



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

LEASE NO. L-XXX

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

AND

**CHINA BASIN BALLPARK COMPANY, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

PIER 48

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

TABLE OF CONTENTS

	<u>Page</u>
1. DEMISE.....	1
2. DEFINITIONS.....	1
3. PREMISES; AS-IS CONDITION	10
3.1. Premises	10
3.2. Accessibility Inspection Disclosure	10
3.3. San Francisco Disability Access Disclosures	10
3.4. No Right to Encroach.....	11
3.5. Proximity of Development Project	12
3.6. No Light, Air or View Easement	12
3.7. Unique Nature of Premises	12
3.8. Seawall.....	12
3.9. As-Is Condition.....	12
3.10. Reserved Rights Regarding Seawall.....	13
3.11. Release and Waiver.....	13
3.12. Port's Rights Regarding Premises	14
3.13. Possible Realignment of Terry A. Francois Blvd.	14
4. TERM OF LEASE; TERMINATION BY PORT	14
4.1. Term.....	14
4.2. Port Early Termination Rights	14
4.3. Effect of Termination.....	15
4.4. Waiver of Relocation Benefits.....	16
5. RENT	16
5.1. Base Rent	16
5.2. Adjustment of Base Rent and Facility Fees.....	16
5.3. Variable Rent	16
5.4. Exclusions from Gross Revenues	16
5.5. Quarterly and Annual Statements	17
5.6. Books and Records	18
5.7. No Joint Venture	18

5.8.	Audit	19
5.9.	Late Charges	19
5.10.	Returned Checks	19
5.11.	Default Interest.....	20
5.12.	Additional Charges	20
5.13.	No Abatement or Setoff	20
5.14.	Survival.....	20
5.15.	Port Obligations	Err
	or! Bookmark not defined.	
6.	TAXES AND ASSESSMENTS	21
6.1.	Payment of Taxes.....	21
6.2.	Possessory Interest Tax.....	21
7.	DEPOSITS	21
7.1.	Security Deposit.....	21
7.2.	Environmental Assurances.....	22
7.3.	Letter of Credit.....	23
8.	USE OF THE PREMISES	24
8.1.	Permitted Use.....	24
8.2.	Prohibited Use.....	24
8.3.	Notice of Prohibited Use Charge	25
9.	COMPLIANCE WITH LAWS AND REGULATIONS	25
10.	PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.....	26
10.1.	Port Acting as Owner of Property.....	26
10.2.	Regulatory Approvals	26
10.3.	Compliance with City's Risk Manager's Requirements	27
11.	MAINTENANCE AND REPAIRS	27
11.1.	Tenant Maintenance and Repair Obligations.....	27
11.2.	Port's Right to Inspect	28
11.3.	Port's Right to Repair	28
11.4.	Acts of Nature	28
12.	UTILITIES AND SERVICES	29

12.1.	Utilities.....	29
12.2.	Services.....	30
12.3.	On-Site Renewable Energy.....	30
12.4.	Energy Consumption.....	30
13.	IMPROVEMENTS AND ALTERATIONS.....	30
13.1.	Port Consent Required.....	30
13.2.	Construction Requirements.....	31
13.3.	Improvements Part of Realty.....	32
13.4.	Removal of Improvements.....	32
13.5.	Removal of Non-Permitted Improvements.....	33
13.6.	All-Gender Toilet Facilities.....	33
13.7.	Signs.....	33
13.8.	Improvements on Roof.....	33
13.9.	Port's Alterations.....	34
14.	LIENS.....	34
15.	HAZARDOUS MATERIALS.....	34
15.1.	Requirements for Handling.....	34
15.2.	Tenant Responsibility.....	35
15.3.	Tenant's Environmental Condition Notification Requirements.....	35
15.4.	Requirement to Remediate.....	36
15.5.	Port's Right to Audit.....	37
15.6.	Notification of Asbestos.....	37
15.7.	Notification of Lead.....	38
15.8.	Failure to Comply.....	38
15.9.	Survival.....	38
15.10.	Storm Water Pollution Prevention.....	38
15.11.	Presence of Hazardous Materials.....	39
16.	INSURANCE.....	39
16.1.	Required Insurance Coverage.....	39
16.2.	Claims-Made Policies.....	41
16.3.	Annual Aggregate Limits.....	41
16.4.	Payment of Premiums.....	41
16.5.	Waiver of Subrogation Rights.....	41

16.6.	General Insurance Matters	41
17.	DAMAGE AND DESTRUCTION.....	42
17.1.	Damage and Destruction.....	42
17.2.	Waiver.....	43
18.	EMINENT DOMAIN	43
18.1.	General.....	43
18.2.	Partial Takings	43
18.3.	Temporary Takings.....	43
18.4.	Award; Waiver; Termination of Lease; Rent and Award.....	43
19.	INDEMNITY AND EXCULPATION	44
19.1.	General Indemnity	44
19.2.	Hazardous Materials Indemnity	44
19.3.	Scope of Indemnities.....	44
19.4.	Exculpation	45
19.5.	Effect of Waivers	45
20.	ASSIGNMENT AND SUBLETTING	46
20.1.	Transfer to Affiliate	46
20.2.	Transfer to Non-Affiliate	46
20.3.	Sublease	47
20.4.	Transfer Agreement Requirements.....	48
20.5.	Notice to Port	48
20.6.	Transfer Audit.....	48
20.7.	Acknowledgement	48
20.8.	Transfer Definitions	48
21.	DEFAULT BY TENANT.....	48
22.	PORT'S REMEDIES	50
22.1.	Tenant's Right to Possession Not Terminated	50
22.2.	Termination of Tenant's Right to Possession.....	51
22.3.	Appointment of Receiver.....	51
22.4.	Port's Right to Cure Tenant's Default	51
22.5.	Port's Options for Hazardous Materials Default.....	52
22.6.	No Accord and Satisfaction	52
22.7.	Waiver of Redemption.....	52

22.8.	Habitual Late Payer.....	52
22.9.	Remedies Not Exclusive.....	52
23.	LITIGATION EXPENSES; ATTORNEYS' FEES.....	52
23.1.	Litigation Expenses.....	52
23.2.	Appeals.....	53
23.3.	City Attorney.....	53
24.	PORT'S ENTRY ON PREMISES.....	53
24.1.	Entry for Inspection.....	53
24.2.	General Entry.....	53
24.3.	Emergency Entry.....	53
24.4.	No Liability.....	53
24.5.	Nondisturbance.....	54
25.	SURRENDER AND QUITCLAIM.....	54
25.1.	Surrender.....	54
25.2.	Quitclaim.....	54
25.3.	Abandoned Property.....	54
25.4.	Survival.....	55
26.	HOLDING OVER.....	55
26.1.	Terms of Holdover Tenancy.....	55
26.2.	With Consent.....	55
26.3.	Without Consent.....	55
26.4.	Renewal Letter of Credit.....	55
27.	MORTGAGE OF LEASEHOLD.....	55
27.1.	No Mortgage Except as Set Forth Herein.....	55
27.2.	Leasehold Liens.....	56
27.3.	Notice of Liens.....	56
27.4.	Port Statement.....	56
27.5.	Interest Covered by Mortgage.....	57
27.6.	Institutional Lender; Other Permitted Mortgagees.....	57
27.7.	Rights Subject to Lease.....	57
27.8.	Required Provisions of any Mortgage.....	57
27.9.	Notices to Mortgagee.....	57
27.10.	Mortgagee's Right to Cure.....	58

