

File No. 190906

Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date October 2, 2019

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Port Commission Resolution</u> |
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Completed by: Linda Wong

Date September 27, 2019

Completed by: Linda Wong

Date _____

1 [Amended and Restatement of Lease - Java House Restaurant - \$4,000 Monthly Base Rent]

2
3 **Resolution approving the Amended and Restatement of Lease No. L-14100 between the**
4 **Port Commission and Java House, LLC, a California limited liability company, for the**
5 **Java House Restaurant located at Pier 40½ at the Embarcadero and Townsend Street,**
6 **increasing the monthly base rent from \$3,314 to \$4,000 including a conditional tenant**
7 **option to extend for ten years, with no change to the initial length of term through**
8 **August 31, 2023.**

9
10 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
11 Sections 4. 114 and B3.581 empower the Port Commission with the power and duty to use,
12 conduct, operate, maintain, manage, regulate and control the Port area of the City and County
13 of San Francisco; and

14 WHEREAS, On May 9, 2006, through Resolution 06-36, the Port Commission
15 approved Lease No. L-14100 ("Lease") with Java House, LLC ("Java House"), subsequently
16 approved by the Board of Supervisors (Resolution 555-07) for approximately 1,490 square
17 feet of restaurant space located at Pier 40½; and

18 WHEREAS, The Lease includes provisions typical for a restaurant lease, requires the
19 tenant to make \$346,140 in capital improvements, and expires on August 31, 2023; and

20 WHEREAS, Java House has proposed to sell substantially all of its assets and assign
21 all of Java House's interest in the Lease to a new entity called Frankie's Java House, LLC
22 ("Frankie's") and Frankie's has proposed a ten (10) year lease extension; and

23 WHEREAS, As material consideration for consenting to the sale of the Java House
24 lease and as a condition to granting the tenant's extension option, the amended and restated
25 lease ("Amended Lease") will include the following significant terms as more fully described in

1 the Memorandum to the Port Commission dated July 3, 2019: (i) increases the monthly base
2 rent to \$4,000, (ii) increases the Port's share of net sale proceeds from a sale of the lease
3 from 10% to 12% (including from this sale), (iii) requires a \$51,000 payment to the Port for
4 Java House's failure to complete capital improvements required under the Lease, (iv) requires
5 Frankie's to make no less than \$737,000 of capital improvements (to include an outdoor
6 dining area and including those improvements that should have been completed under the
7 current Lease) and conditions the extension option on timely completion of such
8 improvements, and (v) updates the Lease to include all current City requirements and
9 standard Port conditions; and

10 WHEREAS, Charter, Section 9.118, requires Board of Supervisors' approval of the
11 modification, amendment or termination of any lease which when entered into was for a
12 period of ten or more years or having anticipated revenue to the City of \$1,000,000 or more;
13 and

14 WHEREAS, As set forth in Administrative Code, Sections 2.6-1 and 23.33, it is Board
15 of Supervisors' policy that leases be awarded in accordance with competitive bidding
16 procedures, unless such procedures are impractical or impossible and that any lease awarded
17 without competitive bidding be in an amount not less than the fair market value of the leased
18 property; and

19 WHEREAS, The Port Commission has determined that, in this circumstance,
20 competitive bidding is impractical and/or impossible and that approval of the Amended Lease
21 is in the best interest of the Port; and

22 WHEREAS, The proposed rent under the Amended Lease, along with the other
23 negotiated terms, is not less than Market Rent as defined in Administrative Code,
24 Section 23.2; and

1 WHEREAS, The Planning Commission issued a Categorical Exemption 2019-
2 006140ENV (State CEQA Guidelines, Section 15332) for the project; now, therefore, be it

3 RESOLVED, That the Board of Supervisors exempts the Amended Lease from the
4 competitive bidding policies, approves the Amended Lease and authorizes the Executive
5 Director of the Port or her designee to execute such Amended Lease in substantially the
6 same form on file with the Clerk of the Board; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
8 Director to enter into any additions, amendments or other modifications to the Amended
9 Lease that the Executive Director, in consultation with the City Attorney, determines, when
10 taken as a whole, to be in the best interest of the Port, do not materially increase the
11 obligations or liabilities of the City or the Port, and are necessary or advisable to complete the
12 transactions which this Resolution contemplates and effectuate the purpose and intent of this
13 Resolution, such determination to be conclusively evidenced by the execution and delivery by
14 the Executive Director of such documents; and, be it

15 FURTHER RESOLVED, That within thirty (30) days of the Amended Lease being fully
16 executed by all parties, the Port shall provide a copy of the Amended Lease to the Clerk of the
17 Board for inclusion into the official file.

<p>Item 1 File 19-0906</p>	<p>Department: Port Commission (Port)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would authorize the Amended and Restated Lease between the Port and Frankie’s Java House, LLC (Frankie’s) for the Java House Restaurant located at Pier 40½ at Embarcadero and Townsend Street including a conditional option to extend the term for ten years, through August 31, 2033. To exercise the conditional extension option, the proposed owners (Frankie’s) would be required to invest at least \$737,000 into the facility and complete all specified capital improvements within one year of the commencement of the amended lease agreement. Under the terms of the amended lease, the monthly base rent would be \$4,000 plus 7.5 percent of gross revenues to the extent that amount exceeds the base rent. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • In October 2007, the Board of Supervisors approved a 15-year lease between the Port and Java House, LLC (Java House) for a restaurant space located at Pier 40 ½ at the Embarcadero and Townsend Street (File 07-1311). The current monthly base rent is \$3,314. Percentage rent of the current lease was set at 7.5 percent of gross sales but has never been paid due to poor business performance. The current lease also requires the tenant to make capital improvements of at least \$346,120 to the facility by September 1, 2010. According to the Port, Java House has not completed the required capital improvements and is thus currently not in compliance with the original lease. • The owners of the Java House wish to sell the current lease to a new entity, which is Shareheffholder LLC Series E, dba: Frankie’s Java House, LLC (Frankie’s). 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • According to the economic analysis conducted by Seifel Consulting, Inc. and C.H. Elliott & Associates, the Port is projected to receive additional value from the tenant’s capital improvements and lease extension when compared to the existing lease. The Port would receive from the tenant estimated rent revenues of approximately \$1.42 million under the proposed lease amendment compared to \$1.11 million if the existing lease runs its term and the Port conducts a competitive solicitation for new tenants after 2023. 	
<p style="text-align: center;">Policy Consideration</p>	
<ul style="list-style-type: none"> • According to City Administrative Code Section 23.33, leases of City property with rent of at least \$2,500 per month should be awarded through a competitive solicitation unless such competitive solicitation is impractical and impossible. According to the Port Commission’s Retail Leasing Policy, the Port Commission determines whether a direct negotiation exception from competitive solicitation is granted based on three criteria According to the Port, the proposed extension of the Java House lease term meets two out of the three criteria of the Port Retail Leasing Policy. The Port has therefore granted a direct negotiation exception from competitive solicitation. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

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

BACKGROUND

In October 2007, the Board of Supervisors approved a lease between the Port and Java House, LLC (Java House) for a restaurant space located at Pier 40 ½ at the Embarcadero and Townsend Street (File 07-1311). The current term of the lease is for 15 years and expires on August 31, 2023. The lease provides for the Port to receive the greater of guaranteed monthly base rent or percentage rent. The current monthly base rent is \$3,314, which equals to \$39,772 per year. Percentage rent of the current lease was set at 7.5 percent of gross sales for food, beverage and retail sales but has never been paid due to poor business performance. The current lease also requires the tenant, Java House, to make capital improvements of at least \$346,120 to the facility by September 1, 2010. According to the Port, Java House has not completed the required capital improvements and is thus currently not in compliance with the original lease.

New Buyer

The owners of the Java House wish to sell the current lease to a new entity in which the current owners will retain a 15 percent interest. The proposed purchaser entity is Shareheffholder LLC Series E, dba: Frankie's Java House, LLC (Frankie's), with the majority owner being Mr. Michael Heffernan. According to the Port, the proposed sale transaction has not yet been completed. The closing of the sale is contingent on approval of the proposed lease amendment.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Amended and Restated Lease between the Port and Frankie's Java House, LLC (Frankie's) for the Java House Restaurant located at Pier 40½ at Embarcadero and Townsend Street including a conditional option to extend the term for ten years, through August 31, 2033. To exercise the conditional 10-year extension option through August 31, 2033, the proposed owners (Frankie's) would be required to invest at least \$737,000 into the facility, which also includes the improvement requirements not completed as required by the current lease. Under the terms of the amended lease, the monthly base rent would be \$4,000, which equals \$48,000 per year. The tenant would also pay the Port rent of 7.5 percent of gross revenues each month to the extent that amount exceeds the base rent. Monthly base rent will increase each year by 3 percent and on the first and fifth years by a formula equal to the higher of (a) monthly base rent increased by 3 percent, or (b) 85 percent of percentage rent.

As noted above, the current owners of Java House intend to sell the lease to a new entity, Frankie's. Under the proposed Amended and Restated Lease, the Port will receive 12 percent of net sale proceeds. In addition, the current owners (Java House) will pay the Port \$51,000 due to its failure to complete the tenant improvements required by the original lease. As previously

mentioned, upon full completion of the capital improvements – which must be completed within one year of the commencement of the amended lease agreement – Frankie’s will have the right to exercise an option to extend the term of the amended lease for ten years. If the required tenant improvements are not completed within one year of the commencement of the amended lease agreement, the extension option is void. The key terms of the proposed lease amendment are shown in Table 1 below.

Table 1: Key Terms of Proposed Lease Amendment

Premises	Pier 40 ½ at the Embarcadero and Townsend Street: Parcel A – Approximately 1,146 square feet of free-standing building comprised of the restaurant located in the vicinity of South Beach Harbor; and Parcel B – Approximately 1,090 square feet of exterior marginal wharf space located adjacent to the restaurant
Lease Term and Extension Option	The original lease is effective on September 1, 2008 and currently expires on August 31, 2023. If the new tenant completes the tenant improvements within one year of the effective date of the commencement of the amended lease, the tenant will have one option to extend the term for 10 years through August 31, 2033. If the initial tenant improvements are not completed within this timeframe, there is no extension option.
Rent	Rent consists of monthly base rent of \$4,000 and percentage rent. The amount of percentage rent is the difference between 7.5 percent of gross revenues and base rent.
Rent increases	Base rent is increased annually by 3 percent and on the first and fifth years of the option period by a formula equal to the higher of (a) monthly base rent increased by 3 percent, or (b) 85 percent of percentage rent.
Initial Tenant Improvements	Tenant must complete tenant improvements and expend not less than \$737,000
Transfer Participation	Port is entitled to 12 percent of the \$525,800 purchase price of the lease (and any future sale), net of “costs of sale” as defined in the lease.
Permitted Use	Parcel A shall be operated as a casual dining restaurant and bar. Parcel B shall be used as an outdoor patio seating area and for other uses directly related to the support of the restaurant and bar operation.

Source: BLA Analysis

FISCAL IMPACT

Economic analysis conducted by Seifel Consulting, Inc. and C.H. Elliott & Associates, on behalf of the Port, estimates that the Port will receive approximately \$1.42 million in rent during the period from 2020 through 2033 (if the extension option is approved). The amended lease rent projections are shown in Table 2 below.

Table 2: Rent Projections of Java House Lease Amendment with Extension Option

Year	Gross Sales	Base Rent	Percentage Rent ¹	Total Rent
2020	\$783,150	\$36,000	\$22,736	\$58,736
2021	\$950,000	\$49,440	\$21,810	\$71,250
2022	\$1,150,000	\$50,923	\$35,327	\$86,250
2023	\$1,318,375	\$52,451	\$46,427	\$98,878
2024	\$1,344,743	\$54,024	\$46,831	\$100,856
2025	\$1,371,637	\$55,645	\$47,228	\$102,873
2026	\$1,399,070	\$57,315	\$47,616	\$104,930
2027	\$1,427,052	\$59,034	\$47,995	\$107,029
2028	\$1,455,593	\$60,805	\$48,364	\$109,169
2029	\$1,484,704	\$62,629	\$48,724	\$111,353
2030	\$1,514,398	\$64,508	\$49,072	\$113,580
2031	\$1,544,686	\$66,443	\$49,408	\$115,851
2032	\$1,575,580	\$68,437	\$49,732	\$118,169
2033	\$1,607,092	\$70,490	\$50,042	\$120,532
Total	\$18,926,080	\$808,144	\$611,312	\$1,419,456

Source: Port

According to the Port, \$361,001 in total rent has been collected to date under the original lease from the effective date of September 9, 2008 to September 2019. According to the Seifel economic analysis, the Port is projected to receive additional value from the tenant's capital improvements and lease extension when compared to the existing lease. Under the proposed lease amendment, the Port would receive from the tenant estimated rent revenues of approximately \$1.42 million under the proposed lease amendment compared to \$1.11 million if the existing lease runs its term and the Port conducts a competitive solicitation for new tenants after 2023.

In addition to the new total rent of the proposed lease amendment, the Port would be entitled to up to \$63,096 in "participation" income from the sale of the lease to the new investor and \$51,000 payment to the Port from the current lease holder for failure to comply with the terms of the current lease.

Proposed Improvements to the Site

As noted above, pursuant to the amended lease agreement, Frankie's proposes to invest no less than \$737,000 in capital improvements required under the current lease. The proposed improvements include, handicap accessible improvements, a new kitchen, the addition of an outdoor seating area and improvements to the dining and bar areas.

According to the Port, staff of the Port's Finance and Administration division has reviewed Mr. Heffernan's (the majority owner of Frankie's) financial information and verified his financial capacity for the proposed investment and ability to complete the capital improvements. Pursuant to the amended lease agreement, Mr. Heffernan is required to execute a Personal

¹ Base rent plus percentage rent equals total rent payable. Percentage rent equals 7.5 percent of gross sales revenue minus the base rent.

Guaranty, a legally binding document executed by the guarantor making the guarantor financially responsible for completing the capital improvements as detailed in the amended lease agreement.

POLICY CONSIDERATION

Port Retail Leasing Policy

According to City Administrative Code Section 23.33, leases of City property with rent of at least \$2,500 per month should be awarded through a competitive solicitation unless such competitive solicitation is impractical and impossible. According to the Port Commission's Retail Leasing Policy, the Port Commission determines whether a direct negotiation exception from competitive solicitation is granted based on the following criteria:

- 1) Tenant is in compliance with the Port's Tenant in Good Standing Policy;
- 2) Evaluate whether the tenant is the most suitable economic tenant based on reasonably projected sales and revenues to the Port, using comparable retail rents on a per square foot basis;
- 3) Request a written business plan and evaluate the plan to determine the cost and value of the capital improvements to Port property and viability of revenue projection.

According to the Port, the proposed extension of the Java House lease term associated with the tenant ownership restructuring and lease amendments meets two out of the three criteria of the policy. Java House does not meet the Tenant in Good Standing criteria due to its failure to complete the tenant improvements required under the original lease. However, Port staff (through the economic analysis conducted by Seifel Consulting, Inc. and C.H. Elliot & Associates in June 2019) has evaluated the projected sales and revenues projections as viable and has determined the proposed capital improvements will likely generate additional revenue that the Port would not otherwise receive. In addition, according to the Port, the benefits of a directly negotiated agreement outweigh the risk and costs associated with a possible default/eviction proceeding, and the loss of time and revenues and the uncertainty associated with a competitive solicitation. The Port states that the prospect of a prolonged eviction solution is further exacerbated when considering the added market risk involved in light of the currently challenging restaurant business environment.

RECOMMENDATION

Approve the proposed resolution.



SAN FRANCISCO PLANNING DEPARTMENT

CEQA Categorical Exemption Determination

PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address		Block/Lot(s)
Pier 40 - Java House		9900040H
Case No.		Permit No.
2019-006140ENV		
<input type="checkbox"/> Addition/ Alteration	<input type="checkbox"/> Demolition (requires HRE for Category B Building)	<input type="checkbox"/> New Construction
<p>Project description for Planning Department approval.</p> <p>The project involves the interior remodeling and renovation of the Java House at Pier 40, on the Embarcadero at the intersection of Townsend Street. It is a continuation of an existing use that has been in operation at the site since 1912.</p>		

STEP 1: EXEMPTION CLASS

The project has been determined to be categorically exempt under the California Environmental Quality Act (CEQA).	
<input checked="" type="checkbox"/>	Class 1 - Existing Facilities. Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	Class 3 - New Construction. Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p>Class 32 - In-Fill Development. New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p> <p>FOR ENVIRONMENTAL PLANNING USE ONLY</p>
<input type="checkbox"/>	Class _____

STEP 2: CEQA IMPACTS

TO BE COMPLETED BY PROJECT PLANNER

<input type="checkbox"/>	<p>Air Quality: Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g., backup diesel generators, heavy industry, diesel trucks, etc.)? (refer to EP_ArcMap > CEQA Catex Determination Layers > Air Pollution Exposure Zone)</p>
<input type="checkbox"/>	<p>Hazardous Materials: If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential?</p> <p><i>if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Maher program, a DPH waiver from the Maher program, or other documentation from Environmental Planning staff that hazardous material effects would be less than significant (refer to EP_ArcMap > Maher layer).</i></p>
<input type="checkbox"/>	<p>Transportation: Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?</p>
<input type="checkbox"/>	<p>Archeological Resources: Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non -archeological sensitive area? If yes, archeo review is required (refer to EP_ArcMap > CEQA Catex Determination Layers > Archeological Sensitive Area)</p>
<input type="checkbox"/>	<p>Subdivision/Lot Line Adjustment: Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography). If yes, Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Slope = or > 25%: Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Topography) If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Seismic: Landslide Zone: Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</p>
<input type="checkbox"/>	<p>Seismic: Liquefaction Zone: Does the project involve any of the following: (1) square footage expansion greater than 500 sq. ft. outside of the existing building footprint, (2) excavation of 50 cubic yards or more of soil, (3) new construction? (refer to EP_ArcMap > CEQA Catex Determination Layers > Seismic Hazard Zones) If box is checked, a geotechnical report will likely be required and Environmental Planning must issue the exemption.</p>
<p>Comments and Planner Signature (optional): Laura Lynch</p>	

STEP 3: PROPERTY STATUS - HISTORIC RESOURCE

TO BE COMPLETED BY PROJECT PLANNER

PROPERTY IS ONE OF THE FOLLOWING: (refer to Property Information Map)	
<input checked="" type="checkbox"/>	Category A: Known Historical Resource. GO TO STEP 5.
<input type="checkbox"/>	Category B: Potential Historical Resource (over 45 years of age). GO TO STEP 4.
<input type="checkbox"/>	Category C: Not a Historical Resource or Not Age Eligible (under 45 years of age). GO TO STEP 6.

STEP 4: PROPOSED WORK CHECKLIST

TO BE COMPLETED BY PROJECT PLANNER

Check all that apply to the project.	
<input type="checkbox"/>	1. Change of use and new construction. Tenant improvements not included.
<input type="checkbox"/>	2. Regular maintenance or repair to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. Window replacement that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. Garage work. A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. Deck, terrace construction, or fences not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. Mechanical equipment installation that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. Dormer installation that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. Addition(s) that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
Note: Project Planner must check box below before proceeding.	
<input type="checkbox"/>	Project is not listed. GO TO STEP 5.
<input type="checkbox"/>	Project does not conform to the scopes of work. GO TO STEP 5.
<input type="checkbox"/>	Project involves four or more work descriptions. GO TO STEP 5.
<input type="checkbox"/>	Project involves less than four work descriptions. GO TO STEP 6.

STEP 5: CEQA IMPACTS - ADVANCED HISTORICAL REVIEW

TO BE COMPLETED BY PROJECT PLANNER

Check all that apply to the project.	
<input type="checkbox"/>	1. Project involves a known historical resource (CEQA Category A) as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	2. Interior alterations to publicly accessible spaces.
<input checked="" type="checkbox"/>	3. Window replacement of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input checked="" type="checkbox"/>	4. Facade/storefront alterations that do not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	5. Raising the building in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	6. Restoration based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.

