day of each Quarter. Additionally, ninety percent (90%) of the annual Base Rent will be allocated to the High Season and ten percent (10%) of the annual Base Rent will be allocated to the Low Season. Accordingly, during the first (1<sup>st</sup>) Lease Year, for the period between April 1—September 30 (the "**High Season**"), each quarterly installment will equal Nine Hundred Eighteen Thousand Dollars (\$918,000). For the period between October 1—March 31 (the "**Low Season**"), each quarterly installment will equal One Hundred Two Thousand Dollars (\$102,000). After opening of the Parcel D2 Garage, no Base Rent shall be paid by Tenant, but Tenant shall pay Variable Rent as set forth in this *Exhibit D*.

#### (b) **Adjustment to Base Rent.**

##### (i) **Annual Adjustments.**

(1) On each Anniversary Date, annual Base Rent payable under this Lease will be adjusted to equal one hundred three percent (103%) of the annual Base Rent in effect immediately prior to the applicable Anniversary Date; provided, however, if the annual Base Rent for each of two (2) consecutive Lease Years is greater than the annual Percentage Rent due Port for each such Lease Year, then annual Base Rent will be adjusted in accordance with *Section 3.2(b)(i)(2)*.

(2) If the annual Base Rent for each of two consecutive Lease Years is greater than the annual Percentage Rent due Port for each such Lease Year, then on the Anniversary Date immediately following the end of such two (2) Lease Year period, annual Base Rent will be adjusted to equal the average of the annual Percentage Rent due Port during the immediately prior two (2) year period.

##### (ii) **Adjustment after Leases for the Lead Parcels have Closed.**

Immediately following the execution of leases for the Lead Parcels, annual Base Rent will increase by an amount equal to one hundred three percent (103%) of the then current Base Rent payable by Tenant, provided, however for purposes of calculating "**then current Base Rent**" the initial Base Rent which was payable by Tenant pursuant to *Section 3.2(a)* will be deemed to be \$2,400,000, rather than \$2,040.00 and will continue to be subject to the annual adjustments described in *Section 3.2(b)(i)*. See Table 3.2. By way of example, if the Lead Parcels closed in Lease Year 3, the annual Base Rent amount used to calculate the appropriate adjustment will be \$2,546,160.

Table 3.2
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Lease year	Base Rent	"then current Base Rent"
1	\$2,040,000	\$2,400,000
2	\$2,101,200	\$2,472,000
3	\$2,164,236	\$2,546,160

(iii) **Adjustment after Release of Development Parcels.** Immediately following release of a Development Parcel in accordance with *Section 1.4*, annual Base Rent will be multiplied by a fraction, the numerator of which shall be equal to the number of parking spaces which are usable by Tenant on the Premises following the release of the applicable Development Parcel [XXX]

(c) **Parking Percentage Rent.**

(i) *Before Closing of Lead Parcels.* Tenant will pay Port on a quarterly basis, Percentage Rent equal to fifty-six percent (56%) of Gross Revenues from Parking Operations, less Parking Taxes and Extraordinary Expenses paid in such quarter up to the Extraordinary Expense Cap.

(ii) *After Closing of Lead Parcels.* Tenant will pay Port on a quarterly basis, Percentage Rent equal to sixty-six percent (66%) of Gross Revenues from Parking Operations, less Parking Taxes and Extraordinary Expenses paid in such quarter up to the Extraordinary Expense Cap.

(d) **Extraordinary Expenses.**

(i) *Allocation of Extraordinary Expense.* The Extraordinary Expense Cap during any Lease Year will be allocated as follows: ninety percent (90%) during the High Season and ten percent (10%) during the Low Season.

(ii) *Deduction of Extraordinary Expense Overage Amount.* If, in any given calendar year, there is any Extraordinary Expense Overage Amount and Tenant is paying Variable Rent, rather than Base Rent, Tenant will be permitted to deduct from Tenant's payment of Variable Rent, an amount equal to eighty-seven and one-half percent (87.5%) of the difference between the amount of Variable Rent payable in such calendar year and the 2017 Variable Rent Amount.

(iii) *Documentation.* Tenant will substantiate actual Extraordinary Expenses with proof of expenditure, which may include: (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonably approved by Port. Port will have the right to examine and audit Extraordinary Expenses and deductions with reasonable advance notice in accordance with *Sections 3.10* and *3.11*. All actual Extraordinary Expenses will be documented no later than in the Annual Statement.