27.11.	Assignment by Mortgagee	60
27.12.	Modification of Lease	60
27.13.	Transfer of Mortgage	60
27.14.	Appointment of Receiver	61
27.15.	Subordination of Liens.....	61
27.16.	Conflicts.....	61
28.	MINERAL RESERVATION.....	61
29.	CITY AND PORT REQUIREMENTS	61
29.1.	Nondiscrimination.....	61
29.2.	Requiring Health Benefits for Covered Employees.....	62
29.3.	First Source Hiring.....	63
29.4.	Local Business Enterprises	64
29.5.	Indoor Air Quality.....	64
29.6.	Resource-Efficient Facilities and Green Building Requirements.....	64
29.7.	Prohibition of Tobacco Sales and Advertising	64
29.8.	Prohibition of Alcoholic Beverages Advertising.....	64
29.9.	Graffiti Removal	64
29.10.	Restrictions on the Use of Pesticides	65
29.11.	MacBride Principles Northern Ireland.....	65
29.12.	Tropical Hardwood and Virgin Redwood Ban	65
29.13.	Preservative-Treated Wood Containing Arsenic	65
29.14.	Notification of Limitations on Contributions	66
29.15.	Sunshine Ordinance	66
29.16.	Conflicts of Interest.....	66
29.17.	Drug-Free Workplace	66
29.18.	Prevailing Wages and Working Conditions.....	66
29.19.	Public Transit Information.....	67
29.20.	Food Service and Packaging Waste Reduction Ordinance.....	67
29.21.	Consideration of Criminal History in Hiring and Employment Decisions.....	67
29.22.	Local Hire	68
29.23.	San Francisco Bottled Water Ordinance.....	69
29.24.	Prevailing Wage Rate Requirement For Theatrical Workers	69
29.25.	Local Truckers	69

29.26.	Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings	70
30.	NOTICES.....	70
31.	MISCELLANEOUS PROVISIONS.....	71
31.1.	California Law	71
31.2.	Entire Agreement	71
31.3.	Amendments	71
31.4.	Severability	71
31.5.	Interpretation of Lease	71
31.6.	Successors	72
31.7.	Real Estate Broker's Fees.....	72
31.8.	Counterparts	72
31.9.	Authority	72
31.10.	No Implied Waiver	72
31.11.	Time is of Essence	73
31.12.	Cumulative Remedies	73
31.13.	Survival of Indemnities.....	73
31.14.	Relationship of the Parties	73
31.15.	No Recording.....	73
31.16.	Additional Written Agreement Required.....	73
31.17.	Approvals by Port	73
32.	LIMITATION ON DAMAGES	73
32.1.	No Recourse Beyond Value of Premises	73
32.2.	Non-Liability of City Officials, Employees and Agents	73
32.3.	Limitation on Port's Liability Upon Transfer	73
33.	TENANT ESTOPPEL CERTIFICATES	74
34.	TENANT'S MANAGEMENT COVENANTS	74
34.1.	Covenants.....	74
34.2.	Parking	74
35.	APPROVAL OF BOARD OF SUPERVISORS	74

EXHIBITS AND SCHEDULES

EXHIBIT A DESCRIPTION OF PREMISES

EXHIBIT B	COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM
EXHIBIT C	ESTOPPEL CERTIFICATE
EXHIBIT D	PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES
EXHIBIT E	QUARTERLY AND ANNUAL STATEMENT FORM
EXHIBIT F	PUBLIC PARKING PLAN
EXHIBIT G	RULES FOR SPECIAL EVENTS AND ZERO WASTE EVENTS AND ACTIVITIES POLICY
EXHIBIT H	SF ZONING ADMINISTRATOR'S TEMPORARY USE AUTHORIZATION
SCHEDULE 1	ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2	SUBSTRUCTURE REPORT(S)
SCHEDULE 3	FEMA DISCLOSURE NOTICE
SCHEDULE 4	HAZARDOUS MATERIALS DISCLOSURE

**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	[_____], 2018
<i>Lease Number:</i>	L-XXX
<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>	China Basin Ballpark Company, LLC, a Delaware limited liability company
<i>Tenant's Contact Person:</i>	Jack Bair
<i>Tenant's Address:</i>	24 Willie Mays Plaza San Francisco, CA 94107 Attention: General Counsel Telephone: (415) 972-2000 Facsimile: (415) 972-2317 Email: jbair@sfgiants.com
<i>Tenant's Billing Address:</i>	24 Willie Mays Plaza San Francisco, CA 94107 Attention: General Counsel Telephone: (415) 972-2000 Facsimile: (415) 972-2317 Email: jbair@sfgiants.com
<i>Contact Information for Tenant's Agent for Service of Process:</i>	The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801 Telephone: (302) 658-7581