<input checked="" type="checkbox"/>	7. Addition(s) , including mechanical equipment that are minimally visible from a public right-of-way and meet the <i>Secretary of the Interior's Standards for Rehabilitation</i> .						
<input type="checkbox"/>	8. Other work consistent with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (specify or add comments):						
<input checked="" type="checkbox"/>	9. Other work that would not materially impair a historic district (specify or add comments): Interior alts not removing character-defining features. <i>(Requires approval by Senior Preservation Planner/Preservation Coordinator)</i>						
<input type="checkbox"/>	10. Reclassification of property status. <i>(Requires approval by Senior Preservation Planner/Preservation</i> <table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> Reclassify to Category A</td> <td><input type="checkbox"/> Reclassify to Category C</td> </tr> <tr> <td>a. Per HRER or PTR dated 06/24/2019</td> <td><i>(attach HRER or PTR)</i></td> </tr> <tr> <td colspan="2">b. Other (specify):</td> </tr> </table>	<input type="checkbox"/> Reclassify to Category A	<input type="checkbox"/> Reclassify to Category C	a. Per HRER or PTR dated 06/24/2019	<i>(attach HRER or PTR)</i>	b. Other (specify):	
<input type="checkbox"/> Reclassify to Category A	<input type="checkbox"/> Reclassify to Category C						
a. Per HRER or PTR dated 06/24/2019	<i>(attach HRER or PTR)</i>						
b. Other (specify):							
Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.							
<input checked="" type="checkbox"/>	Project can proceed with categorical exemption review. The project has been reviewed by the Preservation Planner and can proceed with categorical exemption review. GO TO STEP 6.						
Comments (optional):							
Preservation Planner Signature: Jorgen Cleemann							

STEP 6: CATEGORICAL EXEMPTION DETERMINATION

TO BE COMPLETED BY PROJECT PLANNER

<input checked="" type="checkbox"/>	No further environmental review is required. The project is categorically exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.	
	Project Approval Action: Building Permit	Signature: Jorgen Cleemann
	If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.	06/26/2019
	Once signed or stamped and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code. In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination can only be filed within 30 days of the project receiving the approval action. Please note that other approval actions may be required for the project. Please contact the assigned planner for these approvals.	

STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address (If different than front page)		Block/Lot(s) (If different than front page)
Pier 40 - Java House		9900/040H
Case No.	Previous Building Permit No.	New Building Permit No.
2019-006140PRJ		
Plans Dated	Previous Approval Action	New Approval Action
	Building Permit	
Modified Project Description:		

DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:	
<input type="checkbox"/>	Result in expansion of the building envelope, as defined in the Planning Code;
<input type="checkbox"/>	Result in the change of use that would require public notice under Planning Code Sections 311 or 312;
<input type="checkbox"/>	Result in demolition as defined under Planning Code Section 317 or 19005(f)?
<input type="checkbox"/>	Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?
If at least one of the above boxes is checked, further environmental review is required.	

DETERMINATION OF NO SUBSTANTIAL MODIFICATION

<input type="checkbox"/>	The proposed modification would not result in any of the above changes.
If this box is checked, the proposed modifications are categorically exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can be filed within 10 days of posting of this determination.	
Planner Name:	Date:



SAN FRANCISCO PLANNING DEPARTMENT

PRESERVATION TEAM REVIEW FORM

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Preservation Team Meeting Date:		Date of Form Completion	6/24/2019
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PROJECT INFORMATION:		
Planner:	Address:	
Jørgen G. Cleemann	Pier 40 - Java House	
Block/Lot:	Cross Streets:	
3620/102	Embarcadero	
CEQA Category:	Art. 10/11:	BPA/Case No.:
A	N/A	2019-006140ENV

PURPOSE OF REVIEW:			PROJECT DESCRIPTION:	
<input checked="" type="radio"/> CEQA	<input type="radio"/> Article 10/11	<input type="radio"/> Preliminary/PIC	<input checked="" type="radio"/> Alteration	<input type="radio"/> Demo/New Construction

DATE OF PLANS UNDER REVIEW:	June 12, 2019
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PROJECT ISSUES:	
<input type="checkbox"/>	Is the subject Property an eligible historic resource?
<input checked="" type="checkbox"/>	If so, are the proposed changes a significant impact?
Additional Notes:	
Submitted: Secretary of the Interior's Standards for Rehabilitation Compliance Analysis Memo, prepared by Page & Turnbull (dated 4/19/19), Project plans dated 6/12/19	
Proposal: Horizontal addition at the north facade, reroofing, window and door replacement/enlargement, addition of rooftop mechanical equipment, interior alterations.	

PRESERVATION TEAM REVIEW:				
Category:		<input checked="" type="radio"/> A	<input type="radio"/> B	<input type="radio"/> C
Individual		Historic District/Context		
Property is individually eligible for inclusion in a California Register under one or more of the following Criteria:		Property is in an eligible California Register Historic District/Context under one or more of the following Criteria:		
Criterion 1 - Event:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Criterion 1 - Event:	<input checked="" type="radio"/> Yes <input type="radio"/> No	
Criterion 2 - Persons:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Criterion 2 - Persons:	<input checked="" type="radio"/> Yes <input type="radio"/> No	
Criterion 3 - Architecture:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Criterion 3 - Architecture:	<input checked="" type="radio"/> Yes <input type="radio"/> No	
Criterion 4 - Info. Potential:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Criterion 4 - Info. Potential:	<input type="radio"/> Yes <input checked="" type="radio"/> No	
Period of Significance:	<input type="text"/>	Period of Significance:	1878-1946	
		<input checked="" type="radio"/> Contributor <input type="radio"/> Non-Contributor		

Complies with the Secretary's Standards/Art 10/Art 11:	<input checked="" type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
CEQA Material Impairment to the individual historic resource:	<input type="radio"/> Yes	<input checked="" type="radio"/> No	
CEQA Material Impairment to the historic district:	<input type="radio"/> Yes	<input checked="" type="radio"/> No	
Requires Design Revisions:	<input type="radio"/> Yes	<input checked="" type="radio"/> No	
Defer to Residential Design Team:	<input type="radio"/> Yes	<input checked="" type="radio"/> No	

PRESERVATION TEAM COMMENTS:

The subject building is a one-story, wood-frame, flat-roof restaurant building located near the landward end of Pier 40 in the South or Market neighborhood. The subject building has an irregular plan, horizontal and vertical wood siding, and a variety of different window types. The subject building was identified as contributor to the Port of Embarcadero Historic District ("the District"), which was listed on the National Register of Historic Places and the California Register of Historical Resources in 2006. The District's period of significance extends from 1876 to 1946. As a district contributor, the subject building is considered a historic resource for the purposes of CEQA review. It is not eligible for individual listing in either the National or California Registers.

According to credible new information presented in the Page & Turnbull Standards Analysis memo, the subject building was originally built around 1936 as a cigar store and expanded and converted into a restaurant around 1954. Therefore, the subject building's most extensive phase of construction and establishment as a restaurant did not occur until after the end of the District's period of significance in 1946. Nonetheless, as a vernacular wood-frame structure that was originally built to serve the needs of waterfront workers, the subject building retains sufficient integrity to continue to qualify as a contributor to the District. The subject building's character-defining features include the following:

- Siting immediately south of Pier 40, facing the Embarcadero
- One-story height
- Flat roof
- Mostly horizontal wood siding
- Plan shape that incorporates the volume of the original c.1936 cigar shop
- Publicly accessible interior commercial space

Preservation staff has determined that the proposed project conforms to the Secretary of the Interior's Standards for Rehabilitation ("the Standards") and therefore does not result in an impact to the District. The project conforms to the relevant Standards as follows:

Standard 1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(continued)

Signature of a Senior Preservation Planner / Preservation Coordinator:	Date:
Allison K. Vanderslice Digitally signed by Allison K. Vanderslice Date: 2019.06.24 13:27:13 -07'00'	

Pier 40 Java House
2019-006140ENV
Preservation Team Review Form
June 24, 2019

(Continued)

The subject building will continue to be a waterfront restaurant.

Standard 2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

None of the subject building's character-defining features will be removed or significantly altered. The addition on the north façade and the addition of rooftop mechanical equipment will not affect the building's one-story height and will not significantly obscure the character-defining wood siding.

Standard 3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

The proposed new one-over-one wood-sash windows on the primary (west) façade and tripartite window configuration on the secondary south façade are compatible with the historic character of waterfront shed structures, which often featured a different type of fenestration than the large pier structures, which typically featured industrial steel sash.

Standard 4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

None of the post-1946 features, including all interior fixtures and finishes, has been identified as character-defining. Therefore, their removal and alteration will not result in an impact.

Standard 5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

The subject building's character-defining wood siding, including all siding on the most visually prominent west façade, will be retained and restored.

Standard 9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

The proposed addition on the north façade is modest in scale and slightly lower than the historic building. This height differential will retain the primacy of the historic building and will also indicate a later phase of construction. The fencing proposed for the outside dining area is simple and modest in size; it will not block visibility of the subject building or any of its character-defining features. The proposed rooftop mechanical equipment will be visible, but will not overwhelm the historic resource and is consistent with its historic and current use.

Standard 10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

The proposed north-façade addition, windows, fence, and other related items could be removed in the future without significantly affecting the form and integrity of the subject building or its environment.

Therefore the proposed project conforms to the Standards and will not result in an impact to historic resources.



Figure 1. Pier 40 Java House. Screenshot of 2017 Google Streetview.



MEMORANDUM

July 3, 2019

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of Amendment and Restatement of Port Lease No. L-14100, which includes an option to extend the term for 10 years, with Frankie's Java House, LLC, located at Pier 40½ at the Embarcadero and Townsend Street. (This action constitutes the approval action for the project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code).

DIRECTOR'S RECOMMENDATION: Approve Resolution

Executive Summary

Java House is a longstanding restaurant operation at Pier 40½. In the latest phase of an ongoing dialogue with the Port regarding coming into compliance with lease requirements for capital improvements, and in an overall desire to improve operational performance, the tenant has approached the Port with a proposal to restructure ownership and bring in a new investor.

Under this proposal, the reconstituted entity would complete the previously required capital improvements, plus construct an addition to the restaurant to allow outdoor dining and alcohol sales, subject to amendments to the lease that would improve the Port's financial metrics and provide the tenant with additional lease term, all as further described below. Port staff has commissioned a third-party financial analysis of the proposed terms in relation to fair market value and the likely benefits to the Port. Relevant portions of that analysis are included in this report.

Port staff sees potential benefits to the Port of this tenant restructure and workout arrangement as fully summarized below, but also observes that the lease amendment

THIS PRINT COVERS CALENDAR ITEM NO. 11C

proposal does not qualify for direct negotiation under the Port Commission's adopted Retail Leasing Policy. Because there is approximately 4 years of term remaining on the current lease, the Port could not bid out this opportunity without pursuing a default remedy against the current owner. Factoring the time and expense that such a strategy would require and the uncertainty of the market interest in an opportunity requiring a significant investment, staff believes that approval of the subject proposal would yield a more timely, certain and more beneficial financial outcome to the Port as compared to other options.

This proposal was the subject of an informational presentation to the Port Commission at its February 12, 2019 meeting at which time the Port Commission directed staff to finalize negotiations and prepare a lease for further Port Commission consideration.

Strategic Objective

The proposed amendment and restatement of lease is expected to contribute in a substantial way to meeting the Stability Objective of the Port's Strategic Plan by managing the real estate portfolio to maximize value and income to the Port and to foster a tenant that would be better able to perform through economic cycles.

Background

The Java House, under various owners, has operated at Pier 40½ since 1912. Along with Red's Java House at Pier 30 and the Pier 23 Café at Pier 23, it is one of the last "working person's" cafes that once dotted the San Francisco waterfront when the Port's finger piers were working cargo and passenger terminals employing tens of thousands of longshoremen, stevedores, clerks, warehousemen and teamsters. These restaurants also served the crews and passengers of the cargo and passenger ships calling at the Port of San Francisco.

While the economic and maritime landscape of the San Francisco Waterfront has changed dramatically from those bygone days, the current owners of the Java House, LLC (Java House) have maintained the tradition of providing affordable dining for San Franciscans and others visiting or enjoying a baseball game at Oracle Park or a boating excursion out of South Beach Harbor. The Papadopoulos family has operated the Java House at Pier 40½ for over 33 years. First, under the stewardship of Phillip and Sotiria Papadopoulos, and then in 2006, the senior Papadopoulos family members passed forward this stewardship to a new family generation led by their daughter Maria Papadopoulos-Moustakis.

Lease Summary

The Java House currently operates under Port Lease No. L-14100 (the "Original Lease"), which commenced on September 1, 2008, as approved by the Port Commission by Resolution No. 06-36 and Board of Supervisors Resolution No. 555-07. The term of the Original Lease is for fifteen (15) years and will expire on August 31, 2023. The Original Lease covers approximately 1,490 square feet of existing building space housing the Java House restaurant. The Java House is allowed under the Original Lease to operate as a casual food restaurant with bar service.

The Original Lease provides for the Port to receive the greater of guaranteed monthly base rent or percentage rent. Current monthly Base Rent is \$3,314.39, which equates to \$39,772.68 per year. Percentage rent is set at 7.5% of Gross Sales for food, beverage and retail sales. For the 12 month period ending in May 2019, Java House reported average monthly Gross Sales of \$17,703.09, which resulted in no Percentage Rent being paid to the Port. Moreover, Percentage Rent has not exceeded Base Rent since the commencement of the Original Lease in 2008. The Port is also entitled to a 10% participation in the proceeds of a transfer of the Original Lease.

Pursuant to the Lease, Java House was required to make capital improvements of at least \$346,120.00 to the facility by September 1, 2010. Java House has not completed the required capital improvements and is thus currently not in compliance with the Original Lease.

Proposed Transaction

The owners of the Java House have been engaged in negotiations to sell the Original Lease to a new entity in which the current owners will retain a 15% interest. The transfer of the Original Lease is subject to Port consent by the Executive Director, which cannot be unreasonably withheld. The proposed purchaser entity is Shareheffholder LLC Series E, dba: Frankie's Java House, LLC (Frankie's), with the majority owner being Michael Heffernan, a well know businessman in San Francisco associated with the insurance industry.

Staff of the Port's Finance and Administration division has reviewed Mr. Heffernan's financial information and verified his financial capacity for the proposed investment and ability to complete the capital improvements. Mr. Heffernan has also committed to hiring a manager from one of his existing restaurant operations to manage the operation under the new entity, rather than utilizing current Java House management or staff. Mr. Heffernan's staff attended the February 12, 2019 meeting to further detail their business plan for the restructured and improved restaurant and bar operation.

The Frankie's proposal seeks to resolve the current outstanding issues related to completion of the required capital improvements and make an additional investment in order to reposition the restaurant into a viable business enterprise. Mr. Heffernan has indicated that he is willing to (i) condition any extension of lease term on the successful completion of the site improvements and (ii) provide a personal guarantee for the cost of construction. The proposed Amendment and Restatement of Lease (the "Amended Lease") would require Frankie's to make a capital investment of no less than \$737,000.00 into the facility, which also includes the improvement requirements not completed as required by the Original Lease. Upon 100% completion of the capital improvements, which must be completed within one (1) year of the commencement of the Amended Lease, Frankie's will have the right to exercise an option to extend the term of the amended lease for ten (10) years. A summary of the negotiated lease terms for the proposed Amendment and Restatement of Lease are outlined beginning on the following page.

<i>Tenant:</i>	Frankie's Java House LLC, a California limited liability company
<i>Background; Amended and Restated Lease:</i>	<p>Port and Java House, LLC entered into Lease No. L-14100, dated October 19, 2007 for reference purposes, as approved by the Port Commission by Resolution No. 06-36 and Board of Supervisors Resolution No. 555-07 (the "Original Lease"). The Original Lease was effective on September 1, 2008 and expires on August 31, 2023.</p> <p>Java House LLC is proposing to sell substantially all of its assets and assign all of Java's House LLC's interest in the Original Lease to Frankie's Java House, LLC (the "2019 Sale"). The 2019 Sale is subject to Port's consent by the Executive Director and the payment to Port of a percentage of the net sale proceeds as provided for in the Original Lease. In connection with and conditioned upon the successful closing of the proposed 2019 Sale, Port and Java House LLC negotiated the following new and amended terms to the Original Lease:</p> <ul style="list-style-type: none"> (i) Base Rent would be increased to \$4,000.00 per month escalated by three percent (3%) annually; (ii) Port would be paid twelve (12%) of the net sale proceeds from the 2019 Sale and all future Transfers; (iii) Java House, LLC will pay the Port \$51,000 due to its failure to complete the tenant improvements required by the Original Lease; (iv) Tenant would expend not less than \$737,000 in improvements to the premises including construction of a new outdoor patio in an expanded premises footprint; such improvements to be guaranteed by a personal guaranty by the principal owner of Tenant equal to one hundred percent (100%) of the construction costs of the improvements; (v) in consideration of the above terms and other valuable consideration, Port would consent to the 2019 Sale; and (vi) the above terms would be documented in an Amended and Restated Lease to become effective after the successful closing of the 2019 Sale and receipt of Port's portion of the sale proceeds. <p>Port is not obligated to execute the Amended and Restated Lease until and unless the 2019 Sale is completed and Port receives payment of Port's Sale Participation.</p>
<i>Premises:</i>	Parcel A – Approximately 1,146 square feet of free-standing building comprised of the restaurant located in the vicinity of South Beach Harbor; and

	Parcel B – Approximately 1,090 square feet of exterior marginal wharf space located adjacent to the restaurant.
<i>Expiration Date:</i>	August 31, 2023
<i>Monthly Base Rent:</i>	\$4,000.00 per month.
<i>Base Rent Adjustments:</i>	On the commencement date of the Extension Term (if any), and on the fifth (5 th) Anniversary Date of the commencement date of the Extension Term (if any), Monthly Base Rent shall be adjusted to the higher of: (i) 85% of the average of 7.5% of the Gross Revenues for the previous thirty-six (36) month period divided by twelve (12); or (ii) the Monthly Base Rent for the previous month increased by three percent (3%). In all other years, Monthly Base Rent will increase by three percent (3%) on each Anniversary Date.
<i>Percentage Rent:</i>	Percentage Rent shall be seven and one-half percent (7.5%) of Gross Revenues. In addition to the monthly Base Rent specified above, Tenant shall pay monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.
<i>Security Deposit:</i>	Ten Thousand Dollars and 00/100 (\$10,000.00).
<i>Permitted Use:</i>	<u>Parcel A</u> shall be operated as a casual dining restaurant and bar; and <u>Parcel B</u> shall be used as an outdoor patio seating area and for other uses directly related to the support of the restaurant and bar operation.
<i>Initial Tenant Improvements:</i>	Tenant must complete the following Initial Tenant Improvements; two ADA restrooms, accessible service counters, new FOG interceptor, remodeled kitchen and dining areas, create outdoor seating area, new paint, installation of a new sanitary sewer line, new kitchen equipment, a new bar, refrigeration, plumbing and other improvements. The Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense. Tenant must Complete the Initial Tenant Improvements no later than one (1) after the Effective Date.
<i>Extension Option:</i>	If Tenant completes the Initial Tenant Improvements within one (1) year of the Effective Date, then Tenant shall have one (1) option to extend the term for ten (10) years. If the Initial Tenant

	Improvements are not timely completed, there is no extension option.
<i>Rent Abatement:</i>	No Base Rent shall be due for ninety (90) days during the construction of the Initial Tenant Improvements starting on the date the Port issues the building permit for the Initial Tenant Improvements and ending on the ninetieth (90 th) day thereafter. During this 90-day Base Rent abatement period, Percentage Rent will continue to be due.
<i>Initial Tenant Improvements Guaranty:</i>	Michael Heffernan, President/CEO of Tenant, shall provide a personal guaranty in an amount sufficient to guarantee Completion of the Initial Tenant Improvements. The executed Personal Guaranty shall satisfy the requirements in this Lease for a financial guaranty for the Initial Tenant Improvements.
<i>City Requirements:</i>	The amended and restated lease will be updated to include all current Port provisions as well as current City Ordinances and requirements.

Table 1. below compares two scenarios: (1) the operation of the Original Lease terms and no transfer with (2) the proposed amended terms for the Amended Lease if the transaction moves forward as described (though as noted Port staff intends to continue negotiations based on Port Commission direction and informed by third party analysis).

Table 1. Comparative Lease Scenarios		
Deal Term	Original Lease - Base Case	Proposed Transaction
Expiration Date	August 31, 2023	August 31, 2023, subject to an extension until August 31, 2033 (10 years) if improvements are complete and tenant is in good standing.
Base Rent	\$3,314.36 per month as of June 2019	\$4,000 per month upon approval and execution of the amended lease (a 20.7% increase). Base rent will be waived for three months during the construction of the required improvements, but percentage rent will still be payable on gross revenues from any operations without setoff of base rent.
Base Rent Adjustment		On the commencement date of the Extension Term (if any), and on the fifth (5 th) Anniversary Date of the

Table 1. Comparative Lease Scenarios		
Deal Term	Original Lease - Base Case	Proposed Transaction
		commencement date of the Extension Term (if any), Monthly Base Rent shall be adjusted to the higher of: (i) 85% of the average of 7.5% of the Gross Revenues for the previous thirty-six (36) month period divided by twelve (12); or (ii) the Monthly Base Rent for the previous month increased by three percent (3%). In all other years, Monthly Base Rent will increase by three percent (3%) on each Anniversary Date.
Percentage Rent	7.5%	7.5%
Capital Improvement requirements	<p>Tenant required by original Lease to remodel premises to include:</p> <ol style="list-style-type: none"> 1. ADA restrooms 2. ADA Service Counter 3. FOG interceptor 4. Remodel kitchen and dining area and furniture (cost not less than \$172,882) 5. New interior paint 6. New sewer line <p>Items above to be completed at a cost of not less than \$346,140 by September 1, 2010. Port could pursue default proceedings, but as noted in the Executive Summary above the removal of tenant and replacement with a new tenant could result in a long period of no revenue from the site.</p>	<p>Frankie's must cure lease default and complete all of the improvements required under the Original Lease. In addition, Frankie's must construct an enclosed outdoor seating area, which will increase seating capacity by 133%. The projected cost for these tenant improvements is approximately \$737,000. All improvements will be completed within one year of lease signing; estimated completion in Fall 2019. The term extension could not be exercised until and unless the tenant improvements are completed within one year. Funding for tenant improvement costs will be secured by personal guarantee from Michael Heffernan.</p> <p>Tenant will also pay \$51,000 for tenant's failure to complete capital improvements under the Original Lease.</p>

Table 1. Comparative Lease Scenarios		
Deal Term	Original Lease - Base Case	Proposed Transaction
Transfer Participation Metric	Port is entitled to 10% of the purchase price of the lease, net of costs of sale	Port is entitled to 12% of the \$525,800 Purchase Price of the Lease (and any future sale), net of "Costs of Sale" as defined in the Lease.
Transfer Participation Amount	\$0 if no transfer	Up to \$63,096, depending on the costs of the sale.