**3.3. Special Event Rent.**

(a) **Minimum Special Event Rent.** Tenant will pay to Port in advance on a quarterly basis, rent for each Special Event held at the Premises at the rates set forth in **Table 3.5** ("Minimum Special Event Rent"). Square footage used for parking in connection with a Special Event will not be included in determining the square footage used by such Special Event for



purposes of calculating the Minimum Special Event Rent. Minimum Special Event Rent will be adjusted on an annual basis in accordance with *Section 3.3(b)*.

**Table 3.5**

<u>Special Event Category</u>	<u>Rate/square foot</u>
<i>Minor Special Events:</i>	(i) \$0.0085 per square foot per day (e.g., the equivalent of \$5,000 per day for the entire Premises) for each day of the event and (ii) \$0.0043 per square foot per day for each day of set up and take down.
<i>Major Special Events:</i>	(i) \$0.017 per square foot per day (e.g., the equivalent of \$10,000 per day for the entire Premises) for the first day of the event; (ii) \$0.0128 per square foot (equivalent of \$7,500) per day for the second day of the event; (iii) \$0.0085 per square foot (equivalent of \$5,000) per day for each remaining day of the event; and (iv) fifty percent (50%) of the average daily event fee per day for each set up and take down day.

(b) **Adjustment of Minimum Special Event Rent.** On each Anniversary Date, the Special Event Rent for Minor Special Events and Major Special Events as set forth in **Table 3.5** will be adjusted to equal one hundred three percent (103%) of the Special Event Rent in effect immediately prior to such Anniversary Date.

**3.4. Vertical Improvement Staging Rent.** Any Vertical Staging Areas will be subleased by Tenant to Vertical Developers at fair market rates, as reasonably determined by Tenant; provided, however, with regard to any Subleases with Tenant Affiliates, Tenant will provide Port with documentation supporting its determination that the Sublease rent is at fair market rates. Prior to the opening of the Parcel D2 Garage, (i) to the extent that quarterly Vertical Improvement Staging Rent exceeds, on a prorata square footage basis, the quarterly Base Rent that is payable on such Vertical Staging Area(s), Tenant will pay to Port sixty-six percent (66%) of such excess and (ii) to the extent that quarterly Vertical Improvement Staging Rent is less than, on a prorata square footage basis, the quarterly Base Rent that is payable on such Vertical Staging Area(s), the Base Rent applicable to such Vertical Staging Area(s) shall be reduced to quarterly Vertical Improvement Staging Rent received by Tenant. After the opening of the Parcel D2 Garage, Tenant will pay to Port the Port Parameter Rent on such Vertical Staging Area(s) and, to the extent that quarterly Vertical Improvement Staging Rent exceeds, on a prorata square footage basis, the Port Parameter Rent which would be payable on such Vertical Staging Area(s), Tenant will also pay to Port sixty-six percent (66%) of such excess.

**3.5. Activation Use Rent.** Tenant will have no obligation to pay to Port any rent for the use of the Yard in its location as of the Commencement Date, as depicted on *Exhibit XX*. If Tenant enters into any Sublease, license, or any other agreement for Activations Uses within a portion of the Premises, Tenant will pay Port, on a quarterly basis, additional rent equal to sixty-six percent (66%) of the quarterly gross lease revenue received by Tenant for such Activation Uses (“**Activation Use Rent**”) less any amounts paid by Subtenant, licensee or other user of Activation Space solely to reimburse Tenant for its operating expenses, taxes and insurance costs; provided however, Tenant shall not be permitted to “net out” any expenses from gross lease revenue which are otherwise included in the calculation of Extraordinary Expenses.

**3.6. Promotional Signage Rent.** If Tenant enters into any Sublease, license, or any other agreement for Promotional Signage within a portion of the Premises, Tenant will pay Port

in advance, on a quarterly basis, additional rent equal to fifty percent (50%) of Gross Revenues from Promotional Signage (“**Promotional Signage Rent**”).