<p><i>Facility:</i></p>	<p>Pier 48 San Francisco, California 94134</p>
<p><i>Premises:</i></p>	<p>The Premises is comprised of the following portions of the property commonly referred to as Pier 48:</p> <p>Shed A: consisting of approximately 84,630 square feet of enclosed shed space commonly referred to as Shed A, subject to the rights of Sprint Spectrum LP and other wireless communications tenants and licensees of Port at Pier 48, as further described below in this Basic Lease Information.</p> <p>Valley: consisting of approximately 33,285 square feet of paved land (the "Valley") between Shed A and Shed B, subject to the existing rights of the San Francisco Department of Elections, as further described below in this Basic Lease Information.</p> <p>Shed C: consisting of approximately 9,555 square feet of enclosed shed space commonly referred to as Shed C.</p>
<p><i>Reservation of Access Rights:</i></p>	<p>Without limiting anything else in this Lease, Port hereby reserves, and Tenant accepts the Premises subject to, the following reservation of rights:</p> <p>(a) Valley Ingress and Egress. Prior to the addition of the Shed B Expansion Site to the Premises, Port hereby reserves rights for itself, the City, and the San Francisco Department of Elections ("DOE") the right to use the Valley on and around the days and nights in which the City holds elections for vehicle access and deliveries to and from Pier 48 Shed B and that such rights supersede any rights granted to Tenant pursuant to this Lease. Tenant, Port and DOE will meet and confer prior to such dates to develop a reasonable access plan for DOE so that Tenant's access and use of the Premises is not unreasonably, adversely and materially impeded during such periods. Tenant agrees that it will not hold any Special Events on [and around] the days and nights in which the City holds elections unless Tenant has received the prior written approval of DOE.</p> <p>(b) Access and Use by Wireless Communication Users.</p> <p>Port has leased a portion of the Shed A roof to Sprint Spectrum LP ("Sprint") for installation and use of a wireless communications site (Port Lease No. 13077). As part of such lease, Sprint Spectrum LP has a non-exclusive license to portions of Shed A for the placement and use of utilities (wiring, conduit and electrical devices) in order to service the cell site.</p> <p>Port hereby reserves for itself and its current and future tenants and licensees of the Pier 48 shed roofs (including, without limitation, Sprint Spectrum LP) reasonable access to the shed roof and use of those portions of the Premises where such current tenants and licensees have wireless communication equipment at no additional charge, for the placement, maintenance and repair, replacement and use of wireless communication equipment and utilities (wiring, conduit and electrical devices) in order to service the applicable cell site on the roof of the Premises. Tenant has no claim or rights to any fees or charges payable by Sprint Spectrum LP or any other wireless communications tenant or user at Pier 48 (collectively,</p>

	<p>“P48 Roof User”). P48 Roof User does not include Tenant, its Affiliates or their respective Agents.</p> <p>Port will provide Tenant at least three (3) business days prior notice if a P48 Roof User requires access to the Premises. The notice will include the estimated period of access by the P48 Roof User. Port will not permit a P48 Roof User to access the Premises during a Special Event that is listed on the latest Quarterly Special Event Calendar provided to Port; provided, however, a P48 Roof User may be permitted to access the Premises during set up or break down days for such Special Event.</p> <p>Tenant will have no obligation to Indemnify Port for the acts and omissions of a P48 Roof User nor shall Tenant have any obligation to repair any damage to the Premises caused by such P48 Roof User. Port shall require that any future P48 Roof User add Tenant as an additional insured on such P48 Roof User’s commercial general liability policy and obtain a direct indemnity of Tenant from such P48 Roof User for its use of the Premises, and Port shall use commercially reasonable efforts to obtain the same from any existing P48 Roof User.</p>
<p><i>Shed B Expansion Site:</i></p>	<p>The Pier 48 Shed B (“Shed B Expansion Site”) is currently leased in its entirety by Port to DOE pursuant to that certain Lease No. L-[xxx] dated _____. DOE is expected to relocate from Pier 48 Shed B prior to December 31, 2018. Port shall take such commercially reasonable actions as may be required to effectuate such relocation as soon as reasonably practicable, but in no event shall Port be required to commence any legal action against DOE for DOE’s failure to vacate. Port will provide Tenant with as much advance notice of the estimated DOE vacation date as reasonably possible. Once delivered to Tenant, the Shed B Expansion Site will be included in the Premises (the “Shed B Commencement Date”).</p> <p>Shed B Base Rent</p> <p>There shall be no increase in Base Rent payable for the Premises from the Shed B Commencement Date until the Adjustment Date immediately following the Shed B Commencement Date (“1st Shed B Adjustment Date”); provided Tenant will continue to pay Port Percentage Rent from parking Operations and Promotional signage and the Facility Fee.</p> <p>On the 1st Shed B Adjustment Date, the annual Shed B Base Rent for following twelve (12) month period will be determined by multiplying the number of Parking Spaces available in Shed B by the then annual Base Rent for the initial Premises allocable for each Parking Space within the initial Premises. By way of example, if the annual Base Rent allocable for each Parking Space in the initial Premises on the 1st Shed Adjustment Date is \$1,000 [Note: The \$1,000 is derived by dividing the Base Rent for the initial Premises by the total number of Parking Spaces in the initial Premises.], then the annual Base Rent for Shed B (assuming there are 282 Parking Spaces in Shed B) will be \$282,000.</p> <p>The Shed B Expansion Site shall be part of the Premises, taken "as is," delivered free of all personal property of DOE or any other tenant or licensee, and shall otherwise be subject to all terms and conditions of this</p>

	<p>Lease, including, without limitation, the provisions regarding the Public Parking Plan, without further action by the parties.</p>
<p><i>Aprons:</i></p>	<p>Other than a non-exclusive license to use the Shed B south Apron for emergency egress or as otherwise approved by Port in its reasonable discretion, this Lease does not include use of any of the aprons adjacent to the various sheds within the Premises. Accordingly, Port retains all rights relating to the use of the aprons and the berthing of any vessels within the waterways adjacent to or around the aprons.</p> <p>Port agrees that during the Term, Port will not use the aprons for fish processing or any other use that would materially and adversely affect Tenant’s use of the Premises for Special Events; provided, however, the Parties agree that the apron may be used to store maritime gear. The Parties further agree that the foregoing limitation on use of the aprons does not limit Port’s right to perform any repair, maintenance, or replacement of the aprons or limit the berthing of vessels adjacent to the aprons.</p> <p>Tenant acknowledges that Port has deemed the entire north apron of Shed A (including the northwestern corner portion of the apron facing the Bay) to be unsafe and has “red-tagged” this apron. See Schedule 2 for more information. Tenant also acknowledges that Port routinely uses the east apron of Shed A for maritime purposes which precludes its use for any other purpose. These areas are not part of the Premises under this Lease. Tenant agrees not to use those areas in any manner and not to remove or otherwise interfere with gates, fences or signs posted by Port in these areas. Additionally, if any of the roll-up doors are partially or fully opened, Tenant must install barriers to prevent anyone from accessing the north apron from Shed A.</p> <p>[Note: Include information on all Aprons and whether they are also red-tagged or in deteriorated condition.]</p>
<p><i>Roll-Up Doors:</i></p>	<p>Tenant has requested it be permitted to open the roll-up doors along the north and west sides of Shed A for Special Events. Tenant is aware that the north apron of Shed A is currently “red-tagged” and closed to the public due to its deteriorated condition. Tenant has assured Port that it will install barriers to prevent any and all access to the north apron from Shed A from any of the roll-up doors. So long as Tenant installs such barriers to prevent any and all access to the Shed A north apron from any partially or fully opened roll-up door, at Tenant’s election, Tenant may open roll-up doors along the north and west sides of Shed A during Special Events. Tenant will promptly close all roll-up doors that were opened for a particular Special Event when such Special Event ends.</p> <p>Any damage to roll-up doors caused by the negligence of Tenant or its Transferee’s Subtenants’ or Agents’ use thereof will be sole responsibility of Tenant.</p> <p>A survey of the existing condition of the roll-up doors to Shed A is attached hereto as Exhibit XX.</p>
<p><i>Length of Term:</i></p>	<p>Ten (10) years, unless earlier terminated in accordance with this Lease.</p>