Project Description

Current Java House Site

The current site consists of a portion of the Pier 40½ marginal wharf located at the north end of the South Beach Harbor Promenade directly adjacent to and overlooking South Beach Harbor. The restaurant is just north of and across the promenade from the Harbor Boat House. The current leasehold area of the existing lease is approximately 1,490 sq. ft. consisting primarily of just the building footprint with no outdoor seating allowed. Per the Port's Rapid Structural Assessment Report in August 2017 the substructure was rated Green - which is unrestricted use and generally in good condition.

Proposed Improvements to the Site

Frankie's proposes to invest no less than \$737,000.00 in capital improvements. In terms of sales performance and revenue generation the most impactful portion of the proposed investment is the addition of an enclosed outdoor patio that will increase seating capacity and add more appealing views and atmosphere.

The proposed improvements include the following:

- Addition of ADA accessible restroom, and relocation of 2nd restroom
- Construction of an ADA accessible ramp from the sidewalk into the restaurant
- Construction of ADA accessible service counters
- Class 1 FOG interceptor
- Remodeled kitchen with new kitchen equipment, kitchen hood, cooking and prep surfaces
- Remodeled dining area (remove existing bathroom and closet in front kitchen area to add seating and sales counter)
- Add bar in current dining area
- Interior and exterior paint, window repairs, roof repairs and cosmetic improvements
- Installation of new sewer lateral connection, and other required utility modifications

- Railing to enclose patio café seating area to the north and west of the building
- Public access seating, bike racks and picnic tables to the south of the building
- Outdoor café seating in place of current garbage dumpsters on north end and west side of building
- Improve Refrigerated storage
- Repair and update exterior signage (consistent with Port Sign Guidelines)
- All work will be consistent with the Secretary of the Interior Standards for Historic Rehabilitation

Proposed New Management Team and Strategy

Michael Heffernan intends to build from his success at Vin Antico restaurant in San Rafael and to reposition Frankie's by pursuing successful strategies reflected at the Port's other waterfront casual dining locations. The project sponsor has provided the following information about its experience with related businesses:

Vin Antico opened in San Rafael in 2006 and was modestly successful until 2013 when it closed and was put up for sale. Michael Heffernan purchased the business in 2013 and brought in a new management team, transitioning to a more dinner and wine focus including a wine bar while the menu shifted from primarily Italian to a farm to table focus. After this transition 2014 sales revenues increased by 86% to \$887,482. Over the past five years Vin Antico has generated annual average sales of \$758,124.00 per year; the performance for 2018 fell to \$632,467 partly as a result of a remodeling of the second floor of the restaurant.

Kelly Phu is the General Manager of Vin Antico and will oversee the Java House business. David Donati, one of the founding partners of Frankie's Java House, LLC, is the Chief Operating Officer of Maxville Lake Winery in the Napa Valley. David spearheaded the development of a large (27,000 square feet) tasting room and event center at the winery. David is leading the design of the new kitchen and development of a new menu for Frankie's. Maxville Lake Winery opened in 2015 and by 2018 was generating sales over \$1 million domestically and another \$1.5 million internationally.

The proposed Frankie's restaurant will merge the strategy of the Vin Antico shift towards dinner and more lucrative beverage sales with the price points of other Port restaurants with outdoor dining.

Financial Analysis

As shown on the Annual Gross Sales and Percentage Rent Revenue Table 2. below, for the past five years Java House has not achieved annual gross sales that resulted percentage rent payable to the Port.

Table 2.

Annual Gross Sales and Percentage Rent Revenue

Java House Sales & Rent FY 14-18				
Year	Reported Gross Sales	Base Rent	% Rent	Total Rent Paid
2014	\$134,211.00	\$31,488.00	\$0	\$31,488.00
2015	\$131,220.00	\$31,488.00	\$0	\$31,488.00
2016	\$175,160.00	\$35,471.00	\$0	\$35,471.00
2017	\$166,924.00	\$38,316.00	\$0	\$38,316.00
2018	\$210,739.00	\$39,773.00	\$0	\$39,773.00
Total				\$176,536.00

Frankie's projects the generation of a significant increase of approximately \$235,169.00 in additional rent over the initial 5 years of the new amended and restated lease, as compared to 5 prior years of rent paid by Java House.

Frankie's Java House Five-Year Projected Sales & Rents				
Year	Projected Gross Sales	New Base Rent	% Rent	Projected Rent
1	\$789,400	\$36,000.00	\$59,205.00	\$59,205.00
2	\$900,000	\$49,440.00	\$67,500.00	\$67,500.00
3	\$1,100,000	\$50,923.20	\$82,500.00	\$82,500.00
4	\$1,300,000	\$52,450.92	\$97,500.00	\$97,500.00
5	\$1,400,000	\$54,024.48	\$105,000.00	\$105,000.00
Total				\$411,705.00

As noted above in "Executive Summary", Port staff has commissioned a third-party analysis to validate these projections. Seifel Consulting and its subcontractor C.H. Elliott & Associates (collectively "Seifel") have been retained to analyze the potential effects of the proposed lease amendment as compared to the base case of either not extending the lease or evicting the tenant. The Seifel team performed various financial analyses, including cash flow projections of future sales and Port lease revenues, with and without the proposed lease amendment terms, in order to determine the potential value of the lease amendment term to the Port.

Seifel's research indicates that Java House needs more seating in order to become a viable business and achieve a level of sales that will result in the Port receiving percentage rent. Seifel tested this observation by projecting what the sales would be if the current tenant completed just the required alterations per the Original Lease, and then the lease was extended for 10 years in 2023 on the current terms. The analysis indicates that even if the sales per square foot and per seat almost double as a result of the alterations, the annual sales volume would still not be enough for the tenant to pay percentage rent at any point in the next 14 years.

Seifel then analyzed what the sales could be if the lease were assigned to Frankie's, the required alterations and additional capital investment are undertaken, and the lease is extended for 10 years. Using a similar analysis to the one prepared by the prospective tenant, the projected sales on a per customer basis at different times in the season,

such as game days at Oracle Park and other events, weekends and weekdays. The projections following the renovations are shown below in Table 3.

**Table 3.
Projected Sales Revenues in 2020
Following Proposed Renovations by Frankie's**

	Number of Days	Average per Check	Customers per Day	Estimated Total Sales	Turns
Game Days	81	\$25	200	\$405,000	2.38
Event Days	10	\$25	175	\$43,750	2.08
Weekends	74	\$20	80	\$118,400	0.95
Weekdays	200	\$18	60	\$216,000	0.71
Total	365			\$783,150	

In addition, Seifel assumed that Frankie's would require a few years to attract customers and build its brand, which means that its revenues will build up over time. Accordingly, Seifel analyzed this dynamic by projecting how sales could grow to stabilized levels by 2023, as shown below in Table 4. While these projected sales are less than Frankie's management team provided to the Port, they represent a significant increase over current sales. The projected sales revenues of about \$1.3 million are approximately mid-point between the current sales of Red's Java House and Hi Dive (two high performing local restaurants that are directly comparable to Java House) on a per square foot and per seat basis, which Seifel deemed to be reasonable.

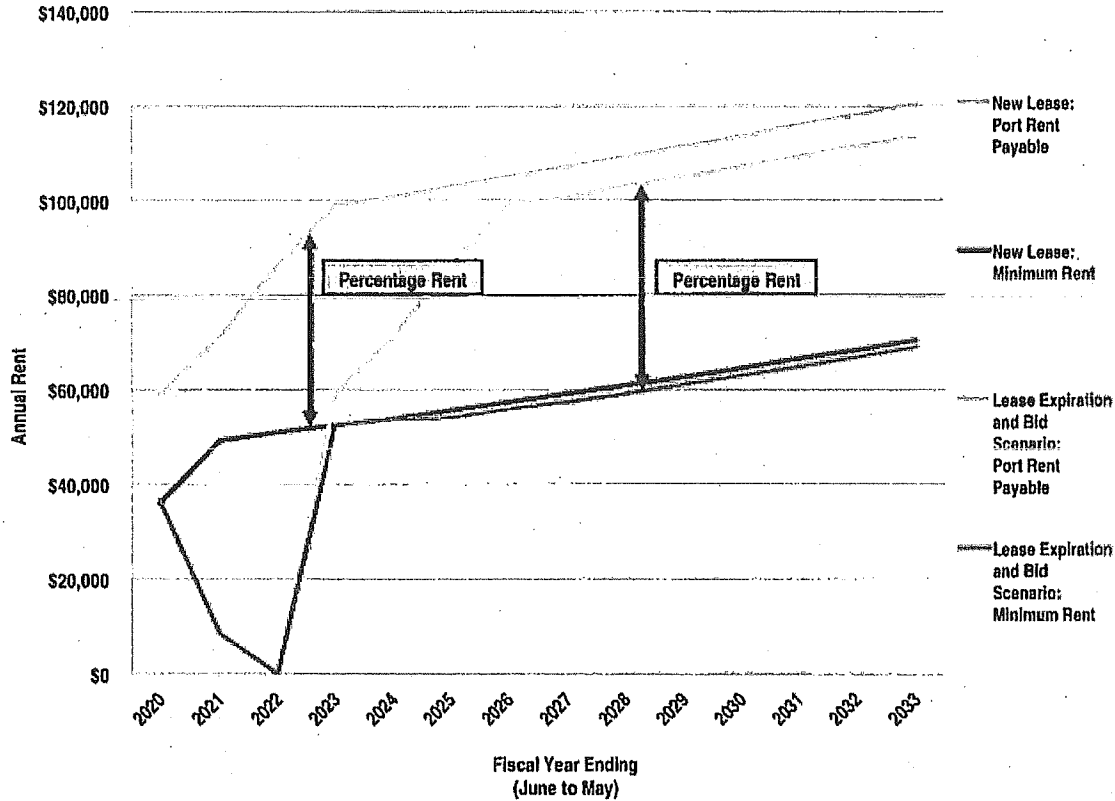
**Table 4.
Projected Stabilized Sales Revenues in 2023
Following Proposed Renovations by Frankie's**

	Number of Days	Average per Check	Customers per Day	Estimated Total Sales	Turns
Game Days	81	\$35	275	\$779,625	3.27
Event Days	10	\$30	225	\$67,500	2.68
Weekends	74	\$25	125	\$231,250	1.49
Weekdays	200	\$20	60	\$240,000	0.71
Total	365			\$1,318,375	

Chart 1. below compares the projected revenue to the Port under the following scenarios:

- New Lease (blue lines) – proposed terms and lease amendment with Frankie's lease assignment
- Lease Termination and Bid Scenario (red lines) – assumes that the Original Lease were to be terminated and the Port issues a request for bids for a new lessee.

Chart 1.
Comparison of Projected Port Revenue
under Proposed Lease Amendment/Workout and Base Case Scenarios



Value to Port from Lease Extension

The value to the Port is calculated based on the net present value of the future base rent and percentage rent that the Port is projected to receive as a result of increases in sales resulting from the proposed renovations and the Port's 12% participation in net proceeds from the sale of the leasehold interest that occurs upon the lease assignment.

Table 5. below summarizes the results of the financial analysis, which compares the revenues to the Port under the proposed Amendment and Restatement of Lease with the Port's potential revenues if the Original Lease were to be terminated and the Port issues a request for bids for a new lease (Lease Expiration and Bid Scenario).

Table 5.
Summary of Value Analysis
Comparing Projected Performance under Future Lease Scenarios
Showing Nominal Value and Net Present Value (NPV) at Six Percent (FY2019/20 \$)

Port Value Analysis (Based on NPV of Lease Revenues)	Lease Expiration and Bid Scenario	New Lease	Value Increase	Percent Increase
Total Value (Nominal \$)	\$1,114,614	1,485,456	\$370,842	33%
Total Net Present Value (FY 2019/20 \$)	\$708,646	\$1,027,739	\$319,093	45%

As shown above, the Port is projected to receive additional value from the Frankie's renovations and lease extension when compared to the existing lease. Over the entire term, inclusive of the potential lease extension term, the value to the Port is projected to increase between 33% on a nominal basis and 45% on a Net Present Value basis.

The analysis indicates that the proposal represents fair market value as compared to competing restaurants in the area and is further evidence that a competitive bid process would not guaranty a more beneficial outcome for the Port.

Based on this analysis, and a comparison between the proposed capital investment in outdoor seating (and not the investment to correct the failure to construct the improvements required under the Original Lease) Seifel analyzes the proposed 10 year option to be an appropriate amount of term to amortize the investment.

Retail Leasing Policy

The Port Commission adopted the Retail Leasing Policy (Resolution 11-15) for existing retail tenants which calls for Port staff to evaluate renewals and extension requests on a case-by-case basis based on proposed improvements, capital costs, the Port's future plans for the site and tenant history. Port staff may negotiate with an existing tenant where a tenant proposes to make capital improvements; in such cases a lease extension may include the term required to amortize the planned improvements.

Under the policy, the Port Commission determines whether a Direct Negotiation Exception from competitive solicitation is granted based on the following criteria:

- Tenant is in compliance with the Tenant in Good Standing Policy;
- Evaluate whether the tenant is the most suitable economic tenant based on reasonably projected sales and revenues to the Port, using comparable retail rents on a per square foot basis; and
- Request a written business plan and evaluate the plan to determine the cost and value of the capital improvements to Port property and viability of revenue projections.

Port staff has determined that the proposed extension of the Java House lease term associated with the tenant ownership restructuring and lease amendments noted above meets two out of the three criteria of the policy. Java House does not meet the Tenant in Good Standing criteria due to its failure to complete the tenant improvements required under the Original Lease. However, as described above, with the assistance of Seifel, Port staff has evaluated the projected sales and revenues projections as viable and has determined the proposed capital improvements will likely generate additional revenue that the Port would not otherwise receive.

Port Staff Policy Analysis

As a basic business proposition, Port staff sees value in (a) the proposed restructuring of the tenant entity to bring in new capital to address the delinquent performance of infrastructure improvements and add new revenue-generating outdoor seating and (b) the amendment of the lease to improve the Port's revenue metrics. Based on the proposed management team's business improvement strategy and the success of similar strategies at other waterfront restaurants with casual dining and bar operations, Port staff believes the proposed transaction would reasonably be expected to improve the Port's revenues from this restaurant. This represents an opportunity to improve a Port-owned facility and operating revenue performance without investment of Port funds or incurring the costs and lost revenues of pursuing default remedies and seeking a new operator under a competitive solicitation. Normally, a competitive solicitation would be the usual path to take if there were no better solution at hand. And, since there is remaining term on the current lease, the Port could not pursue a competitive bid without first pursuing an eviction actions against the current tenant. This proposal presents an excellent opportunity to efficiently and effectively move forward to a more beneficial and certain outcome for the Port.

At the same time, Port staff observes that it is challenging at best to recommend that the Port Commission, in essence, reward the current tenant's failure to uphold the terms of its lease by facilitating a transaction that will result in that tenant's realization of a significant financial benefit. However, this is partially mitigated in the Amended Lease by the tenant's agreement to pay \$51,000 to the Port from the sale proceeds for its failure to complete the capital improvements, a payment penalty called for under the Original Lease.

In light of these challenges and with Port Commission direction, Port staff has continued to negotiate a transaction that reflects fair market value and maximizes benefits to the Port especially in light of the fact that this is a direct negotiation. Since staff's information presentation to the Port Commission on February 12, 2019, the negotiations have yielded a number of significant improvements to the business terms in favor of the Port, which include;

- 10-year extension option versus 11-years originally proposed, despite the fact that updated cost estimates reflect a total project cost of \$737,000 instead of the prior \$450,000 estimate,
- Tenant payment of \$51,000 out of sale proceeds to the Port in respect of tenant's failure to complete the tenant improvements under the Original Lease which payment is in addition to the previously negotiated 12% for participation of sale, and
- adjustment of Base Rent to reflect actual percentage rent performance in the fifth year of the extension period (if any).

In this case, the Port Commission is being asked to waive the "tenant in good standing" criteria of the Retail Leasing Policy in order to resolve this issue through a business work-out solution instead of incurring the costs and potential delays of legal action followed by the market risks and time requirements of a potentially lengthy solicitation

process. This proposal seeks to bring certainty to an uncertain situation by committing the tenant to a defined set of benchmarks and conditions that must be met prior to any benefits inuring to the tenant, while improvements to the Port's revenues commence more quickly (i.e. base rent, sale participation, completion of improvements within a year).

Port staff believe, as supported by the Seifel analysis, that the benefits of a directly negotiated agreement far outweigh the risk and costs associated with a possible default/eviction proceeding, and the loss of time and revenues and the uncertainty associated with a competitive solicitation. The prospect of a prolonged eviction solution is further exacerbated when considering the added market risk involved in light of the currently challenging restaurant business environment. Accordingly, for all of the reasons mentioned above, staff recommends a finding that competitive bidding is impractical and/or impossible and would not guaranty a more beneficial outcome for the Port; and the proposed rent under the Amendment and Restatement of Lease, along with the other negotiated terms, is not less than Market Rent (defined to mean the most probable rent that real property should bring in a competitive and open market reflecting all conditions and restrictions of the property agreement in Administrative Code Section 23.2).

California Environmental Quality Act (CEQA)

On June 26, 2019, the City Planning Department issued a Class 1 Categorical Exemption 2019-006140ENVproject. This exemption concludes the environmental review of the project and allows the Port Commission to take action on the lease amendment.

If the Port Commission approves the proposed Amendment and Restatement of Lease through the attached Resolution based on the categorical exemption, its action constitutes the "Approval Action" (as defined in S.F. Administrative Code Chapter 31, as amended, Board of Supervisors Ordinance Number 161-13). As such, the CEQA decision prepared in support of this Approval Action will be subject to appeal within the time frame specified in S.F. Administrative Code Section 31.16. Typically, an appeal must be filed within 30 calendar days of the Approval Action.

Recommendation

Port Staff recommends that the Port Commission adopt Resolution No. [] approving the Amendment and Restatement of Lease No. L-14100 with Frankie's Java House, LLC for Premises located at Pier 40½. If the Port Commission approves, the Amendment and Restatement of Lease would be subject to approval by the Board of Supervisors.