**3.7. Alternative Return Rent Credits.** Tenant shall be entitled to a quarterly credit against Rent calculated in accordance with Section 2.8 of the Financing Plan [define?] (the “**Alternative Return Rent Credits**”)

**3.8. Additional Definitions.**

“**2017 Variable Rent Amount**” means [\$ \_\_\_\_\_] [parties to agree upon 2017 amount prior to execution]. After conveyance of a Development Parcel, the 2017 Variable Rent Amount shall be reduced, as and when necessary by multiplying the 2017 Variable Rent Amount then in effect by a fraction, the numerator of which shall be equal to the number of parking spaces which are usable by Tenant on the Premises at such time of recalculation and the denominator of which will be [xxx].

“**Extraordinary Expenses**” means the annual substantiated costs of: (i) security for Event Operations, including payments made under the San Francisco Police Department’s 10B program; (ii) operation of an accessibility shuttle from the parking area(s) to the Ballpark for Event Operations; (iii) temporary bathroom facilities, including the cleaning thereof, for Event Operations; (iv) post- Event Operations cleaning of the Premises; (v) labor and uniform costs for parking attendants for Event Operations; (vi) commercial general liability insurance maintained in accordance with [Section 20] which can be equitably attributed to Event Operations; (vii) utilities which can be equitably attributed to Event Operations; (viii) the Department of Transportation fees attributed solely to Event Operations; and (ix) tickets and signage.

“**Extraordinary Expense Cap**” for calendar year 2018, shall equal [\$ \_\_\_\_\_] [parties to agree upon cap amount prior to execution], which amount shall be increased in each subsequent calendar year by one hundred three percent (103%). After conveyance of a Development Parcel, the Extraordinary Expense Cap shall be reduced, as and when necessary by multiplying the Extraordinary Expense Cap then in effect by a fraction, the numerator of which shall be equal to the number of parking spaces which are usable by Tenant on the Premises at such time of recalculation and the denominator of which shall be equal to the number of parking spaces which are usable by Tenant on the Premises as of the Commencement Date.

“**Extraordinary Expense Overage Amount**” means the amount by which Extraordinary Expenses in the Annual Statement (or such other amount due as a result of an audit performed in accordance with Section 3.5) exceed the Extraordinary Expense Cap for the applicable year.

“**Gross Revenues**” means all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any parking activity, parking revenues, sales of parking tickets, entry fees, and services related to Parking Operations or from Promotional Signage, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises, including without limitation, all returns and refunds, discounted services or similar benefits and/or goodwill. Except as specified herein, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be excluded or deducted from Gross Revenues.

“**Parcel D2 Garage**” means that certain parking structure to be constructed on Parcel D2.

“Parking Taxes” means all sums collected by Tenant to pay any parking tax required by Article 9 of the Business and Tax Regulations Code, to the extent such amounts are in fact paid to the appropriate governmental entities for which they are collected.

“Port Parameter Rent” means the then approved Port rental rate for paved land in the central waterfront area.

“Variable Rent” means Percentage Rent, Special Event Rent, Vertical Improvement Staging Rent and Activation Area Rent and Promotional Signage Rent and any other rent generated from or on the Premises.

“Vertical Staging Areas” means those portions of the Premises which are subleased by Tenant to Vertical Developers for the construction of the Vertical Improvements.

“Yard Area” means the pop-up village consisting of repurposed shipping containers located on a portion of the Premises.

### 3.9. *Reporting of Variable Rent.*

(a) Tenant will deliver to Port a complete statement setting forth in reasonable detail the computation of Variable Rent for each calendar month in each calendar quarter, including an itemized list of all adjustments and deductions relating to the calculation of Variable Rent (the “Quarterly Variable Rent Statement”) by the twentieth (20th) day of the immediately following calendar quarter, which shall be accompanied by all Variable Rent due for such calendar quarter. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Quarterly Variable Rent Statement must certify each Quarterly Variable Rent Statement as accurate, complete and current.

(b) Tenant will provide Port within sixty (60) days after the expiration of each Lease Year, a complete statement, showing the computation of the Variable Rent for the immediately preceding Lease Year (“Annual Statement;” together with the Quarterly Variable Rent Statement, “Variable Rent Statement”) substantially in the form of *Exhibit XX*. Each Annual Statement will be certified as accurate, complete and current by Deloitte & Touche, Ernst & Young, KPMG, PwC, or an independent certified public accounting firm reasonably acceptable to Port. Tenant must submit payment of the balance owing together with any Annual Statement showing that Tenant has underpaid Base Rent or Variable Rent. At Port’s option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant’s delivery of any Annual Statement showing an overpayment.