<p><i>Commencement Date:</i></p>	<p>[_____, 2018]</p>
<p><i>Expiration Date:</i></p>	<p>[_____, 2028]</p>
<p><i>Port's Early Termination Rights:</i></p>	<p>Port has the right to terminate this Lease before expiration of the Term in accordance with Section 4.2. Port's right to terminate is a material term of this Lease and Port would not have entered this Lease absent such a provision.</p>
<p><i>Tenant's Early Termination Rights for Legal Compliance Issues:</i></p>	<p>Notwithstanding Articles 9, 11, 12 and 15, in the event any maintenance, repairs, replacements, or improvements to the Premises (other than Routine Maintenance) are required in order to comply with any applicable Laws (collectively, "Required Compliance Work"), in lieu of performing such Required Compliance Work, Tenant will have the option, but not the obligation, to terminate this Lease (the "Termination Option for Legal Compliance Issues") on satisfaction of all the following terms and conditions:</p> <p>(a) If Tenant desires to exercise the Termination Option for Legal Compliance Issues, Tenant will deliver written notice thereof to Port within ninety (90) days after Port or another Regulatory Agency delivers a notice to Tenant that Required Compliance Work is necessary ("Termination Notice Period"); and</p> <p>(b) On or prior to the effective date of termination of this Lease, Tenant must satisfy all of the following conditions:</p> <p>(1) cure all Tenant monetary Events of Default and any Events of Default relating to the provisions of Article 11 (other than as may be related to such legal compliance issue);</p> <p>(2) cure all Tenant Events of Default or Unmatured Events of Defaults under Article 15 (other than as may be related to such legal compliance issue,);</p> <p>(3) pay in full all utility charges and Impositions due and owing up to and including the effective date of termination; and</p> <p>(4) maintain all the insurance required to be maintained under Article 16 until the effective date of termination.</p> <p>Tenant will promptly deliver to Port copies of all notices to Tenant from any Regulatory Agency that Required Compliance Work is necessary.</p> <p>If Tenant elects not to exercise its Termination Option for Legal Compliance Issues within the Termination Notice Period, then Tenant will be required to promptly perform the Required Compliance Work.</p>
<p><i>Either Party's Early Termination Right for Failure to Fund Required Work:</i></p>	<p>If in order for Tenant to use the Premises for the Permitted Uses, any maintenance, repairs, replacements, Remediation or improvements, which are not Routine Maintenance, are required and Port's share of the cost thereof exceeds the MR Cap (in accordance with the provisions of the Basic Lease Information set forth below), the Parties will meet and confer regarding the possible approaches to funding such work.</p>

	<p>If the Parties are unable to identify funding sources for such work, or if the Parties are unable to come to a mutually satisfactory allocation of the costs for the same, then either Party may terminate this Lease upon not less than thirty (30) days' notice to the other; provided, however, unless the failure to complete such work might jeopardize human health and safety, the date of Port's termination may not be before the end of any current Baseball Season.</p>
<p><i>Permitted Use:</i></p>	<p>The Premises shall be used solely for the purposes described below:</p> <ul style="list-style-type: none"> - Parking for bicycles and motor vehicles for Ballpark Events and Special Events. - Miscellaneous parking unrelated to Ballpark Events or Special Events. - Auxiliary uses in connection with Ballpark Events and Special Events, such as temporary wireless and media communication equipment located within the Premises and for Special Events held at the Premises only, the sale of merchandise, food, and beverages within the Premises during such Special Event. - Special Events provided Tenant has obtained approval to hold Special Events at the Premises from BCDC (if applicable and required), and under the conditions specified herein. <p>Installing and maintaining signage containing advertising or promotional messages which is intended to be visible primarily to persons on the Premises ("Promotional Signage").</p> <p>Any other use within the Premises requires the prior written consent of Port which may be withheld in its sole discretion.</p>
<p><i>Parking Operations:</i></p>	<p>All parking spaces will be available to the general public on a non-exclusive basis only and offered at fair market rates on either a daily basis or a monthly basis; provided Tenant will not offer discounted rates for parking other than for parkers involved in the operations of AT&T Park, AT&T Park tenants, or for Giants season ticket holders, and Tenant may reserve sections of parking for certain parkers (i.e. ticket holders for suites at AT&T Park), all consistent with Tenant's historical practice.</p> <p>Tenant may, with Port's consent pursuant to Section 20, retain a parking operator to operate a pay parking lot at the Premises, either as a Subtenant or an Agent of Tenant. In the latter case, an agreement between Tenant and such Agent shall be a "Transfer" and such Agent shall be a "Transferee" for purposes of this Lease. Port has pre-approved Imperial Parking (Impark) as a parking operator for the Premises. In addition to Port's rights under Section 20, Port will have the right to review and approve any operating agreement, agency agreement, sublease or other document between Tenant and such operator pertaining to the operation of a parking lot solely to confirm that such agreement conforms to the terms of this Lease; provided, however, that such agreement shall include a full release and waiver of all Claims against the Indemnified Parties. Without limiting the Percentage Rent payable to Port from Gross Parking Revenues, Section 20.3(b) requiring the payment of Excess Rent will not apply to a parking operator approved pursuant to this Section. If Port approves a parking operator, at Tenant's written request, as a courtesy</p>