Prepared by: Mark Lozovoy
Assistant Deputy Director for
Real Estate

Prepared for: Michael Martin
Deputy Director, Real Estate and
Development

Exhibit A: Site Plan

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

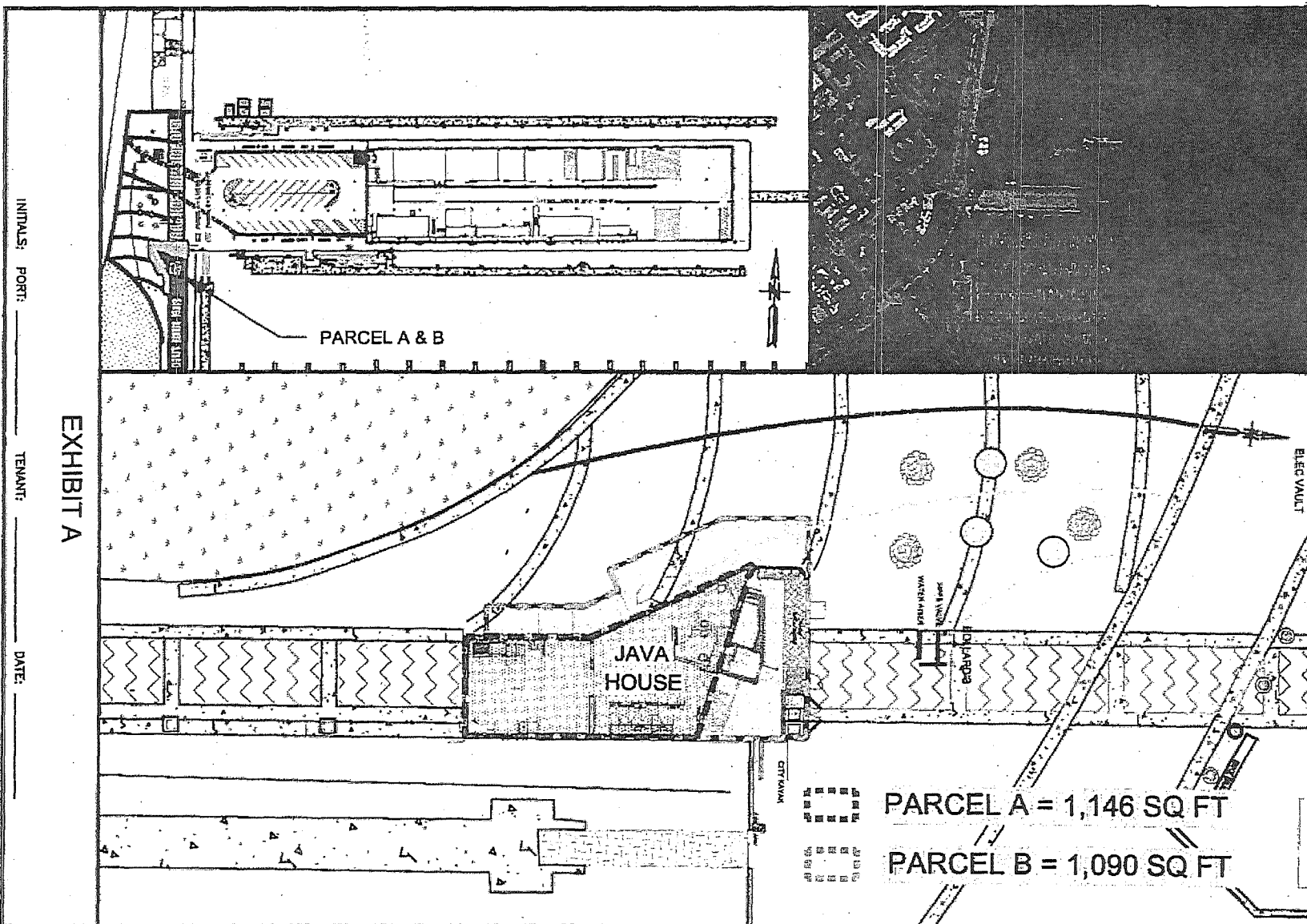
RESOLUTION NO. 19-26

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, on May 9, 2006, through Resolution 06-36, the Port Commission approved Lease No. L-14100 ("Lease") with Java House, LLC ("Java House"), subsequently approved by the Board of Supervisors (Resolution 555-07) for approximately 1,490 square feet of restaurant space located at Pier 40½; and
- WHEREAS, the initial term of the Lease was for fifteen (15) years and required the tenant to make \$346,140.00 in capital improvements to the premises; and
- WHEREAS, Java House has proposed to sell substantially all of its assets and assign all of Java House's interest in the Lease to Frankie's Java Houses, LLC ("Frankie's"), and
- WHEREAS, As a condition to completing the purchase of Java House, Port staff and Frankie's have negotiated an Amendment and Restatement of the Lease which, among other negotiated terms; (i) increases the monthly rent to \$4,000.00, (ii) provides the Port a payment of 12% of the net sale proceeds from the sale of the Lease, (iii) requires a \$51,000.00 payment to the Port for Java House's failure to complete capital improvements required under the Lease, (iv) commits Frankie's to making no less than \$737,000.00 of capital improvements to the premises in exchange for an option to extend the term by 10 years (including those improvements that should have been completed under the current Lease), and (v) requires a personal guaranty by the principal owner of Frankie's equal to 100% of the construction costs of the improvements, and
- WHEREAS, pursuant to Section 23.33 of the Administrative Code, it is City policy that leases be awarded in accordance with competitive bidding procedures ("Competitive Bidding Procedures"), unless such Competitive Bidding Procedures are impractical or impossible. It shall also be City policy that any and all Leases awarded without following the Competitive Bidding Procedures shall be in an amount not less than the fair market value of the leased property.


- WHEREAS, the Port staff has determined that in this circumstance the Competitive Bid Procedures are impractical and/or impossible; and
- WHEREAS, the proposed rent under the amended lease, along with the other negotiated terms, is not less than Market Rent (defined to mean the most probable rent that real property should bring in a competitive and open market reflecting all conditions and restrictions of the property agreement in Administrative Code Section 23.2); and
- WHEREAS, the Amendment and Restatement of Lease includes the terms and conditions as described in the Memorandum to the Port Commission dated July 3, 2019 for the remaining term of the Lease to August 31, 2013 and one 10-year option to extend the term of the Lease to improve and operate a casual dining restaurant at Pier 40½; and
- WHEREAS, the Planning Commission issued a Categorical Exemption 2019-006140ENV(State CEQA Guidelines Section 15332) for the project; and now therefor be it
- RESOLVED, that the Port Commission finds that in this case: (i) the Competitive Bid Procedures are impractical and/or impossible, and (ii) the terms and conditions included in the Amendment and Restatement of Lease are not less than "Market Rent" as defined in Section 23.2 of the SF Administrative Code; and be it further
- RESOLVED, that, subject to Board of Supervisors' approval, the Port Commission approves the Amendment and Restatement of Lease No. L-14100 and authorizes the Executive Director or her designee to execute such Amendment and Restatement of Lease in substantially the same form on file with the Port Commission Secretary; and, be it further
- RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Amendment and Restatement of Lease that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2019.


Secretary



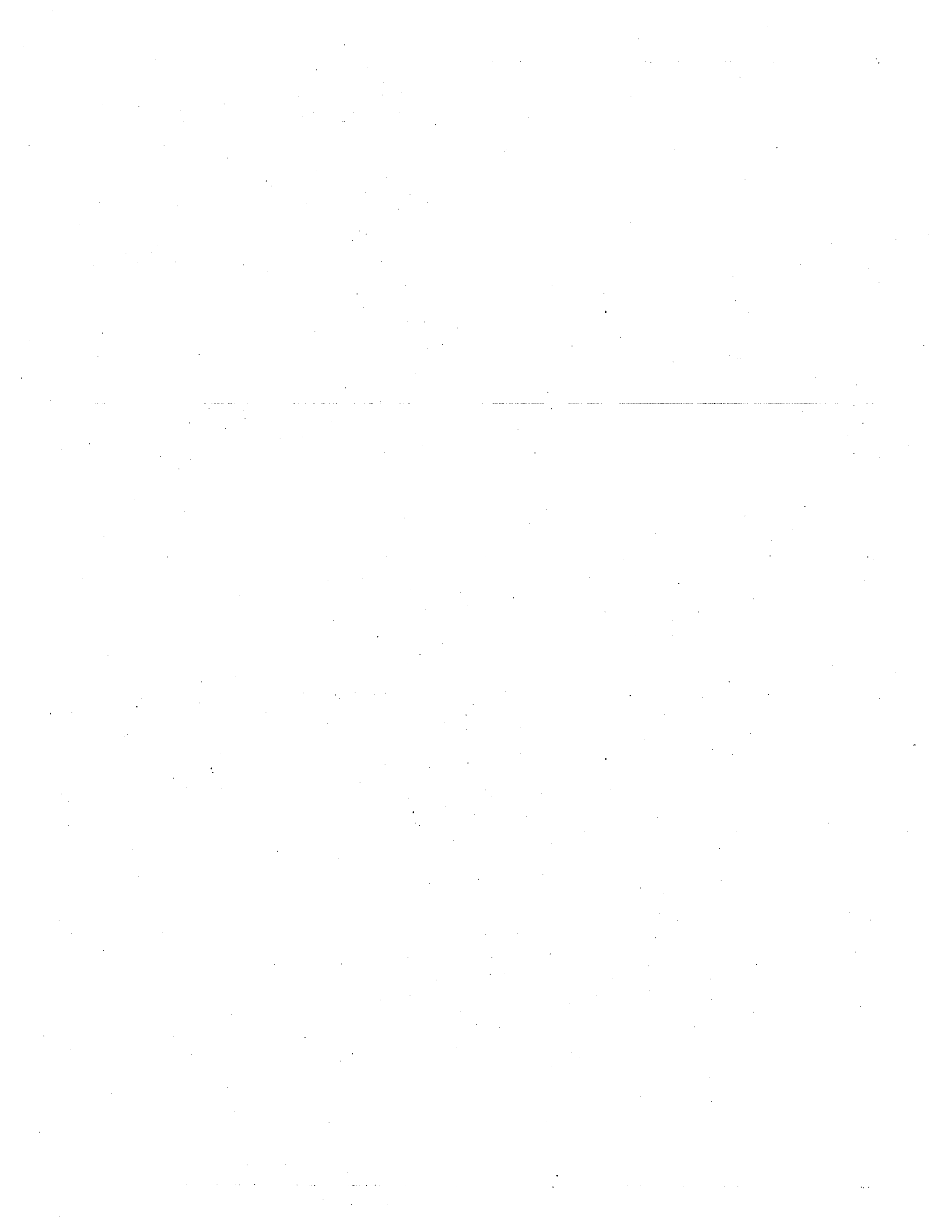
LEASE NO.
L-14100

 SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT
JAVA HOUSE, LLC.

DRAWN BY: J. DOMINGUEZ	DATE: MAY 10TH, 2019
CHECKED BY: M. LOZOVY	SCALE: 1" = 40'
PLACE CODE NO. 1450-0000	SHEET NO. OF SHEETS

C:\GIS PROPERTY FILES\Local Maps\DOBETS-PERS\Plan\40Sheet Master JAVA HOUSE REV.DWG





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

AMENDED AND RESTATED LEASE NO. L-14100

BY AND BETWEEN

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

AND

**FRANKIE'S JAVA HOUSE LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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**AMENDED AND RESTATED LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	June 18, 2019
<i>Lease Number:</i>	L-14100
<i>Landlord or Port:</i>	City and County of San Francisco , a municipal corporation, operating by and through the San Francisco Port Commission
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	Frankie's Java House LLC, a California limited liability company
<i>Tenant's Main Contact Person and Mailing Address:</i>	Kelly Phu Frankies' Java House, LLC Pier 40 San Francisco, CA 94105
<i>Tenant's Billing Contact and Address:</i>	Kelly Phu Frankies' Java House, LLC Pier 40 San Francisco, CA 94105
<i>Tenant's Emergency Contact and Address:</i>	Kelly Phu Frankies' Java House, LLC Pier 40 San Francisco, CA 94105
<i>Tenant's Insurance Contact and Address (not broker):</i>	
<i>Contact Information for Tenant's Agent for Service of Process (including address):</i>	Stephen Porter 220 Montgomery Street San Francisco, CA 94104
<i>Background; Amended and Restated Lease:</i>	Port and Java House, LLC entered into Lease No. L-14100, dated October 19, 2007 for reference purposes, as approved by the Port Commission by Resolution No. 06-36 and Board of Supervisors Resolution No. 555-07 (the " Original Lease "). The Original Lease was effective on September 1, 2008 and expires on August 31, 2023. Java House LLC decided to sell substantially all of its assets and assign all of Java's House LLC's interest in the Original Lease to Tenant (the " 2019 Sale "). The 2019

	<p>Sale was subject to Port's consent and the payment to Port of a percentage of the net sale proceeds as provided by Section 15.6 of the Original Lease. In connection with and conditioned upon the successful closing of the proposed 2019 Sale, Port and Java House LLC negotiated the following new and amended terms to the Original Lease:</p> <p>(i) Base Rent would be increased to \$4,000.00 per month escalated by three percent (3%) annually;</p> <p>(ii) Notwithstanding the provisions of Section 15.6 of the Original Lease, Port would be paid twelve (12%) of the net sale proceeds from the 2019 Sale and all future Transfers;</p> <p>(iii) Java House, LLC will pay the Port \$51,000 due to its failure to complete the tenant improvements required by the Original Lease;</p> <p>(iv) Tenant would expend not less than \$737,000 in improvements to the Premises including construction of a new outdoor patio in an expanded premises footprint; such improvements to be guaranteed by a personal guaranty by the principal owner of Tenant equal to one hundred percent (100%) of the construction costs of the improvements;</p> <p>(v) in consideration of the above terms and other valuable consideration, Port would consent to the 2019 Sale in the form attached hereto as <i>Exhibit C</i> (Form of Consent); and</p> <p>(vi) the above terms would be documented in an Amended and Restated Lease to become effective after the successful closing of the 2019 Sale and receipt of Port's portion of the sale proceeds.</p>
<p><i>Effective Date:</i></p>	<p>Port is not obligated to execute this Amended and Restated Lease until and unless the 2019 Sale is completed and Port receives payment of Port's Sale Participation in accordance with Port's Consent to the 2019 Sale no later than thirty (30) days' from the date of approval of this Amended and Restated Lease by the Board of Supervisors (the "Upset Date"). If the Transfer does not occur or Port does not receive the payment by the Upset Date, Port has no obligation to execute this Amended and Restated Lease and the Amended and Restated Lease shall be null and void and the Original Lease, will remain in effect without modification. The Upset Date may be extended in writing by the Port's Executive Director in her sole discretion.</p> <p>The Effective Date of this Amended and Restated Lease is the later of: (i) the date that is thirty-five (35) days after the Port Commission approves this Amended and</p>

	<p>Restated Lease provided that there is no appeal of Categorical Exemption 2019-006140ENV issued by the SF Planning Department on June 26, 2019; or (ii) the date Port executes and delivers this Amended and Restated Lease (“Restatement Effective Date”).</p> <p>Promptly following the Restatement Effective Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as <i>Exhibit B</i>, confirming the actual Restatement Effective Date but either party's failure to do so shall not affect the commencement of this First Amendment or the Term.</p> <p>Each of the terms summarized above is material consideration for this Amended and Restated Lease and Port would not have entered into this Amended and Restated Lease absent such terms.</p> <p>As of the Restatement Effective Date, the Original Lease shall be automatically replaced and superseded and replaced in its entirety by this Amended and Restated Lease, and the Original Lease, will be invalid and unenforceable. As of such date, unless otherwise specified, all references herein to the “Lease” are to this Amended and Restated Lease.</p>
<i>Premises:</i>	<p>Parcel A – Approximately 1,146 square feet of free-standing building comprised of the restaurant located in the vicinity of South Beach Harbor; and</p> <p>Parcel B – Approximately 1,090 square feet of exterior marginal wharf space located adjacent to the restaurant in the City and County of San Francisco as more particularly shown on <i>Exhibit A</i> attached hereto.</p>
<i>Rent Commencement Date:</i>	Restatement Effective Date
<i>Expiration Date:</i>	August 31, 2023
<i>Extension Option:</i>	<p>As further described below and in compliance with Section 35, if Tenant Completes the Initial Tenant Improvements by the Initial Tenant Improvements Completion Date, then Tenant shall have one (1) option to extend the term for a period of ten (10) years (“Extension Term”). The extension option is personal to Tenant and shall be null and void if the Premises is being operated by an entity other than Tenant at the time the extension option would arise or if Tenant does not intend to operate the Premises for the entire Extension Term.</p>

<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
Parcel A	1 - 12	1,146	\$3.11	\$3,564.00
Parcel B		1,090	\$0.40	\$436.00
				\$4,000.00
<i>Base Rent Adjustments:</i>	On the commencement date of the Extension Term (if any), and on the fifth (5 th) Anniversary Date of the commencement date of the Extension Term (if any), Monthly Base Rent shall be adjusted to the higher of: (i) 85% of the average of 7.5% of the Gross Revenues for the previous thirty-six (36) month period divided by twelve (12); or (ii) the Monthly Base Rent for the previous month increased by three percent (3%). In all other years, Monthly Base Rent will increase by three percent (3%) on each Anniversary Date.			
<i>Percentage Rent:</i>	Percentage Rent shall be seven and one-half percent (7.5%) of Gross Revenues. In addition to the monthly Base Rent specified above, Tenant shall pay monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.			
<i>Security Deposit:</i>	Ten Thousand Dollars and 00/100 (\$10,000.00).			
<i>Permitted Use:</i>	<p>The Premises shall be used solely for the following uses and for no other purpose:</p> <p><u>Parcel A</u> shall be operated as a casual dining restaurant and bar; and</p> <p><u>Parcel B</u> shall be used as an outdoor patio seating area and for other uses directly related to the support of the restaurant and bar operation</p>			
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities without the prior written consent of Port in its sole discretion:</p> <p>(a) Unless approved in advance in writing by Port in its sole discretion: use of the Premises for raves, D. J. parties, dance hall or dances/events or other uses charging a cover charge or requiring a donation to gain entry to the Premises; operation of a private club; or activities that are managed by an outside promoter;</p>			

	<p>(b) operation of a Formula Restaurant as defined in Section 2;</p> <p>(c) Off site sale of alcoholic beverages;</p> <p>(d) Use of garbage disposal or garbage grinder;</p> <p>(e) Disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drains leading to sewer laterals;</p> <p>(f) Storage of Hazardous Materials other than janitorial and office supplies in limited amounts customarily used for general office and restaurant purposes, handled in accordance with Section 15 or storage of hazardous waste;</p> <p>(g) Discharge of any material into Bay waters or storm drains;</p> <p>(h) Washing floor mats, kitchen equipment, or other items outdoors;</p> <p>(h) Pressure washing or hosing down the sidewalk for cleaning, washing floor mats, kitchen equipment, or other items outdoors, except if done in accordance with the Mobile Cleaning Best Management Practices established by the California Stormwater Quality Association's ("CASQA") best management practices, as amended, as described in Schedule 5; and</p> <p>(i) Parking/storage of catering vehicles.</p> <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>
<p><i>Initial Tenant Improvements; Rent Abatement:</i></p>	<p>Tenant must complete the following Initial Tenant Improvements more fully described in the Scope of Development attached to the Work Letter (Exhibit D) two ADA restrooms, accessible service counters, new FOG interceptor, remodeled kitchen and dining areas, new paint, installation of a new sanitary sewer line, new kitchen equipment, a new bar, refrigeration, plumbing and other improvements ("Initial Tenant Improvements"). The Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with the Work Letter and Section 13 below. Tenant estimates the cost of the Initial Tenant Improvements to be \$737,000.</p> <p>Tenant must Complete the Initial Tenant Improvements no later than the date that is three hundred and sixty five (365) days after the Commencement Date ("Initial Tenant Improvements Completion Date").</p> <p>No Base Rent shall be due for ninety (90) days during the construction of the Initial Tenant Improvements starting on the date the Port issues the building permit for the Initial Tenant Improvements and ending on the ninetieth (90th) day thereafter. During this 90-day Base</p>

	<p>Rent abatement period, Percentage Rent will continue to be due.</p> <p>Except for the rent abatement described in the prior paragraph and the Extension Option as explicitly provided for in this Amended and Restated Lease, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements including without limitation the Initial Tenant Improvements discussed above and agrees that it will not seek additional term for the purpose of amortizing any improvements.</p> <p>Tenant further understands and agrees that it will not seek or receive rent credit or other compensation or consideration or additional term for any additional time it may take to obtain Regulatory Approvals, including those issued by Port.</p>
<p><i>Initial Tenant Improvements Guaranty:</i></p>	<p>Michael Heffernan, President/CEO of Tenant, shall provide a personal guaranty in an amount sufficient to guarantee Completion of the Initial Tenant Improvements in the form attached as <i>Exhibit E</i> (Form of Personal Guaranty) (“Personal Guaranty”). The executed Personal Guaranty shall satisfy the requirements in this Lease for a financial guaranty for the Initial Tenant Improvements including without limitation, the requirements in the Work Letter.</p>
<p><i>Extension Option:</i></p>	<p>As further described in Section 35, if Tenant Completes the Initial Tenant Improvements by the Initial Tenant Improvements Completion Date, then Tenant shall have one (1) option to extend the term for a period of ten (10) years by providing at least One Hundred Eighty (180) days’ prior written notice to Port.</p>
<p><i>BCDC Permit Requirements; License:</i></p>	<p><u>BCDC Permit.</u> Tenant shall, at its sole cost and expense, comply with all applicable requirements of BCDC Permit No. 1984.002.21 (Amendment No. Twenty-One) as it may be amended from time to time (the “BCDC Permit”) including without limitation the requirements to remove existing chairs, tables, trash enclosure, storage shed and concrete and planters and install picnic tables, public outdoor tables and public access signage in the dedicated public access areas on the south side of the restaurant and bike racks and signage in the locations required by the permit (See §§I.A.3(j), (m), (n) and (p); and IIB(10).</p> <p><u>Grant of License.</u> In connection with this Lease, Port hereby grants permission to Tenant to carry out the activities required by the BCDC Permit in the area consisting of approximately 854 square feet located in the City and County of San Francisco, State of California as more particularly described on <i>Exhibit X</i> attached hereto and made a part hereof, together with any and all Improvements and Alterations (“License Area”). This</p>