(c) The Annual Statement is for verification and certification of Quarterly Variable Rent Statements and Extraordinary Expenses only and will not result in any averaging of quarterly Base Rent or Variable Rent. Each Quarterly Statement and Annual Statement will set forth in reasonable detail Gross Revenues for such immediately preceding calendar quarterly or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim at that time and which are expressly permitted under this Lease, and a computation of the Variable Rent for the immediately preceding calendar quarterly or Lease Year, as applicable.

(d) If Port receives the Variable Rent payment but does not receive the applicable Quarterly Variable Rent Statement by the twentieth (20th) day of the immediately following calendar quarter, such failure, until cured, will be treated as a late payment of Variable Rent, subject to a Late Charge.

(e) If Tenant fails to deliver any Quarterly Variable Rent Statement within the time period set forth in this Section 3.3 (irrespective of whether any Variable 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 will have the right, among its other remedies under this Lease, to have a Port Representative examine Tenant’s Books and Records

(and, to the extent permitted by the applicable Sublease, the Books and Records of any other occupant or user of the Premises) as may be necessary to determine the amount of Variable 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 will promptly pay to Port the total cost of the examination, together with the full amount of Variable Rent due and payable for the period in question, including any Late Charge and interest at the Default Rate.

(f) In the event this Lease expires or terminates on a day other than the last day of a calendar quarter, Variable Rent for such fractional part of the calendar quarter preceding such expiration or termination date will be prorated to account for the partial calendar quarter 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 will be payable immediately upon termination.

**3.10. Books and Records.** Tenant will keep, and will cause its Subtenants to keep, books and records according to generally accepted accounting principles consistently applied or such other method as is reasonably acceptable to Port. "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Property, and any other bookkeeping documents Tenant utilizes in its 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. If Tenant operates or Subleases all or any portion of the Premises through (or to) a Subtenant or Agent (other than Port), Tenant will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

**3.11. Audit.** Tenant agrees to make its Books and Records (and the Books and Records of any other person relating to the calculation of Variable Rent) available in the City and County of San Francisco 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 Gross Revenues and Variable Rent, for a period of five (5) years after the applicable Annual Variable Rent Statement 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 after 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 an audit reveals that Tenant has understated its Gross Revenues or Variable Rent 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 Gross Revenues 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.

**3.12. 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. Variable Rent is 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.

**3.13. Interest on Delinquent Rent.** Rent not paid when due (or in the case of Variable Rent, if not reported when due or applied when due) will bear interest from the date due until paid (or, for Variable Rent, when reported or when applied) 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.

**3.14. Late Charge.** Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant’s failure to provide the Variable 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 Variable Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Variable Rent due for the subject period of the Variable Rent Statement), or (b) [**Note: Increase following amount by \$500 every 5 years after execution of the DDA**]: One Thousand Dollars (\$1,000)], which amount will be increased by an additional One Thousand Dollars (\$1,000) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter; provided, however, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Variable Rent Statement to Port, as applicable, within five (5) days of written notice from Port of such failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant.

**3.15. 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 (other than the Alternative Return Rent Credits), deduction, or counterclaim.

**3.16. 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 except as set forth in this Lease, 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.

**3.17. *Survival.*** Tenant's obligation to pay any unpaid Rent due and payable (and Port's obligation to repay any overpayments) will survive the expiration or earlier termination of this Lease.

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: <b>China Basin Ballpark Company LLC</b>	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Laurence M. Baer, Chairman, Chief Executive Officer, President, Chief Operating Officer and Director Jack F. Bair, Executive Vice President, General Counsel and Secretary Elizabeth Pantages, Senior Vice President, Chief Financial Officer and Director Mario F. Alioto, Executive Vice President – Business Operations Alfonso Felder, Executive Vice President – Administration and Facilities	
Contractor address: 24 Willie Mays Plaza, San Francisco, CA 94107	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: \$3,500,000
Describe the nature of the contract that was approved: A lease for Pier 48.	
<b>Comments:</b>	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: ( 415 ) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed

Print Form

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ 180093 ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Clerk of the Board Breed, KIM

Subject:

Pier 48 lease - CHINA BASIN BALLPARK COMPANY, MISSION ROCK PROJECT

The text is listed:

[ ]

Signature of Sponsoring Supervisor:

*London Breed*

For Clerk's Use Only