	<p>only, Port will provide a copy of any default notice concerning parking operations to the parking operator at the operator's address provided in writing by Tenant.</p> <p>Tenant or its parking operator may enter into parking use agreements with third parties (“Parking Use Agreements”) for parking on an hourly, daily, weekly or monthly basis, each of whom will be deemed to be Tenant's Invitee. The Parking Use agreements must comply with all the terms and conditions of this Lease and include a full release and waiver of all Claims against the Indemnified Parties. Without limiting the Percentage Rent payable to Port from Gross Parking Revenues, Section 20.3(b) requiring the payment of Excess Rent to Port will not apply to Parking Use Agreements. So long as the Parking Use Agreements comply with the requirement herein, they do not need Port’s prior consent. [Note: Subject to further refinement.]</p> <p>Recognizing that parking on the Premises may be intermittent until commencement of construction of Phase I of the Mission Rock Project, Tenant will cause parking on the Premises to be operated in such a manner as to generally maximize parking revenue opportunities from the Premises as is commercially feasible.</p>
<p><i>Location of Parking Spaces:</i></p>	<p>As of the Commencement Date, portions may accommodate parking spaces for standard passenger sized vehicles (each a “Parking Space”) as follows: [Numbers being confirmed]</p> <p>Shed A: [282] Shed C: [34] Valley: [103]</p> <p>Once the Premises is expanded to include Shed B, [282] Parking Spaces.</p>
<p><i>Unavailable Parking Spaces:</i></p>	<p>Tenant agrees and acknowledges that Port will have no obligation to replace Parking Spaces that become unavailable (“Unavailable Spaces”) due to deterioration of the Premises or “red-tagging” of portions of the Premises by the Chief Harbor Engineer.</p> <p>Without limiting Port's rights under Section 4.2, if there are Unavailable Spaces which prevent Tenant from fully utilizing the Premises for parking (and Tenant would have utilized such Unavailable Spaces), Base Rent for any affected month will be reduced for the period during which Tenant is unable to fully utilize the Premises for parking on a pro-rata basis based on the number of Unavailable Spaces compared to the number of overall Parking Spaces in the Premises. To the extent that such Unavailable Spaces would not have been utilized by Tenant, there shall be no reduction in Base Rent. If the parties cannot reach agreement on the amount of the reduction, the Executive Director will reasonably determine the final reduction.</p>
<p><i>Special Events:</i></p>	<p>Approvals. Tenant shall provide reasonable advance notice of all Special Events. Generally, Tenant may conduct Special Events without the Port’s approval, however, the following Special Events are subject to Port’s approval, which shall not be unreasonably withheld and any conditions imposed therewith:</p>

	<p>(i) by the Port's Executive Director, for (A) Special Events with a duration of five (5) days or more (excluding set up and take down); and (B) Special Events with an estimated attendance of 5,000 people or more; and</p> <p>(ii) by the Port Commission for (A) a flea market or (B) a Special Event lasting more than ninety (90) days (including set up and take down).</p> <p>In addition to the above approvals, where needed, Tenant shall obtain all Regulatory Approvals, including but not limited to, building permits, fire permits, alcohol licenses, BCDC approval or permit and other approvals necessary to hold Special Events within the Premises; provided, however, Tenant shall not be required to obtain a Special Event permit from Port for any Special Event within the Premises. Tenant shall provide Port with copies of any required regulatory approvals once obtained by Tenant, but in no event later than seven (7) days prior to the first day of set-up/load-in for each Special Event. All Special Events must comply with the Rules for Special Events set forth in Exhibit G.</p> <p>Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property, including, but not limited to musical or other performance rights in connection with Special Events.</p> <p>Port staff shall work with Tenant in respect of the approval process for all Special Events in a cooperative and expeditious manner.</p> <p>Notice. Tenant must provide the following minimum written advance notice to Port of its desire to use the Premises for a Special Event: (i) at least 90 calendar days when Port Commission approval is required; (ii) at least 45 calendar days for any Special Event that requires notice or approval by the Bay Conservation and Development Commission; (iii) at least 30 calendar days when Port's Executive Director approval is required; and (iv) at least 14 calendar days for all other events. Tenant's written notice must provide as much relevant information about the Special Event as possible, including anticipated revenues to the Port.</p> <p>No later than seven (7) days prior to the set up date for any Special Event, Tenant shall submit the following to Port: (i) all required insurance certificates; (ii) a copy of each required Regulatory Approval or the application for such approval if not yet issued; (iii) a list of anticipated Designated Services (as defined in Exhibit G, Rules for Special Events); (iv) any required BMI license or other permission to use intellectual property or provide funds to the City Administrator sufficient to cover any fees incurred pursuant to the City's Local Government Licensing Agreement with BMI; (v) an "after event cleanup plan"; and (vi) any other information or documentation reasonably requested by Port. Tenant shall provide the Port with copies of the required Regulatory Approvals once they are obtained by Tenant.</p> <p>If Tenant fails to provide such information or fails to obtain Port's approval, when required. Tenant shall be prohibited from conducting the Special Event.</p> <p>Event Promoters. Tenant may enter into agreements with other parties, each of whom shall be deemed to be Tenant's Agent or Invitee, to use the</p>
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	<p>Premises for Special Events, provided that such use complies with all the terms and conditions of this Lease. Such agreements shall not be subject to Port’s prior consent under Section 20 (Assignment and Subletting) and without limiting Port’s rights to Facility Fees, nor the Excess Rent provisions of Section 20.3(b). All such agreements must include a full release and waiver of all Claims against the Indemnified Parties. Tenant’s Agents and Invitees shall be subject to all terms and conditions of this Lease. A breach by Tenant’s Agent or Invitee (as that term is used in this Section) constitutes a breach by Tenant. Tenant is solely responsible for ensuring that each of its Agents and Invitees (as that term is used in this Section) under this Lease are aware of and comply with all of the provisions of this Lease and Tenant acknowledges that it shall be subject to default and termination provisions under this Lease if it’s Agents or Invitees (as that term is used in this Section) fail to comply with the terms and conditions of this Lease. For purposes of this Section, without limiting any indemnification obligation of, or waiver or releases of claims against the Indemnified Parties by, Tenant, Invitees shall not include individual persons who use the Premises for parking purposes or attend Special Events.</p> <p><u>Waiver by Executive Director.</u> Notwithstanding the foregoing, the Executive Director may waive, in his or her sole discretion, any of the requirements for Special Events set forth in this Lease as necessary to accommodate special circumstances that may arise.]</p>
<p><i>Calendar of Ballpark Events and Special Events:</i></p>	<p><u>Giants’ Home Games:</u></p> <p>To the extent Tenant has not previously delivered the following to Port, no later than January 15 of each year, Tenant will notify Port of the dates of each Giants’ home games for the upcoming baseball season. Tenant will provide notice of any Giants’ post-season home games as soon as reasonably possible.</p> <p><u>Special Events and other Ballpark Events Calendar:</u></p> <p>No later than March 1, June 1, September 1, and December 1, of each year, Tenant will provide Port with a calendar listing and describing in reasonable detail all upcoming scheduled Special Events and Ballpark Events that are not Giants’ baseball games and require use of the Premises (each “Other Ballpark Event”) for the following quarter (starting January 1, April 1, July 1 and October 1) (each a “Quarterly Special Event Calendar”).</p> <p>Tenant’s Quarterly Special Event Calendar must include the following information for each Special Event and Other Ballpark Event (if available at the time of the Quarterly Special Event Calendar is delivered to Port and regularly updated thereafter and, in any case, no later than 14 days prior to the Special Event or Other Ballpark Event, as applicable, unless this Lease specifically requires notice or an item to be submitted earlier): the entity or entities sponsoring and or participating in the Special Event or Other Ballpark Event, including any Agent or Invitee of Tenant; the location duration, including set up and take down, approximate square footage, anticipated hours of operation and estimated attendance of the Special Event; and any other information reasonably requested by Port.</p> <p>Tenant shall provide Port notice of each Special Event by submitting to Port a notice form setting forth the location, duration, including set up and</p>