	<p>license (the "License") is a revocable, personal, non-assignable (except in connection with a permitted Transfer pursuant to this Lease), non-exclusive, and non-possessory privilege to enter and use the License Area on a temporary basis that commences on the Commencement Date and expires on the Expiration Date unless sooner terminated pursuant to the terms of this Lease.</p> <p>The License Area shall be used solely for purposes of compliance with the BCDC Permit and public access. Tenant shall actively manage the License Area to ensure compliance with the terms and conditions set forth herein.</p> <p>Except as provided herein, the rights by license described above are for the same purposes and are subject to all of the terms and conditions of this Lease as if the License Area is the Premises, but Tenant agrees and acknowledges that, the License is non-exclusive, and non-possessory, and revocable and that Port may, in its sole and absolute discretion, upon not less than sixty (60) days' prior written notice to Tenant, revoke or terminate the License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Tenant. The parties agree that provisions regarding the nature of the License are material and that the Port would not have granted the Lease absent such provisions.</p> <p>Tenant shall be responsible to manage the License Area to ensure compliance with all rules pertaining to its use, and including if necessary, to compensate any City Agency including the Port for the cost of any dedicated enforcement officers, bollards, signage, repainting and minor repair to curbs, signs and bollards.</p> <p>Port has no obligation, responsibility or liability to provide any services in on or to the License Area or to maintain or repair the License Area.</p>
<p><i>Food and Merchandise Concession:</i></p>	<p>This Lease also grants Tenant exclusive permission to sell food and merchandise in the License Area and within twenty-five (25) square feet of the around the Premises and License Area ("Concession Zone"). Such exclusive rights may be revoked by Port upon no less than five (5) days' prior written notice at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Tenant. The concession rights granted in this Lease are non-assignable and non-transferable.</p> <p>Notwithstanding the grant of an exclusive concession right as specified above, neither City nor Port has any obligation, responsibility or liability to provide any</p>

	<p>services in connection with the concession, including without limitation any obligation to fine or remove other vendors from the Concession Zone.</p> <p>The concession rights described above are for the same purposes and are subject to all of the terms and conditions of this Lease as if the Concession Zone is the Premises and all of the terms and conditions of the indemnity and exculpation provisions set forth in Section 19 below (Indemnity and Exculpation) apply. Tenant shall Indemnify Port from and against any and all loss or liability resulting from Claims regarding the grant of the concession included in this Lease including, without limitation, any loss or liability resulting from any Claims against Port made by any vendor founded on or resulting from the grant of such concession, together with, in each case, actual attorneys' fees and costs.</p>
<i>Additional Requirements:</i>	<p>Tenant shall:</p> <ul style="list-style-type: none"> - Comply with San Francisco's Fats, Oils, Grease (FOG) Control Ordinance. - Comply with San Francisco's Mandatory Recycling and Composting Ordinance. - Comply with the Port's "Restaurant Rules and Regulations" attached hereto as (<i>Exhibit F</i>). - Use a mop / brush and bucket for sidewalk cleaning. - Designate an indoor area to manage recyclable, compostable, and landfill waste. - Obtain a SF Department of Public Health, Hazardous Materials Unified Program Agency (HMUPA) Permit or file a Disclaimer Notice with the Agency. - Obtain a San Francisco Fire Department permit for the handling, use, or storage of more than 5 gallons of flammable liquids or 25 gallons of combustible liquids. <p>WASTE DISPOSAL</p> <p>Businesses may be able to use a drop-off program by making an appointment to take their own waste to the City's Household Hazardous Waste Facility. Drop-off days are held once or twice a month (usually the last Wednesday of the month). Motor oil can be dropped off during all business hours. To schedule an appointment, call SF Recycling & Disposal at (415) 330-1425.</p>
<i>Maintenance and Repair:</i>	Tenant's sole responsibility, as further described in this section and Section 11 below.
<i>Utilities:</i>	Tenant's sole responsibility, as further described in this section and Section 12 below.
<i>Substructure:</i>	See <i>Schedule 2</i> attached hereto.

<i>Development Projects:</i>	Pier 30-32, Piers 38 and 40.
<i>Parking:</i>	Tenant acknowledges that this Lease does not include parking rights or spaces.
<i>Lease Prepared By:</i>	Mark Lozovoy, Assistant Deputy Director, Real Estate and Development

LEASE AGREEMENT

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

2. DEMISE.

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

3. PREMISES; AS-IS CONDITION.

3.1. *Premises.*

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

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

3.2. *Accessibility Inspection Disclosure.*

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that

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

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

3.3. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in Section 9 (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with the ADA and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. No Right to Encroach.

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

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

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

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

3.5. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, constructed on the Premises or on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

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

3.7. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) the Facility is located along the waterfront adjacent to, on top of, and bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.8; (c) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (d) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (e) there is a risk that sea level rise will increase the cost of Substructure repairs and/or prevent or limit the ability to make repairs to the Substructure; and/or (f) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

3.8. Seawall. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("Seawall") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake

performance of reclaimed land is an issue for coastal communities worldwide. The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: <http://sfport.com/seawall>. Tenant agrees that its waiver of Claims set forth in Section 19 (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.9. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.8 including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information on the Port's website; the FEMA disclosure notice attached as *Schedule 3* and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in *Schedule 2* attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.10. Reserved Rights Regarding Seawall. Port has the right to use the Premises on an extended basis without charge, and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice (except in the event of an emergency which poses an imminent danger to public health or safety as determined by Port in its sole discretion) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform or place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for inconvenience, disturbance, loss of business, nuisance or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses commercially reasonable efforts to conduct the activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to the activities of Tenant, its Subtenants (if any), and their respective Invitees. In no event will inconvenience or disturbance caused by Port's activities under this Section constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port's activities under this Section. If use of the Premises is required by Port or its Agents under this Section, then the Parties will coordinate their use of the Premises and use their good faith efforts to minimize adverse impacts to each of their respective needs. Port will have the absolute right to use the Premises without charge in the event of an emergency involving the Seawall.

3.11. Release and Waiver. As part of its agreement to accept the Premises in their "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, will be

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

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

4. TERM OF LEASE; TERMINATION BY PORT.

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

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

4.2. Termination Rights.

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

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

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

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

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

4.3. Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease.

5. RENT.

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

5.1. Base Rent. From and after the Rent Commencement Date, Tenant shall pay the monthly Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month. Under no circumstances shall the Rent Commencement Date be delayed due to failure to complete the Initial Tenant Improvements, Force Majeure, Port delays or other reasons.

5.2. Percentage Rent.

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

(b) Percentage Rent shall be determined and paid by Tenant for each calendar month within twenty (20) days after the end of the prior calendar month, except that in the event this Lease expires or terminates on a day other than the last day of a calendar month, Percentage Rent for such calendar month shall be determined and paid within twenty (20) days after such expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement (the "**Monthly Percentage Rent Statement**") in a form approved by Port. In addition, Tenant shall furnish to Port, within thirty (30) days after the expiration of each Lease Year, a complete statement, showing the computation of the Percentage Rent for the immediately preceding Lease Year ("**Annual Statement**") in a form approved by Port. The Annual Statement is for verification and certification of Monthly Percentage Rent Statements only and shall not result in any averaging of monthly Percentage Rent. Each Monthly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar month or Lease Year, as applicable.

(c) Each Monthly Percentage Rent Statement shall be certified as accurate, complete and current by a financial officer or other accountant employed by Tenant who is authorized and competent to make such Monthly Percentage Rent Statement. Each Annual Statement shall be certified as accurate, complete and current by an independent certified public accounting firm acceptable to Port in its sole discretion. Tenant must submit payment of the balance owing together with any Annual Statement showing that Tenant has underpaid Percentage Rent. At Port's option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Statement showing an overpayment.

If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Monthly Percentage Rent Statement or Annual Statement within the time period set forth in this Section 5.2 (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent and Annual Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.

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

5.3. Books and Records. Tenant agrees that the business of Tenant upon the Premises shall be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to Port shall be issued with each sale, whether for

cash, credit or exchange. Furthermore, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the "Audit Period").

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

5.5. Audit.

(a) Tenant agrees to make its Books and Records available to Port, or to any City auditor, or to any auditor or representative designated by Port or City (hereinafter collectively referred to as "Port Representative"), upon no less than fifteen (15) business days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after a Percentage Statement is delivered to the Port. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records shall be removed by Port Representative without the prior express written consent of Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Premises through one or more Subtenants or Agents (other than Port), Tenant shall require each such Subtenant or Agent to provide the Port with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, Port shall promptly deliver a copy of the audit report to Tenant.

(b) If an audit reveals that Tenant has understated its Gross Revenues for said audit period, Tenant shall pay Port, promptly upon demand, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Tenant has overstated its Gross Revenues for said audit period, Tenant shall be entitled to a credit against rent for either Base Rent or Percentage Rent next owed equal to the difference between the amount Tenant has paid and the amount it should have paid to Port. If Tenant understates its Gross Revenues for any audit period by three percent (3%) or more, Tenant shall pay the cost of the audit. A second understatement within any three (3) Lease Year period of the first such understatement shall be considered an Event of Default.

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

costs, including attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

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

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

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

5.10. *Additional Charges.* Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 15.8 (Storm Water Pollution Prevention), 28.1(d) (CMD Form), and 34 or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as

Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.10 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.10 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.10 and the reasonableness of the amount of the charges described in this Section 5.10.

6. TAXES AND ASSESSMENTS.

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

6.2. *Possessory Interest Tax.* Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

7. SECURITY DEPOSIT.

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

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

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

7.2. At Tenant's option, the Security Deposit may be provided by an irrevocable, stand-by and unconditional negotiable letter of credit (the "**Letter of Credit**") in a form approved by Port in its sole discretion. Neither cash nor the Letter of Credit nor any portion of the proceeds ("**LC Proceeds**") will be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default. The "**LC Value**" means the face amount of the Letter of Credit.

7.3. The Letter of Credit must:

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

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

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

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

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

7.5. Tenant agrees that Port will have until three (3) months after the Expiration Date (or later date of Port's acceptance of Tenant's surrender of the Premises) to return any LC Proceeds drawn but not applied towards Port costs or damages; and that Port will have no further liability to Tenant with respect to the Letter of Credit or LC Proceeds following a transfer of the beneficial interest to a transferee in accordance with the Issuer's requirements.

8. USE OF THE PREMISES.

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

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

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

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

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

(d) any activity which constitutes waste or nuisance including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

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

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

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

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

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

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

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

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

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

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

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

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

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

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

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

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

10.3. *Compliance with City's Risk Manager's Requirements.* Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably

interfere with Tenant's use of the Premises or are otherwise consistent with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

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

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

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

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

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

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges

associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

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

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

12. UTILITIES AND SERVICES.

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

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

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

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor

entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

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

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

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

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

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

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

(b) As a condition to giving consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and/or (ii) a

payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount up to one hundred fifty percent (150%) but not less than one hundred percent (100%) of the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

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

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

13.2. Tenant's Obligation to Construct the Initial Tenant Improvements. Tenant shall construct the Initial Tenant Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions in the Work Letter. Any Subsequent Alteration shall be performed in accordance with this Section.

13.3. Construction Requirements. All Subsequent Alteration to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

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

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

(c) Tenant, while performing any subsequent construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

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

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

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

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("**HEPA**") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.3(g), lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.4. Improvements Part of Realty. Except as set forth in Section 13.5 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to

Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender).

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

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

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

13.8. Signs. Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to, Port's Sign Guidelines, as revised by Port from time to time, and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

13.9. Port's Alterations. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when

the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

14. LIENS.

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

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

15. HAZARDOUS MATERIALS.

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

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

- (a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property except as permitted under Section 15.1;
- (b) will not cause or permit any Hazardous Material Condition; and
- (c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

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

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by

written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

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

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

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

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

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

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

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

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

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

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

15.4. Requirement to Remediate.

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

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

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

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

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

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

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

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

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

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

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

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

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

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

15.8. Storm Water Pollution Prevention.

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

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

15.9. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in Schedule 1 attached hereto, naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in Schedule 4, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

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

16. INSURANCE.

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

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

(b) **Automobile Liability Insurance.** Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must

obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation, Tenant's Agents and Invitees.

(c) Workers' Compensation; Employer's Liability. Worker's Compensation Insurance, with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

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

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

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

(ii) In addition, Tenant shall carry "Builder's All Risk" insurance on a form reasonably approved by Port, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

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

(f) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement), including earthquake, subject to provisions of Section 16.6(b), and flood, subject to the provisions of Section 16.6(c), in an amount not less than one hundred percent (100%) of the then-current full

replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage).

(g) **Builders Risk Insurance.** At all times prior to Completion of the Initial Tenant Improvements and during any period of Subsequent Alteration, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 16.6(c)).

(h) **Boiler and Machinery Insurance.** Unless same is not included within Tenant's property insurance, Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(i) **Business Interruption Insurance.** Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 16.1(d), 16.1(e) and 16.1(f) above, with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

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

(k) **Special Events/Participants.** Tenant, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

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

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

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

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

16.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "Waiving Party") each hereby waives any right of

recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

16.6. General Insurance Matters.

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

(b) As to earthquake insurance:

(i) during construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation).

(ii) from and after Completion of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the City's Risk Manager, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

(c) As to flood insurance only:

(i) During construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation);

(ii) from and after Completion of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the amount available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized insurance carriers, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

(d) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's

compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

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

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

17. DAMAGE AND DESTRUCTION.

17.1. *Damage and Destruction.* If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

If at any time during the last six (6) months of the Term, the Premises or the Facility is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The

effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

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

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

18. EMINENT DOMAIN.

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

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

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

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

18.5. Award; Waiver; Termination of Lease; Rent. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against

Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

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

19.2. Hazardous Materials Indemnity.

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

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

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

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

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

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease shall remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

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

20. ASSIGNMENT AND SUBLETTING.

20.1. Transfer to Affiliate.

(a) Tenant may make a Transfer to an Affiliate without obtaining Port's consent, provided: (1) at the time Tenant provides Port with notice, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) if the proposed Transferee is a successor to Tenant by purchase, such proposed Transferee shall acquire all or substantially all of the stock or assets of Tenant's business or, if such proposed Transferee is a successor to Tenant by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or

substantially all of the assets of Tenant; (3) such proposed Transferee must have a net worth which is at least equal to the greater of Tenant's net worth as of the Commencement Date or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization as evidenced to Port's reasonable satisfaction; (4) such proposed Transferee operates the business in the Premises for the Permitted Use and no other purpose; and (5) Tenant gives Port written notice at least sixty (60) days prior to the effective date of the proposed Transfer and provides copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date.

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

20.2. *Transfer to Non-Affiliate.*

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

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

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

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

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

contract directly with the Transferee on terms acceptable to Port in its sole and absolute discretion.

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

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

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

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

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

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

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

20.4. Sale. In addition to all requirements in Section 20.2, the following provisions apply to any Transfer in the form of a Sale.

(a) Tenant must pay to Port twelve percent (12%) of Tenant's Net Sale Proceeds as Port's Sale Participation, concurrently with and as a condition to the Sale Closing. If Tenant operates at multiple locations, then Port's Sale Participation will be calculated using only the Gross Sale Proceeds, Net Sale Proceeds, and Costs of Sale reasonably attributable to the Premises.

(b) As soon as available after Port consents to the Sale, Tenant must deliver to Port an estimated closing statement that includes Tenant's best estimate of: (i) Gross Sale Proceeds; (ii) Costs of Sale; (iii) Net Sale Proceeds; and (iv) Port's Sale Participation. The closing statement must be updated and delivered to Port the business day before the Sale Closing. If an escrow account is not established for the Sale, Tenant's chief financial officer or independent accountant must certify to Port under penalty of perjury the accuracy of the final closing statement or provide a detailed accounting of and documentation supporting any variances from the estimated closing statement in form and content reasonably acceptable to Port. Tenant must submit the amount of any underpayment with the certificate or accounting. Tenant's obligation to pay Port's Sale Participation will survive the Sale Closing and the expiration or termination of this Lease.

(c) If Tenant constructed Initial Tenant Improvements at the Premises, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Construction Costs as follows.

(i) Within ninety (90) days after Completion of the Initial Tenant Improvements, Tenant must deliver to Port a Construction Costs Report in form and content acceptable to Port in its reasonable discretion, accompanied by a CPA's agreed-upon procedures report prepared in accordance with AICPA standards for compliance attestation and specifying Port as an intended user. Port will notify Tenant in writing whether Port agrees or disagrees with Tenant's Construction Costs Report within ninety (90) days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Construction Costs Report. Tenant must keep accurate Books and Records of all Construction until the later of two (2) years after Tenant's submission of its Construction Costs Report or six (6) months after any dispute regarding the Construction Costs has been resolved. Tenant's failure to submit a Construction Costs Report as and when required under this Section will be deemed a waiver of its right to make a reduction to Net Sale Proceeds.

For example, if: (i) Initial Tenant Improvements have a Class Life of 15 years; (ii) Certified Construction Costs are \$3 million; (iii) Gross Sale Proceeds are \$10 million; (iv) Costs of Sale are \$200,000, leaving Net Sale Proceeds of \$9.8 million; and (v) the Closing Date is the sixth (6th) anniversary of the "placed in service" date of the Initial Tenant Improvements, then Port's Sale Participation is \$1,170,000, as shown in the calculation below.

Gross Sale Proceeds:	\$10,000,000
Costs of Sale:	\$200,000
Net Sales Proceeds before Adjusted Basis reduction:	\$9,800,000
Certified Construction Costs of Initial Tenant Improvements:	\$3,000,000
Adjusted Basis (10/15 years unamortized):	\$2,000,000
Net Sales Proceeds less Adjusted Basis:	\$7,800,000
Port's Sale Participation @ 12% of adjusted Net Sales Proceeds:	\$936,000

20.5. Notice to Port. In addition to the obligations under Section 6.2, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

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

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

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

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

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

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

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

20.7. Transfer Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer for one (1) year after the Expiration Date. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Affiliates where applicable.

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

20.9. Transfer Definitions. For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer. Other applicable definitions are in Section 37.

21. DEFAULT BY TENANT.

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

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

(b) failure by Tenant to deliver the Monthly Percentage Rent Statement or Annual Statement when due and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by

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

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

(d) failure to comply with Tenant's management covenants set forth in Section 31, as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

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

(f) failure to pay Port at close of escrow of any Sale, Port's Participation in Net Sale Proceeds and such default continues for a period of three (3) days following written notice from Port.

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

(h) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 33.3 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

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

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

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

(m) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such

default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

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

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

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

(q) without limiting the provisions of Sections 21(c) above or 21(g) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

22. PORT'S REMEDIES.

Upon Tenant's Event of Default, Port shall, without further notice or demand of any kind to Tenant or to any other person, have the remedies described in Sections 22.1 through 22.4 below:

22.1. *Tenant's Right to Possession Not Terminated.* Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of

Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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

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

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

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

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

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

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

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

maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

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

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

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

22.8. *Remedies Not Exclusive.* The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law or in equity. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

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

24. PORT'S ENTRY ON PREMISES.

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

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

- (a) To perform any necessary maintenance, repairs or restoration to the Premises or the Seawall, or to perform any services which Port has the right or obligation to perform;
- (b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c) To post "For Sale" signs at any time during the Term; to post "For Lease" signs during the last six (6) months of the Term or during any period in which Tenant is in default;
- (d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;
- (e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or
- (f) To obtain environmental samples and perform equipment and facility testing.

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

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

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

25. SURRENDER AND QUITCLAIM.

25.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier

termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.5, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.2 or 26.3 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

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

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

26. HOLDING OVER.

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

portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

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

26.3. *Without Consent.* If Tenant holds over without the prior written consent of Port, monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.

26.4. During any holding over period (whether with or without the consent of Port), Tenant shall deliver to Port, a new Letter of Credit or certificate of renewal or extension (collectively, "**Renewal LC**") at least ninety (90) days prior to the then current LC Expiration Date, without any action whatsoever on the part of Port, extending the then current LC Expiration Date by an additional year. Failure to provide such Renewal LC shall entitle Port to draw on the Letter of Credit and Port shall hold the proceeds of such draw as Letter of Credit Proceeds pursuant to Section 7.

27. MINERAL RESERVATION.

The State of California ("**State**"), pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises and Tenant acknowledges such reserved rights including necessary ingress and egress rights. In no event shall Port be liable to Tenant for any Claims arising from the State's exercise of its rights nor shall such action entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease

28. CITY AND PORT REQUIREMENTS.

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

28.1. *Nondiscrimination.*

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages,

facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

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

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

(d) **CMD Form.** On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by CMD.

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

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

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Office of Labor Standards Enforcement ("OLSE") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant,

Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

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

(h) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

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

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

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

28.5. Indoor Air Quality. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of

the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

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

28.7. Graffiti Removal. Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "Graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

28.8. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

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

28.10. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

28.11. *Preservative-Treated Wood Containing Arsenic.* Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

28.12. *Notification of Limitations on Contributions.* If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 28.12 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 28.12 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

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

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

28.15. *Drug-Free Workplace.* Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

28.16. *Prevailing Wages and Working Conditions.* Tenant shall comply with all applicable prevailing wage requirements, including but not limited to any such requirements in the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages, (B) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include and shall require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and

Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

28.17. Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Facility and encouraging use of such facilities, all at Tenant's sole expense.