	take down, approximate square footage, anticipated hours of operation and estimated attendance of the Special Event no later than fourteen (14) days prior to the set-up day of each Special Event (the “ Notice Sheet ”).	
<i>Rules and Regulations for Special Events:</i>	See Exhibit G attached hereto.	
<i>Promotional Signage:</i>	Tenant may enter into agreements with other parties for purposes of placing Promotional Signage, and provided that such use complies with all the terms and conditions of this Lease (including a full release and waiver of all Claims against the Indemnified Parties), such use shall not be considered a Transfer for purposes of this Lease. Regardless of the terms of Tenant's agreements under this Section, Tenant shall be solely responsible for the installation, maintenance, repair and removal of Promotional Signage on the Premises. Tenant will promptly repair any damage to the Premises in connection with the installation, maintenance, repair and removal of Promotional Signage. In addition, Tenant is solely responsible for ensuring that each of its Agents related to Promotional Signage are aware of and comply with all of the provisions of this Lease relating to Promotional Signage.	
<i>Monthly Base Rent:</i>	Months	Initial Monthly Base Rate [Sheds A and C and the Valley]:
	April 1 – Sept. 30 (“ High Season ”)	Fifty-Five Thousand Four Hundred Sixteen and 67/100 Dollars (\$55,416.67)
	October 1 – March 31 (“ Low Season ”)	Two Thousand Nine Hundred Sixteen and 67/100 Dollars (\$2,916.67)
<i>Adjustment to Base Rent:</i>	<p>Base Rent will be adjusted on April 1, 2019 (“Initial Adjustment Date”) to equal the higher of the then payable Base Rent or eighty-five percent (85%) of the Percentage Rent (excluding Gross Revenue from Parking Operations for post-season games played by the San Francisco Giants) payable to Port for the period commencing on April 1, 2018 and ending on March 31, 2019.</p> <p>Base Rent will be further adjusted after the Shed B Expansion Site is added to the Premises in accordance with the Basic Lease Information section labeled “Shed Expansion Site.”</p> <p>Base Rent will be further adjusted on April 1, 2020 and on April 1 of every year thereafter (each, a “Subsequent Adjustment Date;” together with the Initial Adjustment Date, “Adjustment Date”), to equal the higher of the then payable Base Rent or eighty percent (85%) of the average Percentage Rent (excluding Gross Revenue from Parking Operations for post-season games played by the San Francisco Giants) payable to Port for the thirty-six (36) month period immediately prior to the applicable Adjustment Date; provided, however, for any period where historical Percentage Rent from Parking Operations for the Shed B Expansion Site is not available, for purposes of calculating the adjusted Base Rent, the Parties will use the then applicable Base Rent for the Shed B Expansion Site for such period.</p>	

	<p>The annual Base Rent after each Adjustment Date will be allocated such that the monthly Base Rent during the High Season, in the aggregate, will equal 95% of the applicable adjusted annual Base Rent and the monthly Base Rent during the Low Season, in the aggregate, will equal 5% of the applicable adjusted annual Base Rent.</p> <p>The Parties agree that the actual adjusted Base Rent will be determined after the Annual Statement is approved by Port. Accordingly, Tenant may continue to pay the then current monthly Base Rent until the adjusted Base Rent is determined. The Parties will reasonably cooperate with each other so that the adjusted Base Rent will be determined no later than May 15 of each year.</p> <p>Tenant will pay to Port the difference between the adjusted Base Rent and the Base Rent actually paid by Tenant (“Base Rent Difference”) within fifteen (15) days after Port has approved the Annual Statement. The Base Rent Difference is subject to a Late Charge and Interest if not paid within fifteen (15) days after Port has approved the Annual Statement.</p>
<p><i>Security Deposit:</i></p>	<p>An amount equal to the average of two (2) months’ of Base Rent, as adjusted on each Adjustment Date. The initial security deposit will equal \$58,333.00.</p>
<p><i>Percentage Rent for All Parking Operations:</i></p>	<p>In addition to the monthly Base Rent specified above, Tenant shall pay a monthly Percentage Rent for Parking Operations in an amount equal to the difference between (i) the Percentage Rent for Parking Operations for such calendar quarter; and (ii) the Base Rent for such calendar quarter in any quarter in which the Percentage Rent for Parking Operations exceeds the Base Rent. Percentage Rent for Parking Operations is sixty-six percent (66%) of Tenant's monthly Gross Revenues for all Parking Operations including parking revenues from Special Events parking, less Parking Taxes and Extraordinary Expenses up to the Extraordinary Expense Cap.</p>
<p><i>Minimum Facility Fees:</i></p>	<p>Tenant will pay Port for each Special Event (the “Facility Fee”), no less than the higher of:(a) fifty percent (50%) of the amounts received as a facility use fee or other charge for use of the Premises by Tenant, its Special Event operator, promoter, subtenant, Agent or other party, or (b) fifty percent (50%) of the following charges for use of various portions of the Premises:</p> <ul style="list-style-type: none"> (i) Full Venue Special Event (Sheds A, B & C + Valley): -\$50,000 for each Event Day + \$8,000 for each set-up and take-down day. (ii) Full Shed A & C with Valley or Full Shed B & C with Valley: -\$30,000 for each Event Day + \$5,000 for each set-up and take-down day. (iii) Half Shed A & C with Valley or Half Shed B & C with Valley: -\$15,000 for each Event Day + \$3,000 for each set-up and take-down day.

	<p>(v) Quarter Shed A & C with Valley or Quarter Shed B & C with Valley: -\$9,000 for each Event Day + \$2,500 for each set-up and take-down day.</p> <p>The Facility Fee for full shed space may be reduced pro-rata by the applicable portion of the shed that is unusable for Special Events because such portion is “red-tagged,” the fire marshal has declared certain areas of the Premises unusable (unusable includes prohibition on using the space for “back of house” or storage of road case or audio-visual equipment) for a particular Special Event, or the roof above such area is leaking and such unusable area is greater than three percent (3%) of the total square footage of the applicable shed. An area will be deemed usable if the fire marshal imposes limitations on such areas during Special Events that limit the number of guests, but permit use of such areas for “back of house” storage, storage of road case or audio-visual equipment, portable bathrooms, or green rooms.</p>
<p><i>Adjustment of Minimum Facility Fees:</i></p>	<p>The Facility Fee may be adjusted on the third (3rd) Anniversary Date and every three (3) years thereafter (each, a “SE Adjustment Date”) provided that Port commences a study of the special event venue market in San Francisco (for spaces comparable to the Premises) to determine if the Facility Fees should be adjusted, which study shall be completed not less than one hundred twenty (120) days prior to the SE Adjustment Date. Port will promptly deliver to Tenant its completed study and the Parties shall meet and confer to determine the appropriate adjustment to the Facility Fee.</p> <p>The adjusted Facility Fee shall be applicable to any Special Event contracts entered into after Port’s delivery to Tenant of its completed study.</p>
<p><i>Special Event Bonus Fee:</i></p>	<p>From and after the twentieth (20th) Special Event at the Premises during each Lease Year, in addition to the Facility Fees due for such event, Tenant will pay Port an additional amount equal to ten percent (10%) of the Facility Fees for such Special Event.</p> <p>By way of example, if the Facility Fees for a particular event is \$20,000, then the bonus fee to Port for such Special Event will equal \$2,000. The total Facility Fees and bonus owed Port for such Special Event will equal \$22,000.</p>
<p><i>Reimbursement for Displaced Parking Revenues for Special Events</i></p>	<p>With each Notice Sheet for a Special Event which occurs on a home game day during the Baseball Season, Tenant shall provide (i) an analysis and documentation of the revenues that would have been due to Port as Percentage Rent from Parking Operations had the Special Event not displaced such revenues (the “Displaced Parking Revenues”); or (ii) a statement that no such revenues would have been due. If the Displaced Parking Revenues are less than the Facility Fees specified above, no amount shall be owed. If the Displaced Parking Revenues are greater than the Facility Fees specified above, Tenant shall pay the difference to the Port as part of the Facility Fees. The Executive Director shall reasonably determine the final Displaced Parking Revenue for any Special Event.</p>

<p><i>Promotional Signage Percentage Rent</i></p>	<p>In addition to Rent described above, Tenant shall pay to Port fifty percent (50%) of all Gross Revenues (less the actual cost paid by Tenant for fabrication and installation of the Promotional Signage by outside vendors as documented to Port's reasonable satisfaction) attributable to Promotional Signage.</p>
<p><i>Additional Prohibited Uses:</i></p>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant, its Agents and Invitees shall be prohibited from using the Premises for any of the following activities:</p> <ul style="list-style-type: none"> (a) Vehicle washing, detailing, maintenance or servicing of any kind. (b) Storage of any kind, including vehicle storage for more than three (3) consecutive calendar days unless storage is needed in connection with a Special Event, in which case the square footage for such storage and the number of days of such storage shall be included in calculating the Facility Fees. If Tenant wishes to store items other than porta-potties, trash receptacles or other equipment routinely used in connection with High Season Ballpark Events, it may seek a separate agreement with Port to do so. Notwithstanding the foregoing, Tenant shall be permitted to utilize portions of the Premises that cannot be used for vehicular parking due to its size or configuration, for storage related to the Permitted Uses. Note: Subject to further discussion. (c) Special Events not approved by Port as provided in this Lease and Special Events not otherwise permitted by applicable Laws, including without limitation, the Waterfront Land Use Plan and San Francisco Planning Code Article 9. (d) Use of barbeque grills or similar devices. (e) Hot works and welding. <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>Prevailing Rate of Wages and Displaced Work Protection Required for Workers:</i></p>	<p>To the extent applicable, Tenant shall comply fully and be bound by all the requirements of Section 21C.3 of the City's Administrative Code (Prevailing Rate of Wages and Displaced Work Protection Required for Workers in Public Off-Street Parking Lots, Garages, or Storage Facilities for Automobiles) (the "Work Protection Ordinance"). In general, the Work Protection Ordinance requires operators of public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by the City (including the Port) to pay employees working in such facilities not less than the Prevailing rate of Wages, as defined in the ordinance, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the agreement with the City (including the Port) is being performed. The Work Protection Ordinance also requires the operator of such facilities to retain for a 90-day transition employment period, the Employees, as defined by the ordinance, who have worked at least 15 hours per week and have been employed by the immediately preceding operator or its subcontractors, if any, for the preceding twelve months or longer at the facility or facilities covered by the agreement with the City (including the Port), providing just cause does not exist to terminate any Employee. The</p>

	<p>predecessor operator's Employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor. Tenant agrees that any Subcontract, as defined in the Work Protection Ordinance, shall comply with the obligations imposed by the ordinance.</p>
<p><i>Maintenance and Repair:</i></p>	<p>Tenant's responsibility, as further described in Section 11.</p>
<p><i>Rent Credit for Required Work:</i></p>	<p>Any maintenance, repairs, replacements or improvements to the Premises or the Improvements, which are not Routine Maintenance, (collectively, "Required Work"), if performed by Tenant and required in Tenant's commercially reasonable judgment for the continued operation of the Premises, may be deducted from Tenant's payment of Rent up to the MR Cap in accordance with this section of the BLI.</p> <p>For any amounts for Required Work that exceed the MR Cap, the Parties will meet and confer regarding the possible approaches to funding such Required Work. Port may approve any amounts for Required Work exceeding the MR Cap for Parking Operations in Port's reasonable discretion and for any amounts exceeding the MR Cap for Special Events in Port's sole discretion.</p> <p>All Certified Required Work Costs that are not objected to by Port or if objected, later agreed to by Port, shall be split between Tenant and Port for (i) Parking Operations, with 66% payable by Port and 34% payable by Tenant, and (ii) Special Events, with 34% payable by Port and 66% payable by Tenant.</p> <p>"MR Cap" means, for Required Work related to (i) Parking Operations, an amount in any Lease Year equal to twenty percent (20%) of the Base Rent payable in such Lease Year and (ii) Special Events, an amount in any Lease Year equal to ten percent (10%) of the Percentage Rent paid for Special Events in the prior Lease Year.</p> <p>During any Lease Year, Tenant may be eligible for rent credits up to the MR Cap (the "Maintenance Rent Credits"). Tenant must satisfy all of the following conditions in order to receive the Maintenance Rent Credits:</p> <p>(a) Tenant provides Port with a notice that it has incurred Required Work costs that Tenant in its commercially reasonable judgment believes are required for the continued operation of the Premises. The notice must include an itemized list of Required Work made during the applicable Lease Year, the Certified Required Work Cost for each applicable Required Work performed during such Lease Year, and a description of the Required Work performed, all certified by Tenant's chief financial officer as true and complete ("Notice of Certified Required Work Costs");</p> <p>(b) [Note: Subject to further review] [Within [XX (XX)] days of Port's receipt of the Notice of Certified Required Work Costs, Port will notify Tenant of any objections to the information provided in the Notice of Certified Required Work Costs, including if applicable, Port's belief that the Required Work was not necessary for the continued operation of the Premises ("Objection Notice"). If Port does not deliver an Objection Notice within such [XX] day period, then it will be deemed as if Port has no objections to the information provided in the Notice of Certified Required Work Costs. If Port delivers an Objection Notice, the Parties</p>