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

28.19. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12T"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

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

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

28.20. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

28.21. San Francisco Bottled Water Ordinance. Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

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

right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

28.23. Employee Signature Authorization Ordinance. The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

29. NOTICES.

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

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

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

30. 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 formed and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

(c) **No Limitation on Ability to Perform.** No 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. There are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court,

governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

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

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

(f) **Financial Matters.** Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, and (iv) Tenant has not suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

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

31. TENANT'S MANAGEMENT COVENANTS.

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

31.2. *Continuous Operations.* Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion. Notwithstanding the foregoing, the Port shall not unreasonably withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become untenable due to fire or other casualty, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

32. MISCELLANEOUS PROVISIONS.

32.1. *California Law.* This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Tenant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

32.2. *Entire Agreement.* This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease

or changes from those drafts to the executed version of this Lease shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

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

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

32.5. Interpretation of Lease.

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

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

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

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

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

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

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

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

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

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

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

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

32.9. Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity; that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

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

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

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

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

32.14. Relationship of the Parties. Port is not, and none of the provisions in this Lease shall be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any

joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

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

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

33. LIMITATION ON DAMAGES.

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

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

33.3. Limitation on Port's Liability Upon Transfer. In the event of any transfer of Port's interest in and to the Facility, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

34. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as *Exhibit I*. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

35. EXTENSION OPTION.

35.1. Option to Extend Term. Provided that (i) Tenant completes the Initial Tenant Improvements no later than the Initial Tenant Improvements Completion Date and all the terms and conditions of this Section are satisfied by Tenant, Tenant shall have one (1) Extension

Option for the Extension Term as to the entire Premises only commencing upon the first day after the Expiration Date. Tenant may exercise the Extension Option no earlier than the date it has Completed the Initial Tenant Improvements and no later than six (6) months after the Initial Tenant Improvements Completion Date by providing Port with written notice of its exercise of the Extension Option. Any such notice by Tenant shall be irrevocable by Tenant.

If (i) any Event of Default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term and remains uncured after notice and the expiration of all applicable cure periods; or (ii) Tenant fail to Complete the Initial Tenant Improvements by the Initial Tenant Improvements Completion Date to Port's satisfaction in its reasonable discretion, then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. If Tenant fails to exercise the Extension Option or Port rejects Tenant's exercise of the Extension Option in accordance with this Section then this Lease will terminate as of the original Expiration Date.

35.2. Revocation of Extension Option. After written notice and no less than thirty (30) days to cure, Port may, in its sole discretion, revoke the Extension Option should Tenant fail to complete the Initial Tenant Improvements by the Initial Tenant Improvements Completion Date.

35.3. Base Rent and Other Terms. The lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the last day of the Extension Term.

35.4. The Parties acknowledge and agree that the prerequisite conditions to Tenant's extension option right set forth for in this Section are a material part of the bargained-for consideration under this Amended and Restated Lease.

36. APPROVAL OF BOARD OF SUPERVISORS.

Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Lease unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Lease shall be null and void if City's Mayor and the Board of Supervisors do not approve this Lease, in their respective sole discretion. Approval of this Lease by any department, commission or agency of City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

37. DEFINITIONS.

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

"ACMs" is defined in Section 15.6 above.

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

"Additional Rent" means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every

fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

"**Adjusted Basis**" means the value of the Certified Construction Costs of the Initial Tenant Improvements to the extent unamortized on the Transfer Date. If Tenant made Initial Improvements at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with Section 20.4(c).

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

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

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

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

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

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

"**Audit Period**" is defined in Section 5.3 above.

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

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

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

"**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, the Initial Tenant Improvements and the operation and maintenance of the Premises, including without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

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

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

"**Cash Consideration**" means cash or its equivalent in immediately available funds.

"**Certified Construction Costs**" are Construction Costs that Port has approved through the procedures described in Section 20.4.

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

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

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

"**Class Life**" means the classification of and amortization period applicable to the Initial Tenant Improvements under Internal Revenue Code section 168(e) or the period between the date of Completion and the date of Lease expiration or earlier termination whichever is shorter.

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

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

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

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

"**Concession**" is defined in Section 32.16 above.

"**Conduct Code**" is defined in Section 28.11 above.

"**Construction Costs**" means actual costs paid by Tenant for all categories of costs for Initial Tenant Improvements, without interest, and subject to the limitations set forth in *Exhibit D*, Work Letter, and amortized on a straight line basis over the Class Life of the Initial Tenant Improvements.

"**Construction Costs Report**" means a report prepared by a CPA specifying the Class Life of and verifying Tenant's actual Construction Costs for the Initial Tenant Improvements, accompanied by copies of documentation substantiating all expenditures, such as: (a) executed contracts; (b) invoices for labor, services, goods, and materials, bills of lading, and other bills or receipts marked "Paid" or similarly indicating payment in full; (c) canceled checks or other written evidence of payment; and (d) other documents reasonably requested by Port.

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

"**Completion**" in reference to the Initial Tenant Improvements is defined in the Work Letter. "Completion" in reference to any Subsequent Alteration means the Port's sign off on the Job Card or other customary documentation of completion by the Port's Chief Harbor Engineer or his or her designee for any Subsequent Alterations.

"**Core and Shell Work**" means those Initial Tenant Improvements identified as core and/or shell work in the Scope of Development.

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

"**Costs of Sale**" means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable (as determined by the Port in its reasonable

discretion) brokerage commissions; (b) customary closing fees and costs, including title insurance premiums, survey fees, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys' fees; and (d) new tenant improvements to be made solely in connection with the Sale and performed in compliance with Section 13. Costs of Sale exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

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

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

"disturbed or removed" is defined in Section 13.3(g) above.

"Encroachment Area" is defined in Section 3.4 above.

"Encroachment Area Charge" is defined in Section 3.4 above.

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

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

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

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

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

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

"Expiration Date" means the date on which the Term expires as specified in the Basic Lease Information or the last date of the Extension Term, if any.

"**Extension Option**" is defined in the Basic Lease Information.

"**Extension Term**" is defined in the Basic Lease Information.

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

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

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

"**Final Construction Documents**" is defined in the Work Letter.

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

"**Force Majeure**" means events which result in delays of performance of a party's obligations hereunder due to causes beyond the party's control and not caused by the acts or omissions of such party, including acts of nature or of the public enemy, war, invasion, insurrection, riots, any general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Improvements, acts of the government, fires, floods, earthquakes, tidal waves, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between a party and its contractors or work performed on behalf of such party). Force Majeure does not include (1) failure to obtain financing or failure to have adequate funds, (2) sea level rise; and (3) any event that does not cause an actual delay.

"**Formula Restaurants**" means a type of eating or drinking establishment that, along with eleven (11) or more other such establishments located in the United States, maintains two or more of the following features: a standardized menu, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized business signage, a trademark or a service mark. The following definitions shall be used for the definition of "Formula Restaurant".

(a) "**Business Signage**" means a sign that directs attention to a business, commodity, service, industry or other activity that is sold, offered, or conducted, other than incidentally, on the premises upon which such sign is located, or to which it is affixed.

(b) "**Color Scheme**" means selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the façade.

(c) "**Décor**" means the style of interior finishing, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.

(d) "**Façade**" means the face or front of a building, including awnings, looking onto a street, passageway, or an open space.

(e) "**Menu**" means type, variety and price of food and beverages offered and sold on the premises.

(f) "**Service mark**" means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party those of others.

(g) "**Trademark**" means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.

(h) **"Uniform Apparel"** means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.

"goodwill" means the value assigned to Tenant's intangible business assets in connection with a Transfer, but only if the Transferee will continue to operate the same business that Tenant operated at the Premises and Port reasonably agrees with the valuation.

"Gross Revenue" means, subject only to the exceptions stated below, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises, including without limitation, all returns and refunds, employee meals, discounted and complimentary meals, beverages and services or similar benefits and/or goodwill, the total value, based on price, for the tickets, cover charges, merchandise and any other items and the operation of any event, including any special or fundraising event, and catering or food delivery business conducted by, from or at the Premises (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed). Except as specified below, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.

The following shall be excluded from Gross Revenues, provided that, Tenant provide to Port separate records to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly and Annual Statements:

- (i) The amount of any refund made or credit allowed due to a bona fide complaint from a customer concerning the quality of food, beverages, merchandise or service by Tenant;
- (ii) Sales by redemption of gift certificates or like vouchers, but only to the extent previously reported as part of Gross Revenues;
- (iii) Sums collected for any sales or excise tax imposed directly upon Tenant by any duly constituted governmental authority, but only if stated separately from the selling price of the goods or merchandise, or services, and collected from customers and such amounts are in fact paid to the appropriate governmental entities for which they are collected; and
- (iv) All food and beverage sales to employees of Tenant, not to exceed, however, one percent (1%) of Gross Revenues in any single month, and provided further that said sales are at a discount; and
- (v) Tips paid to Tenant's employees by its customers, so long as such tips go directly to Tenant's employees (and not Tenant or Tenant's management); and
- (vi) Intra and inter-company transfers of inventory and supplies between and among Tenant and Affiliates (as defined in Section 20.1); and
- (vii) Bona fide promotional discounts to Tenant's customers for food, beverages and other sales, up to a maximum of five percent (5%) of Gross Revenues in any single month; and
- (viii) Ticket sales and cover charges, but only to the extent that such revenue is less than Tenant's actual monthly entertainment costs payable to promoters,

musicians, performers, licensors, agents and booking companies and agents that are not Tenant's employees or Affiliates ("Entertainment Costs").

"Gross Sale Proceeds" means all consideration in any form directly or indirectly received by or for the account of the Tenant in connection with a Sale, including: (a) Cash Consideration; (b) the principal amount of any loan by Tenant to the Transferee to finance the Sale; and (c) the fair market value of any other non-cash consideration representing a portion of the purchase price.

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

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

"Hard costs" is defined in Section 11.3 above.

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

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises or the Facility, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, any other part of the Facility, or other Port property, the loss or restriction of the use or any amenity of the Premises, any other part of the Facility, or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

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

"HEPA" is defined in Section 13.3(g) above.

"Initial Tenant Improvements" means the tenant improvements to be constructed by Tenant, at its sole cost and expense, as further described in Section 13 above and the Work Letter.

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

"Improvement Costs" is defined in Section 4.2 above.

"Improvements Pertaining to the Realty" means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial

economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

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

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

"**Initial Tenant Improvements**" is defined in the Basic Lease Information.

"**Initial Tenant Improvements Completion Date**" is defined in the Basic Lease Information.

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

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

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

"**Late Charge**" means a fee of fifty dollars (\$50.00) with respect to Base Rent and a fee equivalent to One Hundred Dollars (\$100.00) with respect to Percentage Rent and Monthly and Annual Statements.

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

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

"**Monthly Percentage Rent Statement**" is defined in Section 5.2(b) above.

"**Net Sale Proceeds**" means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made Initial Tenant Improvements at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with Section 20.4(c).

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

"**Notice of Removal**" is defined in Section 13.5 above.

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

"**Notice to Vacate**" is defined in Section 3.4 above.

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

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

"PACMs" is defined in Section 15.6 above.

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

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

"Port" means the San Francisco Port Commission.

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

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

"Port's Sale Participation" means the portion of Net Sale Proceeds that Tenant must pay to Port.

"Port Work" is defined in Section 13.9 above.

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

"preservative-treated wood containing arsenic" is defined in Section 28.11.

"prevailing party" is defined in Section 23.1 above.

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

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

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

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

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

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

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

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

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

"**Rules and Regulations**" means the Rules and Regulations, if any, applicable to the Facility, set forth in *Exhibit F* attached hereto, as may be amended from time to time.

"**Sale**" means: (a) Tenant's Transfer of its entire interest in this Lease or the entire leasehold estate, including the sale of Tenant's Property at the Premises and Tenant's goodwill to any other Person or entity; or (b) a Transfer affecting ownership of the beneficial interests in or business assets of Tenant.

"**Sale Closing**" means the date that any Sale closes.

"**saltwater immersion**" is defined in Section 28.11.

"**Scope of Development**" means the Scope of Development attached to the Work Letter (*Exhibit D*) as Attachment 1.

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

"**Secretary's Standards**" is defined in Section 13.3(e) above.

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

"**Sublease**" means the following events or proposed events: (a) a proposed or actual sublease or sub-license of all or any part of the Premises under a sublease, sub-sublease, license, sub-license or agreement of similar effect with a subtenant, vendor, concessionaire, food truck or food cart operator; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; or (c) any Subtenant or sub-licensee of Tenant sub-subleases or sub-sub-licenses any of its interest in its sublease or premises.

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

"**Subtenant**" means the Person with whom Tenant enters into a Sublease.

"**Subsequent Alteration**" means all alterations, installations, Improvements, repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Tenant Improvements pursuant to the Work Letter.

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

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

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

"**Tenant's Property**" means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any

Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant's Property, in either case without cost to Port.

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

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

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

"**Transfer Agreement**" means all document(s) effecting or evidencing Tenant's proposed Transfer.

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

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

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

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

"**Upset Date**" is defined in the Basic Lease Information.

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

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

"**Work**" when used in reference to construction is defined in Section 28.11 above.

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

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IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

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

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: FRANKIE'S JAVA HOUSE LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

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

By: _____
Rona H. Sandler
Deputy City Attorney

Lease Prepared By: Mark Lozovoy, Assistant Deputy Director, Real Estate and
Development _____ Initial _____

Port Commission Resolution No. 19-26

Board of Supervisors Resolution:

EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

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

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

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

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

FORM OF CONSENT TO ASSIGNMENT

This Consent to Assignment (this "Consent") is dated as of _____, 2019, for reference purposes only, by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City") operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), Java House, LLC a California limited liability company, ("Assignor") and Frankie's Java House, LLC, a California limited liability company ("Assignee").

RECITALS

A. Port and Assignor entered into that certain Lease L-14100 dated as of October 19, 2007 the "Original Lease") relating to certain premises located in the vicinity of South Beach Harbor in San Francisco, California and known as the Java House ("Premises") as more particularly described in the Lease.

B. Assignor desires to sell substantially all of its assets and assign its interest in the Lease to Frankie's Java House, LLC, a California limited liability company. Assignee agrees to assume all obligations of Assignor under the Lease pursuant to an Assignment Agreement dated _____ ("Assignment Agreement") and attached hereto as *Exhibit A* (the "Transfer"). As required by Section 15.6 of the Lease, Assignor has requested that Port consent to the Transfer. Port has agreed to consent, on the terms and conditions set forth herein.

C. Assignor acknowledges that it is currently not in compliance with the Original Lease because of Assignor's failure to complete the improvements to the Premises as required under the Original Lease.

D. As material consideration for Port's Consent to the Transfer, Port, Assignor and Assignee have negotiated new and amended terms to the Lease. On [Date xx] 2019, the Port Commission approved the following terms to be included in an amended and restated lease with Assignee, contingent upon the Transfer and payment to Port of the amounts described in this Consent: (i) base rent shall be increased to \$4,000.00 per month escalated by three percent (3%) annually; (ii) Assignor shall pay twelve percent (12%) of its net sale proceeds to Port for the sale to Assignee as well as any future sales or refinancings; (iii) Assignor will pay the Port \$51,000 due to Assignor's failure to complete the tenant improvements required by the Original Lease; (iv) Assignee shall expend not less than \$737,000 in improvements to the Premises including construction of a new outdoor patio; such improvements to be guaranteed by a personal guaranty by the principal owner of Assignee; and (v) inclusion of currently applicable City and Port requirements] (the "Amended and Restated Lease"). Port is obligated to execute the Amended and Restated Lease only upon payment to Port of the amounts due under (ii) above as further described in this Consent. The Parties anticipate that Tenant's failure to complete the improvements will be cured by the means described in this Consent and the Amended and Restated Lease. If the Transfer does not occur or Port does not receive the payment, Port has no obligation to execute the Amended and Restated Lease and the Amended and Restated Lease shall be null and void and the Original Lease, will remain in effect without modification.

E. Assignor has provided Port the Tenant Estoppel Certificate attached hereto as *Exhibit B*.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual agreements and covenants hereinafter set forth, Port, Assignor and Assignee agree as follows:

1. Lease.

The Assignee shall be bound by all of the terms, covenants, conditions, provisions and agreements of the Lease. Neither the Assignment Agreement nor this Consent shall be construed

to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease.

2. Port's Consent.

Conditioned upon compliance with the terms and conditions set forth in Section 15.6 of the Amended and Restated Lease and payment of the amounts specified in Section 3 below, Port consents to the Transfer of the Lease to Assignee. Payment of such amounts is material consideration for this Consent and Port would not have consented absent such payments. The Assignee shall be bound by all of the terms, covenants, conditions, provisions and agreements of the Lease, as amended, which arise and relate to periods from and after the Effective Date of this Transfer. Neither the Assignment Agreement nor this Consent shall be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease.

3. Payments to Port. Assignor shall pay the following amounts to Port on the closing date the sale of the Lease to Assignee.

(a) Port's Participation in Transfer Proceeds. Port, Assignor and Assignee agree that Port's Sale Participation will be paid in an amount determined pursuant to and in accordance with Section 15.6 of the Amended and Restated Lease as estimated in the attached Closing Statement Worksheet (*Schedule 1*) which shall be prepared in accordance with generally accepted accounting principles consistently applied together with the applicable supporting documents set forth on *Schedule 2* attached hereto. On the day prior to the closing, Assignor shall provide an updated Closing Statement Worksheet to show the final calculated amount of Port's Sale Participation with the payment to Port. Within sixty (60) days after the sale closing date, Assignor shall submit to Port a final Closing Statement Worksheet and applicable supporting documents. Any overpayments by Assignor indicated by the final Closing Statement Worksheet shall be applied to any amounts owed by Assignee to Port. If there has been an underpayment of Port's Sale Participation, Assignor's final Closing Statement Worksheet shall be accompanied by payment to Port of any amounts owing.

Each Closing Statement Worksheet shall be prepared in accordance with generally accepted accounting principles consistently applied shall be certified by Assignor's Chief financial Officer under penalty of perjury.

(b) Additional Payment. Assignor will pay the Port an amount equal to \$51,000 due to Assignor's failure to complete the tenant improvements required by the Original Lease.

(c) Review Fee. Assignor shall reimburse Port for all costs, including without limitation attorneys' fees, which are incurred by Port in connection with the review, investigation, processing, documentation and/or consent to the Assignment Agreement ("Review Fees"). Accordingly, as a condition to Port's consent to the Assignment Agreement, prior to the Effective Date, Assignor shall pay to Port, an amount equaling [\$_____] to reimburse Port for its Review Fees.

4. No Release or Waiver.

Neither the Assignment Agreement nor this Consent shall: (a) release or discharge the Assignor from any liability, whether past, present or future, under the Lease (including but not limited to the payment of Rent and any indemnification, hold harmless or exculpation obligations); or (b) be construed to waive any breach by Assignor of the Lease, or any of Port's rights as the landlord thereunder, or to enlarge or increase Port's obligations thereunder. Assignor and Assignee shall be and continue to be liable for the payment of all bills rendered by Port, if any, for charges incurred by the Assignee for services and materials supplied to the Premises. Assignor acknowledges that Port need not give any notice to Assignor before amending or terminating the Lease or entering into any new lease for the Premises.

5. No Further Consent.

Neither the Assignment Agreement nor this Consent shall: (a) operate as a consent or approval by Port to any of the terms, covenants, conditions, provisions or agreements of the Assignment Agreement, and Port shall not be bound thereby, or (b) be construed as a consent by Port to any further assignment by Assignor or Assignee of the Lease, it being clearly understood that this Consent shall not in any way be construed to relieve Assignor or Assignee of the obligation to obtain Port's prior written consent to any further assignment. In the event of any conflict between the terms of this Consent and the terms contained in the Assignment Agreement, the terms of this Consent shall prevail.

6. Representation and Warranty by Assignor.

Assignor hereby represents and warrants that except as disclosed in the attached Estoppel Certificate, (i) to the best of Assignor's knowledge, Assignor is not in default or in breach of the Lease, nor has Assignor committed an act or failed; and (ii) Assignor is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing. The representations in this Section and in the Tenant Estoppel Certificate provided by Assignor attached hereto as **Exhibit B** are material and Port would not have given its consent absent such representations.

7. No Representation or Warranty by Port.

Nothing contained herein shall operate as a representation or warranty by Port of any nature whatsoever.

8. Indemnity and Exculpation.

Notwithstanding any provision to the contrary in the Assignment Agreement, Assignee agrees and acknowledges to be bound by any and all indemnification, exculpation and survival provisions of the Lease on and after the Transfer Date and without limiting the generality of the foregoing, Assignee acknowledges that it has read and agrees to be bound by the Indemnity and Exculpation provisions in Section 19 of the Restated Lease. Assignor and Assignee each covenant and agree that Port and City shall not be responsible for or liable for, and, to the fullest extent allowed by law, each waive all rights against City, Port and their agents and release City, Port and their agents from any and all losses or liabilities relating to the Transfer, this Consent or any disputes that may exist between Assignor and Assignee relating to the Lease.

Assignor and Assignee understand and expressly accept and assume the risk that any facts concerning the Claims released in this Consent might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Consent shall remain effective. Therefore, with respect to the Claims released in this Consent, Assignor and Assignee waive any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Assignor and Assignee specifically acknowledge and confirm the validity of the release made above and the fact that Assignor and Assignee were represented by counsel who explained the consequences of the release at the time this Consent was made.

9. Waiver of Relocation.

To the extent allowed by applicable Law, Assignor and Assignee hereby waive any and all rights, benefits or privileges of the California Relocation Assistance Law, California

Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

Notwithstanding any provision to the contrary in the Assignment Agreement, Assignee, shall, at Assignee's expense, with respect to the Premises, secure and keep in force during the term of the Lease such insurance as required of tenant under the Lease. Without limiting the generality of the immediately preceding sentence, such liability policy or policies of insurance shall name as additional insureds by written endorsement "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES**", shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability. A certificate evidencing such insurance shall be delivered to Port promptly after the date hereof. Assignee additionally acknowledges Port's absolute right to demand increased coverage to amounts consistent with the type of Assignee's business activities on the Premises.

10. Notices.

As of the Effective Date of this Consent, Assignor's and Assignee's addresses for delivery of notices are:

Assignor:

Assignee:

11. Miscellaneous.

(a) This Consent may be executed in counterparts.

(b) This Consent shall be governed by and construed in accordance with the laws of the State of California. In the event of a conflict between the terms and provisions of this Consent and the Assignment Agreement, the Consent shall control. Terms not defined in this Consent shall have the same meanings as in the Amended and Restated Lease unless otherwise specified.

(c) The terms and provisions of this Consent shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) If any one or more provisions in this Consent shall be invalid, illegal or unenforceable for any reason, the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(e) This Consent may not be modified or amended except by a writing executed by all parties to the Consent.

(f) Port and Assignee hereby mutually waive any claim against the other and its agents for any loss or damage to any of their property located on or about the Premises, the Building and the Project that is caused by or results from perils covered by property insurance carried by the respective parties, to the extent of the proceeds of such insurance actually received with respect to such loss or damage, whether due to the negligence of the other party or its agent(s). Each party shall immediately notify its insurer, in writing, of these mutual waivers and

have their insurance policies endorsed to prevent the invalidation of the insurance coverage because of these waivers.

12. EFFECTIVE DATE.

(a) The Effective Date of this Consent is the date on which the Port fully executes and delivers this Consent.

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The execution of this Consent by Assignor and Assignee shall evidence Assignor's and Assignee's joint and several confirmation of the foregoing conditions, and of their agreement to be bound thereby and shall constitute Assignee's acknowledgement that it has received a copy of the Lease.

Landlord: CITY AND COUNTY OF SAN FRANCISCO
operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date: _____

Assignor: JAVA HOUSE, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Assignee: FRANKIE'S JAVA HOUSE, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

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

By: _____
Deputy City Attorney

Prepared By: _____, Commercial Property Manager _____

EXHIBIT A

ASSIGNMENT AGREEMENT

[ATTACHMENT ON FOLLOWING PAGE]

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EXHIBIT B

JAVA HOUSE, LLC ESTOPPEL CERTIFICATE

The undersigned, Java House, LLC, is the tenant of a portion of the real property commonly known as Java House Café, Pier 40½, located in San Francisco, California (the "Property"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION** ("Port") [and to _____ ("Developer/Lender")] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of October 7, 2007, between the undersigned and Port, covering approximately 1,490 square feet of the Property (the "Premises").
2. That the Lease has not been modified, assigned, supplemented or amended except by:
3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.
4. That the commencement date under the Lease was September 1, 2008, the expiration date of said Lease is August 31, 2023.
5. That the present minimum monthly Basic Rent which the undersigned is paying under the Lease is \$3,314.39.
6. The security deposit held by Port under the terms of the Lease is \$6,643.00 and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.
10. That, except for Tenant's failure to complete the improvements to the Premises required under the Lease, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

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

Dated: _____, 20____.

[Name of Tenant]

By:

Name:

Title:

SCHEDULE 1

CLOSING STATEMENT WORKSHEET

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SCHEDULE 2

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EXHIBIT D

WORK LETTER

This Work Letter sets forth Tenant's obligation to construct the Initial Tenant Improvements and shall be deemed part of the Lease. The "Initial Tenant Improvements" are described in the Basic Lease Information and associated Port Building Permits and any amendments thereto.

1. General Terms

1.1. Definitions. Initially capitalized terms used in this Work Letter have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Work Letter shall have the same meanings as in the Lease.

1.2. Relationship between Work Letter and the Lease. This Work Letter governs Tenant's obligations to construct the Initial Tenant Improvements or, in the event Tenant fails to complete such improvements by the Initial Tenant Improvements Completion Date, as defined below, to such later date Port issues a Certificate of Completion for the Initial Tenant Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Tenant Improvements, Tenant's obligations to obtain final approvals for the Initial Tenant Improvements, and the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiry of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

1.3. Term. This Work Letter shall commence and become effective as of the Lease Commencement Date and shall expire on the Completion Date as defined below..

1.4. Lease Provisions. The provisions of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

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

2. Construction Of The Initial Tenant Improvements

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to Complete the construction of the Initial Tenant Improvements. Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease including without limitation Section 16 thereof. All such requirements are sometimes referred to collectively as the "Project Requirements."

(b) Scope of Development; Schedule of Performance. Tenant shall use commercially reasonable efforts to construct or cause to be constructed the Initial Tenant Improvements on the Premises within the times and in the manner set forth in this Work Letter and the scope of development comprised of the Schematic Drawings, the Schedule of Performance, the preliminary plans and any narrative description (collectively, the "**Scope of Development**") attached hereto as *Attachment 1*. The Scope of Development shall clearly identify which components of the Initial Tenant Improvements are Core and Shell Work. All construction with respect to the Initial Tenant Improvements shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant, while performing any construction with respect to the Initial Tenant Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining tenants, properties and improvements, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(c) Costs; Private Development. Tenant shall bear all of the cost of construction of all Initial Tenant Improvements. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for construction of the Initial Tenant Improvements. Such preparation of the Premises shall include, among other things, asbestos and lead abatement investigation required for development or operation of the Initial Tenant Improvements, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

2.2. Utilities. Tenant, at its sole expense, shall arrange for the provision and construction of all on-Premises utilities necessary to use the Premises for the Permitted Use. Tenant and Port shall coordinate, if necessary, with respect to installation of any off-Premises utility infrastructure and design of the Initial Tenant Improvements, including providing advance notice of trenching requirements, and coordinate any modification of utilities to any adjacent Port tenants or uses.

2.3. Submittals after Completion. Tenant shall furnish Port both design/permit drawings in their finalized form and "**As-Built**" Drawings, specifications and surveys with respect to the Premises (core and shell, and tenant improvements) within sixty (60) days after Completion of the Initial Tenant Improvements. If Tenant fails to provide such surveys and as-built plans and specifications to Port within such period of time, Port after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of final surveys and as-built plans and specifications, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

2.4. Insurance. At all times during the construction of the Initial Tenant Improvements, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "**any auto**", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) workers' compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One

Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice. In addition, Tenant shall carry "**Builder's All Risk**" insurance covering the construction of the Initial Tenant Improvements as set forth in the Lease. The liability insurance shall be written on an "**occurrence**" basis and shall name Port as additional insureds (by endorsement reasonably acceptable to Port). All of the insurance required to be carried by Tenant or Tenant's Agents hereunder shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Port, shall provide that Port shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage, and shall be placed with companies which are rated A-VIII or better by Best's Insurance Guide and licensed to business in the State of California. All deductibles and self-insured retentions under Tenant's policies are subject to Port's reasonable approval, and all insurance, except workers' compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Tenant's compliance with the provisions of this Section 2.4 shall in no way limit Tenant's liability under any of the other provisions of this Work Letter or the Lease.

2.5. Performance Bond. At least five (5) business days prior the start of construction, Tenant shall provide Port, at Tenant's sole cost and expense, (i) a corporate surety payment bond and a performance bond substantially in the form attached hereto as *Attachment 2* obtained by each of Tenant's contractors performing work on the Initial Tenant Improvements or, (ii) a financial guaranty, in a form approved by Port in its sole discretion, from a third party with liquid assets in an amount of no less than One Hundred Ten (110%) of the cost of the Initial Tenant Improvements. Each bond shall be in an amount equal to one hundred percent (100%) of the estimated costs of such work on the Initial Tenant Improvements. Each performance bond shall guarantee the contractor's faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor's payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each corporate surety bond shall obligate the surety to Tenant and the City and County of San Francisco as co-obligees.

2.6. Compliance with Laws. At its sole cost and expense, Tenant shall comply (taking into account any variances or other deviations properly approved) with: (i) all Laws; (ii) all Regulatory Approvals which place requirements on the Initial Tenant Improvements; (iii) all requirements of all policies of insurance which may be applicable to the Premises as to the Initial Tenant Improvements or Tenant's Personal Property; and (iv) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of Tenant by the preceding sentence shall include the obligation to make, at Tenant's sole cost and expense, all additions to, modifications of, and installations on the Premises which may be required by any Laws regulating the Premises or any insurance policies covering the Premises as to the Initial Tenant Improvements or Tenant's Personal Property. Tenant shall, promptly upon request, provide Port with reasonable evidence of compliance with Tenant's obligations under this Section.

2.7. Port and Other Governmental Permits. Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the Initial Tenant Improvements and shall make application for such permits directly to the applicable Regulatory Agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with Section 10.2 of the Lease.

2.8. Port Rights of Access. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent

reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the work being performed in constructing the Initial Tenant Improvements upon reasonable prior written notice to Tenant during regular business hours; provided, however, Port shall take such reasonable action necessary to minimize any interference with Tenant's construction activities. Port will provide Tenant promptly upon request with a copy of any written reports prepared by Port or its Agents with respect to the Initial Tenant Improvements under any such inspection, subject to withholding documents otherwise privileged or confidential. Port disclaims any warranties, representations and statements made in any such reports, will have no liability or responsibility with respect to any such warranties, representations and statements, and will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Initial Tenant Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

2.9. Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Initial Tenant Improvements, and shall post the signs on the Premises during the period of construction. The size, design, test and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably.

3. Preparation And Approval Of Plans

3.1. The Construction Documents.

(a) Definition of Construction Documents. The Construction Documents shall be as follows:

(i) "Schematic Drawings" for the Initial Tenant Improvements which shall generally include, without limitation, the following:

(1) Perspective drawings sufficient to illustrate the Initial Tenant Improvements.

(2) A site plan at appropriate scale showing relationships of the Initial Tenant Improvements with their respective uses, designating public access areas, open spaces, walkways, buildings, loading areas, streets, parking, and adjacent uses. Adjacent existing and proposed streets, piers, arcades and structures should also be shown.

(3) Building plans, floor plans and elevations sufficient to describe the development proposal, the general architectural character, and the location and size of uses.

(4) Building sections showing height relationships of those areas noted above.

(ii) "Preliminary Construction Documents" in sufficient detail and completeness to show that the Initial Tenant Improvements and the construction thereof shall comply with the Project Requirements, and which shall generally include, without limitation:

(1) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

- (5) Preliminary interior improvement plans.
 - (6) Plans for proposed public access areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.
 - (7) Outline specifications for materials, finishes and methods of construction.
 - (8) Interior and Exterior Signage Plans.
 - (9) Exterior lighting plans.
 - (10) Material and color samples.
 - (11) Roof plans showing all mechanical and other equipment.
- (iii) "Final Construction Documents" which shall include all plans and specifications required under applicable codes to be submitted with an application for a Premises Permit.

(b) Exclusion. As used in this Work Letter "Construction Documents" do not mean any contracts between Tenant and any contractor, subcontractor, architect, engineer or consultant.

(c) In preparing the Construction Documents, Tenant shall use good faith efforts to include energy conservation and other green building improvement measures including but not limited to solar panels, energy efficient light fixtures; Energy Star appliances; recycling of demolition debris and use of recycled building materials; composting services for customers including in bathrooms (for paper towels).

3.2. Scope of Tenant Submissions of Construction Documents. The following provisions apply to all stages of Tenant's submission of Construction Documents. Each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. The elements of the Preliminary Construction Documents requiring Port's approval shall be in substantial conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by Port or required as a condition of Regulatory Approvals as approved by Port. Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Initial Tenant Improvements and the construction of the Initial Tenant Improvements will be in compliance with the Project Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The elements of the Final Construction Documents requiring Port approval shall incorporate conditions, modifications and changes required by Port for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Initial Tenant Improvements to be constructed and completed in accordance with this Work Letter.

3.3. Construction Document Review Procedures.

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

(b) Timing of Port Disapproval/ Conditional Approval and Tenant Resubmission. If Port disapproves of the Construction Documents in whole or in part, Port in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a time shall be stated for satisfying the conditions. Tenant shall make a resubmittal as expeditiously as possible. Tenant may continue making resubmissions until the approval of the submissions or the time specified in any conditional approval.

3.4. *Changes in Construction Documents.*

(a) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any Port-approved Construction Documents without Port's express written approval in its reasonable discretion as provided in Section 3.4(b) below. Prior to making any changes that Tenant considers to be non-material to any Port-approved Construction Documents, including, without limitation, substituting materials which are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant shall notify Port in writing. If Port in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Port's approval under Section 3.4(b). Port's determination of whether such changes are material will be conclusive. Without otherwise limiting the requirements of this Section 3.4(a), any changes that cost Five Thousand Dollars (\$5,000.00) or less in the aggregate and that would not otherwise affect the structural elements of the Initial Tenant Improvements shall be presumed to be non-material changes.

(b) Response. Tenant shall request in writing Port's approval in connection with all material changes to the Construction Documents. Port shall respond to Tenant in writing within thirty (30) days after receipt of Tenant's request. If Port fails to respond within five (5) business days after Tenant's second written request made to Port after the thirty (30) day period, such changes will be deemed disapproved.

3.5. *Progress Meetings/Consultation.* During the preparation of Construction Documents, Port staff and Tenant agree to hold regular progress meetings, as appropriate considering Tenant's Construction Document progress, to coordinate the preparation of, submission to, and review of Construction Documents by Port. Port staff and Tenant (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

4. No Force Majeure

4.1. *Completion of Construction.* Tenant shall use its best efforts to commence, prosecute and Complete the Initial Tenant Improvements by the dates set forth in the Schedule of Performance. During construction of the Initial Tenant Improvements, Tenant shall submit written progress reports to City, in form and detail as may be required reasonably by Port, but at least on a monthly basis.

4.2. *No Force Majeure.* Tenant's obligation to Complete construction of the Initial Tenant Improvements as set forth in Section 4.1 above shall be final and absolute and shall not be subject to Force Majeure, Port delays, Regulatory Approval delays or any other delays.

4.3. *Port's Remedy for Tenant's Failure to Timely Complete Construction.* In the event Tenant fails to complete the Initial Tenant Improvements in a manner sufficient to cause Port to determine the Initial Tenant Improvements to be Completed by the Initial Tenant Improvements Completion Date, Tenant shall pay to Port an amount equaling One Hundred Dollars (\$100.00) per day commencing on the Initial Tenant Improvements Completion Date and shall continue at such rate until Completion in addition to the Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Force Majeure, Port delays or other reasons.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES IN THE EVENT OF TENANT'S FAILURE TO COMPLETE CONSTRUCTION OF THE INITIAL TENANT IMPROVEMENTS BY THE INITIAL TENANT IMPROVEMENTS COMPLETION DATE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED UPON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF PORT'S DAMAGES IN SUCH EVENT.

TENANT _____

PORT _____

5. Completion

5.1. *Completion.*

(a) Issuance Process.

(i) Before the Completion Date, Tenant may not occupy the Premises except for construction purposes under this Work Letter or the Lease.

(ii) After the Completion Date, Tenant may request a determination of Completion for the Initial Tenant Improvements in writing. Port shall act on Tenant's request within sixty (60) days of receipt.

(iii) Port's determination that the Initial Tenant Improvements have been Completed does not relieve Tenant or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including Port) that may be required for the occupancy or operation of the Initial Tenant Improvements.

(b) *Condition to Approval.* If there remain uncompleted (i) finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list", (ii) landscaping, (iii) exterior finishes (to the extent Tenant can demonstrate to Port's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of Interior Improvements), or (iv) any other item that Port approves in writing in its sole and absolute discretion (collectively "**Deferred Items**"), Port may reasonably condition approval upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to Port) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by Port. The obligations set forth in this subsection shall survive a termination of the Lease.

(c) *Definition of Completed.* For purposes of this Work, "**Completed**" means completion by Tenant of all aspects of the Initial Tenant Improvements as the case may be in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Project or provision of security satisfactory to Port for Deferred Items under Section 5.1(b), and Port's sign off on the Job Card or other customary documentation of completion by the Port's Chief Harbor Engineer or his or her designee. The "**Completion Date**" shall mean the date of Port's sign off on the Job Card or the date of the Port's Chief Harbor Engineer's or designee's written approval of completion of the Initial Tenant Improvements.

6. Termination Of Lease

6.1. *Plans and Data.* If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Tenant Improvements, Tenant shall assign and deliver to Port (without cost to Port) any and all copies of reports in its possession regarding the Premises and all Construction Documents in the possession of or prepared for Tenant, for the contracting of the Initial Tenant Improvements within thirty (30) days after written demand from Port. Port

may use said reports and Construction Documents for any purpose whatsoever relating to the Premises; provided, however, Port shall release Tenant and Tenant's contractor, architect, engineer, agents, employees and other consultants from any Losses arising out of Port's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Port to complete the Initial Tenant Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Tenant Improvements an express agreement by the Person performing such services that Port may use such reports or Construction Documents as provided in this Section 6.1 without compensation or payment from Port in the event such reports or Construction Documents are used.

Documents are delivered to Port under the provisions of this Section 6.1, provided that Port agrees (i) not to remove the name of the preparer of such reports or Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

6.2. Return of Premises. If the Lease terminates pursuant to this Section 6, Tenant shall, at its sole expense and as promptly as practicable, return the Premises to Port in a safe condition, and unless otherwise requested by Port, shall promptly remove all Improvements, loose building materials and debris present at the Premises resulting from Tenant's construction activities. In the event that Tenant is required to return the Premises as aforesaid, Tenant shall obtain those permits customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Port shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Port will not be required to expend any money or undertake any obligations in connection therewith. The provisions of this Section shall survive any termination of the Lease.

ATTACHMENTS

ATTACHMENT 1	SCOPE OF DEVELOPMENT
ATTACHMENT 2	FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND

ATTACHMENT 1

SCOPE OF DEVELOPMENT

Category		Amount	Notes
Construction			
ADA Bathrooms		\$75,000	2 fixtures, \$37,500
Service Counters, Bar		\$35,000	New Bar in back room
ADA entrance		\$15,000	Ramp at front entrance
New Patio		\$75,000	Concrete patio infill, new railings and gate
New Kitchen and bar equipment		\$175,000	Kitchen and bar equipment - walk-in refrigerator, tap systems, hood and ANSUL system
Windows and Paint		\$35,000	5 windows x \$2,000 each / paint interior and exterior
Plumbing		\$75,000	new sewer line connection - NOT TO STREET
Electrical		\$75,000	kitchen, lighting etc.
Mechanical - Kitchen Hood		\$25,000	Connect to hood - Heating
Permits		\$16,800	3% of cost
General Conditions		\$30,000	4 months x \$7,500 / month
Fee and Insurance	6%	\$37,908	6% of costs
Contingency	10%	\$66,971	10% of Cost
TOTAL		\$736,679	

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ATTACHMENT 2

**FORM OF PERFORMANCE BOND &
PAYMENT (LABOR AND MATERIAL) BOND**

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the Port of San Francisco on behalf of City and County of San Francisco, State of California, has awarded to:

hereinafter designated as the "Principal", a Lease by Port Commission Resolution No. xx-xx, adopted xxx, xx, xxxx for:

Lease No. xxxxx (the "Contract")

WHEREAS, said Principal is required under the terms of said Contract to furnish a Bond for the faithful performance of certain improvements under said Contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done;

NOW, THEREFORE, we the Principal and

as Surety, are firmly bound unto the City and County of San Francisco in the penal sum of

(PERFORMANCE BOND)

and

(PAYMENT BOND)

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for the penal sum for a performance bond and an equal and separate penal sum for a separate payment bond. The conditions of this obligation is such that if the said principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

(PERFORMANCE BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors, administrators, successors or assigns, or its subcontractors, shall fail to pay (i) any of the persons named in California Civil Code Section 9100 for any materials, provisions, or other supplies used in, upon, for or about the performance of work under the Contract, or for any work or labor performed under the Contract; or (ii) amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the Contract; or (iii) for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work or labor, that Surety will pay for the same in an amount not exceeding the sum specified in this Bond. In the event that suit is brought upon this Payment Bond, the parties not prevailing in such suit shall pay reasonable attorney's fees and costs incurred by the prevailing parties in such suit.

This Payment Bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought against this Bond.

Should the condition of this Payment Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety, for value received, hereby expressly agrees that no change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the work to be performed thereunder, or to the Specifications accompanying the same, and no inadvertent overpayment of progress payments, shall in any way affect its obligations on these Bonds; and it does hereby waive notice of any such change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the Work to be performed thereunder, or to the Specifications, or of any inadvertent overpayment of progress payments.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this ___ day of _____, 20___, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:
Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Principal

By: _____

Surety

By: _____

END OF DOCUMENT

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EXHIBIT E

FORM OF PERSONAL GUARANTY

THIS PERSONAL GUARANTY (“**Guaranty**” or “**Agreement**”) is made as of [], 2019 by Francis Michael Heffernan II and Kristen Johnson DelBiaggio-Heffernan with an address of [Insert Address] (“**Guarantor**”), in favor of the City and County of San Francisco, acting by and through the San Francisco Port Commission (“**Port**”).

RECITALS:

A. Port and Java House, LLC entered into Lease No. L-14100, dated October 19, 2007 for reference purposes (the “**Original Lease**”). Java House LLC decided to sell substantially all of its assets and assign all of Java’s House LLC’s interest in the Original Lease to Frankie’s Java’s House, LLC (“**Tenant**”) (the “**2019 Sale**”). The 2019 Sale was subject to Port’s consent and Port provided such consent in exchange for, among other things, Tenant’s Completion of not less than \$737,000 of Initial Tenant Improvements to be guaranteed by a personal guaranty by the principal owner of Tenant equal to one hundred percent (100%) of the construction costs of the improvements. Port and Tenant entered into an Amended and Restated Lease effective [date] (“**Lease**”).

B. The “**Initial Tenant Improvements**” are described in the Basic Lease Information and in the Work Letter, *Exhibit D* (Work Letter) of the Lease and detailed in Port Building Permit number [].

C. Port requires a financial guaranty for the Initial Tenant Improvements. Tenant has requested and Port agrees to allow Tenant to provide this Guaranty instead of a payment and performance bond or other security instrument.

D. Mr. Heffernan is the Chief Executive Officer of Tenant and Ms. DelBiaggio-Heffernan is [insert relationship] and acknowledge that they have derived or expect to derive material financial advantages and other benefits commensurate in value to the obligations and liabilities being undertaken by them under the terms of this Guaranty.

E. Guarantor executes this Agreement guaranteeing the performance by Tenant of its obligations to complete the Initial Tenant Improvements as required in the Lease, including without limitation in the Basic Lease Information, Section 12.2, and *Exhibit D* (Work Letter) and all other responsibilities and claims, losses or liabilities associated with Tenant’s performance of such obligations or non-performance whenever discovered (collectively, the “**Obligations**”).

F. The current estimated cost of the Initial Tenant Improvements is seven hundred thirty seven thousand dollars (\$737,000). This Guaranty covers the entire cost of the Obligations, regardless of whether such costs exceed the current estimate.

NOW, THEREFORE, in consideration to Port for amending the Lease, Guarantor covenants and agrees as follows:

- 1.** Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
- 2.** Defined Terms. All defined terms used herein and not defined herein, have the meanings ascribed to them in the Lease. If there is more than one Guarantor, then all words used herein in the singular shall be deemed to have been used in the plural when the context and construction so require; and when this Guaranty is executed by more than one Guarantor, the word “Guarantor” respectively shall mean all and any one or more of them.
- 3.** Guaranty. Guarantor and each of them, jointly and severally irrevocably and unconditionally guarantees to Port the full, faithful and timely performance of the Obligations by

Tenant. The provisions of the Lease which provide for the Obligations are hereby incorporated into this Guaranty, including, without limitation, the Basic Lease Information, Section 12.2, and *Exhibit D* (Work Letter) of the Lease.

4. **Obligations of Guarantor Upon Tenant Default.** In the event that an Event of Default by Tenant under the Lease occurs with respect to the Obligations guaranteed hereby, Guarantor, and each of them, at Guarantor's expense, shall diligently proceed to cure such default and procure complete performance of all of the Obligations on same time schedule as provided for Tenant in the Lease. Port shall accept such performance by or at the insistence of Guarantor as if the same had been made by Tenant.

5. **Remedies.** If Guarantor fails to perform as herein provided or fails to faithfully perform its obligations hereunder (a "Default"), Port has the following remedies:

(a) at its option and without any obligation so to do, proceed to perform on behalf of Guarantor any and all of the Obligations to the extent Port deems necessary in its sole discretion, and Guarantor shall pay to Port within ten (10) days after written demand all sums expended by Port in such performance on behalf of Guarantor and all costs associated with the failure of the Obligations to be fully satisfied by Tenant and Guarantor; and

(b) from time to time and without requiring performance on the part of Tenant and without being required to exhaust any or all security held by Port to require performance by Tenant or Guarantor of any obligation on the part of Guarantor to be performed pursuant to the terms hereof, file an action at law or in equity or both to secure performance and further to collect in any such action compensation for all loss, damage and injury and expense sustained or incurred by Port as a consequence of such breach, as well as to collect any reasonable expenses incurred in such action.

(c) immediately require a letter of credit or a payment and performance bond from Tenant or Guarantor in an amount of up to 150% of the outstanding costs for the Initial Tenant Improvements.

6. **Acknowledgments by Guarantor.** Guarantor acknowledges, confirms, and agrees that (i) it has received fair and adequate consideration for its execution and delivery of this Guaranty, (ii) it will derive material financial benefit from Port's acceptance of this Guaranty, (iii) Port's agreement to consent to the 2019 Sale and allow the Initial Tenant Improvements is in consideration of, and in material reliance upon, Guarantor's execution and delivery of this Guaranty, and (iv) there are no conditions to the full effectiveness of this Guaranty.

7. **No Waiver.** Guarantor, and each of them, authorizes Port, without notice or demand and without affecting Guarantor's obligations or liabilities under this Guaranty, to: (a) amend, compromise, release or otherwise alter any term, covenant or condition of the Lease; (b) assign or sublet the Lease; (c) exercise, not exercise, impair, modify, limit, destroy or suspend any right or remedy under the Lease and Guarantor guarantees and promises to perform the Obligations as so amended; (d) take and hold security for any payment provided for in the Lease or the performance of any covenant, term, or condition of the Lease or exchange, waive, or release any security; and (e) apply such security as Port may determine. Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guaranty shall continue until all of the Obligations have been fully and completely performed by Tenant or Guarantor, and Guarantor shall not be released of any obligation or liability under this Guaranty as long as there is any claim against Tenant arising out of the Lease regarding the Obligations that have not been settled or discharge in full.

8. **Covenants, Representations and Warranties of Guarantor.**

(a) Guarantor shall advise Port promptly in writing of (i) all actions, suits or proceedings against or involving Guarantor, pending or to his or her knowledge threatened in writing, at law or in equity, before any federal, state, municipal or other court or governmental

department, commission, board, bureau, agency or instrumentality, domestic or foreign, involving the possibility of judgments, penalties or liabilities against Guarantor, is reasonably likely to, in the aggregate exceed Five Hundred Thousand Dollars (\$500,000) and which are not reasonably anticipated to be covered by insurance or (ii) adverse changes in the value of their community and separate assets, resulting in Guarantor's failure to meet the net worth requirements in Section 10;

(b) Guarantor, and each of them, represents, covenants and warrants to Port as follows:

(i) Guarantor is a married couple whose community and separate assets shall be available to satisfy their obligations under this Guaranty;

(ii) The execution, delivery and performance by Guarantor of this Agreement will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets; and

(iii) This Agreement, when executed and delivered to Port, will constitute a legal, valid and binding obligation enforceable against Guarantor in accordance with its terms to the fullest extent allowed by law;

(iv) All financial statements and data that have been given or shown to Port or its representatives or that will be given or shown to Port by Guarantor (A) are complete and correct in all material respects as of the date given; and (B) accurately present the financial condition of Guarantor on each date as of which, and the results of Guarantor's operations for the periods for which, the same have been furnished.

(c) If this Guaranty is signed or proposed to be signed by more than one person, nevertheless it shall be effective and shall be deemed to be fully delivered as to each of the signers immediately upon his or her signing the Guaranty. In the event it is proposed that more than one person shall sign this Guaranty, the failure of such additional person or persons to sign the Guaranty shall not affect the liability of any person or persons whose signatures are fixed or subscribed to this Guaranty but such liability shall be absolute, fixed and unconditional upon the signing of this Guaranty, it being the intention of the undersigned person or persons that concurrently with the signing of this Guaranty with such person or respective persons, this Guaranty shall instantly be absolutely and unconditionally in full force and effect as to all of its terms without any oral or other reservations, modifications or collateral agreement or understanding whatsoever.

9. Guaranty Independent; Waivers.

(a) Guarantor agrees that the obligations hereunder are independent of, may exceed and are in addition to the undertakings of Tenant pursuant to the Lease, any deed of trust or security agreement given to secure the same, any other guaranties given in connection with the Lease. A separate action may, at Port's option, be brought and prosecuted against Guarantor, or any of them whether or not any action is first or subsequently brought against Tenant, or whether or not Tenant is joined in any action, and Guarantor may be joined in any action or proceeding commenced by Port against Tenant arising out of, in connection with, or based upon the Lease.

(b) Guarantor waives any right to (i) require Port to proceed against Tenant or any other person or entity or pursue any other remedy in Port's power, (ii) complain of delay in the enforcement of Port's rights under the Lease; and (iii) require Port to proceed against or exhaust any security held from Tenant or Guarantor. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause

whatsoever of the liability of Tenant. If this Guaranty is signed by more than one Guarantor, a release of any one or more of Guarantor or any limitation of this Guaranty in favor of or for the benefit of one or more Guarantor shall not in any way be deemed a release of or for the benefits of any other Guarantor.

(c) Guarantor shall not, without the prior written consent of Port, commence, or join with any other person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Tenant, or by any defense that Tenant may have by reason of any order, decree, or decision or any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor, and shall assign to Port all rights of Guarantor under these claims. Port shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action that a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Port the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor assigns to Port all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations under this Guaranty shall not be satisfied except to the extent that Port receives cash by reason of any such payment or distribution. If Port receives anything other than cash, the same shall be held as collateral for amounts due under this Guaranty.

(d) Guarantor, and each of them, is acting as a primary obligor and not as a surety. Without limiting the generality of the waivers contained in this Guaranty, Guarantor waives, to the fullest extent permitted by law, all rights, defenses, and other benefits under California Civil Code Sections 2787 through 2856, 2899, and 3433, and any similar or analogous statutes of California or any other jurisdiction and judicial decisions applying these statutes and any defense based on any statutory or other limitation of the amount of any deficiency judgment available to Port after foreclosure or other proceedings to realize upon any such collateral security or guaranty, shall not relieve Guarantor of any liability, and shall not impair or affect the rights and remedies of Port against Guarantor. Guarantor acknowledges that Port is relying on all of the waivers contained throughout this Guaranty in accepting this Guaranty.

10. Financial covenants. Guarantor covenants and agrees that during the term of this Agreement:

(a) **Liquidity.** Guarantor shall maintain at all times, in the aggregate, Liquid Assets (as defined below) that are totally unencumbered by liens or pledges and as to which there are no restrictions upon the use thereof imposed by any agreement as to which Guarantor's property may be bound, with a market value of not less than one million one hundred five thousand five hundred dollars (\$1,105,500). As used herein "**Liquid Assets**" means the sum of the following unencumbered community and separate assets of Guarantor: (i) all cash, (ii) any demand deposits, (iii) marketable securities consisting of short-term (maturity of one year or less) obligations issued or guaranteed as to principal and interest by the United States of America, (iv) short-term certificates of deposit, with a maturity of one year or less, issued by any bank organized under the laws of the United States of America and having total assets in excess of one billion dollars (\$1,000,000,000), (v) other marketable securities traded on a naturally recognized exchange operating in the United States; (vi) mutual funds, or (vii) any other securities acceptable to Port as evidenced by Port's written approval.

(b) **Minimum Net Worth.** Guarantor shall at all times maintain an aggregate Minimum Net Worth of not less than two million two hundred eleven thousand dollars (\$2,211,000). As used herein, "Minimum Net Worth" means the sum of: (i) the market value of

Liquid Assets and marketable securities traded on a nationally recognized exchange operating in the United States, and (ii) estimates of fair market value made in good faith by Guarantor as to all other assets, less the sum of all liabilities, all as evidenced by Guarantor's most recent financial statements provided in accordance with the provisions of this Guaranty.

11. Disposition of Assets. Guarantor will not at any time enter into any transaction providing for the sale, transfer, encumbrance, pledge, mortgage or other disposition of any assets (or the future income therefrom), or otherwise dispose of any property (whether by assignment, gift or creation of a trust or otherwise), other than in the ordinary course of Guarantor's business. Guarantor shall advise Port promptly in writing of any transaction providing for the sale, transfer, encumbrance, pledge, mortgage or other disposition of any Liquid Assets (or the future income therefrom), or other disposition of property (whether by assignment, gift or creation of a trust or otherwise) affecting five hundred thousand Dollars (\$500,000) or more.

12. Financial Statements. At any time during the Lease Term (as defined in the Lease), Guarantor shall, upon ten (10) days prior written notice from Port allow Port to inspect their current financial statements and financial statements of the two (2) years prior to the current financial statement year. Guarantor also consents to the release to Port from time to time of credit reports issued by a nationally recognized credit reporting agency.

13. Successors and Assigns. This Guaranty shall be binding upon Guarantor and each of their estate, heirs, devisees, legatees, executors, administrators, personal and legal representatives, successors and assigns, and shall inure to the benefit of Port and Port's successors and assigns. Port may, without notice, assign this Guaranty in whole or in part in connection with an assignment of the Port's interests in the Lease.

14. No Release. Guarantor agrees that a sale, transfer or assignment by Tenant of all or any portion of its interest in the Lease, the Premises and/or the Improvements shall not cause a release or reduction of, or otherwise impair the obligations of Guarantor under this Agreement.

15. Interest, Attorneys' Fees and Costs.

(a) Any sum required to be paid by Guarantor to Port pursuant to the terms hereof shall bear annual interest at a rate of twelve percent (12%). If any party commences legal action to enforce the terms of the Lease as to the Obligations or of this Guaranty or in connection with any dispute arising out of or related to this Guaranty, the prevailing party shall be entitled to its attorneys' fees and costs, including costs incurred on appeal, in connection with the bankruptcy of any party, and in enforcing any judgment and interest. For the purposes of this provision, any attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

16. Rights Are cumulative. The liability of Guarantor, and each of them, and all rights, powers, and remedies of Port under this Guaranty and under any other agreement now or at any time hereafter in force between Port and Guarantor relating to the Lease shall be cumulative and not alternative, and such rights, powers, and remedies given to Port by law or in equity.

17. Notices. Any notice, request, demand, instruction, or other communication to be given to any party under this Guaranty shall be in writing and shall be delivered in the manner provided in the Lease for delivery of notices (and be deemed delivered in accordance with the time periods

set forth in the Lease) and addressed to the party to be notified at the address set forth in the Basic Lease Information in the Lease.

18. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City's Charter, and Port and Guarantor hereby irrevocably consent to the jurisdiction and proper venue of the State and the City and County of San Francisco. Further, Guarantor irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any right that it might have to a trial by jury in connection with any suit, action, or proceeding arising out of or relating to the Lease or this Guaranty, all to the fullest extent permissible under applicable law.

(b) Except as provided to the contrary herein, Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Agreement and of the existence, creation or incurring of all or any part of the obligations now existing or hereafter arising.

(c) Time is of the essence in the performance and enforcement of the terms and conditions of this Agreement.

(d) If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(e) Guarantor, and each of them assumes full responsibility for keeping fully informed of the financial condition of Tenant and of all other circumstances bearing upon the risk of nonperformance by Tenant of its Obligations under the Lease and agrees that Port shall have no duty to advise or report to Guarantor any information that Port receives about Tenant's financial condition or any condition or circumstances, whether or not material, bearing on Tenant's ability to perform the Obligations.

(f) Entire Agreement. This Guaranty embodies the entire agreement and understanding between the parties hereto relating to the guaranty of the Obligations. All prior or contemporaneous negotiations, agreements, and understandings, oral or written, are hereby revoked, cancelled, and rescinded, and are all merged herein and superseded hereby. The provisions of this Guaranty may be altered, amended, modified, or repealed, in whole or in part, only upon the written agreement of Port and Guarantor.

(g) This Guaranty and Guarantor's liability hereunder shall not be altered, limited, or otherwise affected by Port's failure to enforce, or delay in enforcing, any of its rights or remedies under the Lease or hereunder, and no such failure or delay shall be construed as a waiver of any such rights or remedies.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

GUARANTOR:

By: Francis Michael Heffernan II

_____ Date _____

By: Kristen Johnson DelBiaggio-Heffernan

_____ Date _____

EXHIBIT F

RESTAURANT RULES AND REGULATIONS

[Attachment on following page]

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EXHIBIT G
SUMMARY OF SECRETARY OF THE INTERIOR'S STANDARDS
FOR THE TREATMENT OF HISTORIC PROPERTIES

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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EXHIBIT H

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

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

Background

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

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

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

Port of San Francisco Review Process – Overview

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

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

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

Pier and Bulkhead Wharf Substructures

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

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

EXHIBIT I

TENANT ESTOPPEL CERTIFICATE

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

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "Premises").
2. That the Lease has not been modified, assigned, supplemented or amended except by:
3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.
4. That the commencement date under the Lease was _____, 20__, the expiration date of the Lease is _____, 20__.
5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by Port under the terms of the Lease is \$_____ and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.
10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

SCHEDULE 1

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

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SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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SCHEDULE 3

FEMA-National Flood Insurance Program Disclosure Notice

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

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

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA"). To prepare the FIRM for San Francisco, FEMA has performed detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as well as detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses form the basis for the Base Flood Elevations (BFEs) and SFHAs shown on the FIRM.

FEMA initiated preparation of a FIRM for the City in the mid-2000s, and issued a preliminary version of the FIRM in 2007, but did not finalize that map. Subsequently, FEMA completed region-wide analyses of flooding on San Francisco Bay and the Pacific Ocean coastline. FEMA used these studies to prepare another preliminary FIRM for San Francisco, which it issued in November 2015. The preliminary FIRM identified SFHAs along the City's shoreline in and along the San Francisco Bay consisting of "A zones" (coastal areas subject to inundation by tidal surge and waves less than three feet in height) and "V zones" (areas subject to the additional hazards that accompany waves more than three feet in height). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

Due to comments and an appeal submitted by the City, FEMA has not yet finalized the FIRM. Sometime during 2019, FEMA intends to issue a revised preliminary FIRM showing changes due to the appeal resolution, and give the City a period (most likely 30 days) in which to comment. Following resolution of any comments, FEMA would finalize the FIRM.

To finalize the FIRM, FEMA will issue a Letter of Final Determination (LFD) stating that the map will be published in final form six months from the date of the LFD (referred to as the "effective date" of the FIRM). During that six-month period, the City must amend the floodplain management ordinance to adopt the new FIRM. After the effective date, the FIRM will be used for all flood insurance and floodplain management purposes.

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

Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links:

<http://sfgsa.org/san-francisco-floodplain-management-program>

<https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>

<https://www.fema.gov/national-flood-insurance-program>

SCHEDULE 4

HAZARDOUS MATERIAL DISCLOSURE

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SCHEDULE 5

MOBILE CLEANING BEST MANAGEMENT PRACTICES

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Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

2019 SEP 05 PM 2:05
 BOARD OF SUPERVISORS
 CITY OF SAN FRANCISCO
 BY *JL*

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. []
- 9. Reactivate File No. []
- 10. Topic 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):

Haney

Subject:

Amendment of Port Lease for the Java House Restaurant at Pier 40 1/2

The text is listed:

Resolution approving the Amendment and Restatement of Lease between the San Francisco Port Commission and Java House, LLC, a California limited liability company, for the Java House Restaurant located at Pier 40 1/2 at the Embarcadero and Townsend Street, including a conditional tenant option to extend for ten (10) years.

Signature of Sponsoring Supervisor:

For Clerk's Use Only

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

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Frankie's Java House, LLC, a California limited liability company.	
<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>	
Michael Heffernan, President / CEO of tenant.	
Contractor address: Frankie's Java House, LLC. Pier 40 – The Embarcadero, San Francisco, California, 94105	
Date that contract was approved:	Amount of contract: Initial monthly Base Rent of \$4,000.00 per month.
Describe the nature of the contract that was approved: Amendment and Restatement of Port Lease No. L-14100 between Frankie's Java House, LLC and the Port of San Francisco.	
Comments: Amendment and Restatement of restaurant lease, which includes an option to extend the term for 10 years.	

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 Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, 1 Dr. Carlton B. Goodlett Pl., Room 244, 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