	<p>will confer within a reasonable period following Port’s delivery of the Objection Notice to resolve any issues. Tenant will not be entitled to rent credits on Required Work costs that Port has timely objected to until reasonably agreed to between the Parties];</p> <p>(c) The Required Work is performed and completed in accordance with this Lease; and</p> <p>(d) There is no uncured Event of Default</p> <p>There is no rollover of any portion of the MR Cap that is not used in any given Lease year.</p> <p>Port and Tenant acknowledge and agree that in the first (1st) year of the Term, certain Required Work is required [as described in the attached Exhibit XX] (the “Pre-Approved Required Work”). The Pre-Approved Required Work must be completed in the first Lease Year. The Pre-Approved Required Work is not subject to the MR Cap. Unless agreed to by Port in its sole discretion, no other Required Work is eligible for any rent credits during the first Lease Year. Thirty four percent (34%) of the Pre-Approved Required Work costs that is certified will be eligible for rent credits.</p>
<p><i>Application of Rent Credits:</i></p>	<p>Except as set forth in the immediately following sentence, after certification of the costs of the Required Work up to the MR Cap, Port’s share of such cost will be paid through rent credits against up to seventy-five percent (75%) of the next quarterly installment of Base Rent and each quarterly installment thereafter, until the earlier of it being fully paid/applied or this Lease is terminated or expired. If there is an uncured Event of Default, then until the Event of Default is cured, even if Port’s share of the cost is outstanding, Tenant will not be entitled to any rent credits until all Events of Default are cured.</p> <p>Port will have no liability or obligation to pay or credit Tenant all or any portion of any unused rent credit or outstanding Port’s share of the cost of the Required Work at the expiration or earlier termination of this Lease, unless Port elects to terminate the Lease in accordance with Section 4.2.</p>
<p><i>Certified Required Work Cost:</i></p>	<p>After final completion of each Required Work, Tenant will deliver to Port an itemized statement of the actual costs expended by Tenant for the Required Work, certified by Tenant’s chief financial officer as being true, accurate, and complete, accompanied by documentation reasonably satisfactory to Port evidencing all said expenditures (each a “Certified Required Work Cost”). Such appropriate proofs of expenditure will include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonable approved by Port, (v) unconditional lien waivers from all the general contractors and all subcontractors and suppliers; and (vi) if reasonably requested by Port, a copy of the as-built final plans for the applicable work.</p> <p>In no event will the cost of any construction management fees, general administrative costs or other forms of mark-up be eligible for rent credits.</p>

	To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the labor for the Required Work, the costs for such labor will be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. Upon receipt of and based upon said statement and accompanying documentation which substantiate the actual construction costs expanded, Port in its reasonable discretion will determine the certified construction costs.
<i>Utilities:</i>	Tenant's sole responsibility, as further described in Section 12 .
<i>Location of Asbestos in Premises:</i>	See Schedule 1 attached hereto.
<i>Development Projects:</i>	Mission Rock Project; Mission Bay Development; Chase Center, Public Service Building Project and Mission Bay Park 20
<i>Prior Lease:</i>	The parties agree that as of the Commencement Date, Lease No L-14980 dated as of January 1, 2012 (the " Prior Lease "), between Tenant and Port as it relates only to the License of Pier 48 is hereby terminated; provided, however, that the parties shall continue to be liable for any obligations under the Prior Lease which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Lease. [To be confirmed]
<i>Additional Insurance Requirements:</i>	For any activity, including any Special Event, that requires a liquor license, Tenant (or its Agents, vendors, contractors or subcontractors pursuant to Section 16.1(h)) shall maintain Liquor Liability insurance with limits not less than XXX Million Dollars (\$XXX.00) each occurrence combined single limit for bodily injury and property damage.
<i>Public Parking Plan</i>	Tenant shall, at all times, operate in compliance with the Port-approved Public Parking Plan attached hereto as Exhibit F . The Plan must support good relations with customers and include the following elements: Hours of Operation; Housekeeping Practices including waste management, recycling, composting and litter control for the Premises and nearby areas which could be impacted by Tenant's activities; Best Management Practices for Stormwater Control; Security; Landscaping; Restrooms; Allocation of pre-sold spaces for all baseball seasons during the Lease Term; Job Responsibilities; Vehicle Handling, Revenue Collection, Rates, Cashiering, and Customer Relations; Maintenance including storage of spill kits, cleanup of spills and leaks of from vehicles; Reports and Communications; and Emergency Procedures. Non-compliance with the Plan is a material breach of this Lease. Material changes to the Plan shall be made only with the approval of the Executive Director of the Port or her or his designee.
<i>Revenue Control Equipment:</i>	To the extent applicable, Tenant shall comply with Article 22 of the San Francisco Business and Tax Regulations Code, including, without limitation the requirement to install, maintain and use Revenue Control Equipment at the Premises. Tenant shall immediately notify Port in writing of any audit, inspection, alleged violation, violation or penalty

	action taken under such Article by any Enforcing Agency, as defined by the Article. In addition to any other requirements under this Lease, upon Port's request, Tenant shall provide Port a copy of all information submitted to the Tax Collector and any other City department or official to demonstrate Tenant's compliance with such Article.
<i>Lease Prepared By:</i>	Phil Williamson, Senior Project Manager

LEASE AGREEMENT

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

1. DEMISE.

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

2. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

"**Ballpark Events**" means baseball games and other events taking place AT&T Park.

"**Ballpark Ground Lease**" means that certain Ground Lease between City and County of San Francisco through the Port Commission as Landlord and China Basin Ballpark Company LLC or tenant dated November 26, 1997 for reference purposes only.

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

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

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

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

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

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

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

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

"**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.

"**Conduct Code**" is defined in Section 29.14 below.

"**Concession**" is defined in Section 31.8 below.

"**Control**" means a Person that: (a) owns or has the right to acquire 50 percent or more (25 percent or more if publicly traded) of each class of equity interests in the second Person or 50

percent or more (25 percent or more if publicly traded) of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the second Person; or (b) otherwise has the right to direct or cause the direction of substantially all of the management and policies of the second Person.

"**Core Benefits**" is defined in Section 29.1(c) below.

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

"**Displaced Parking Revenue**" is defined in the Basic Lease Information.

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

"**DDA**" means that certain Disposition and Development Agreement between Port and [XXXXXX] dated as of XXXX, 2018, relating to the development of the Mission Rock Project.

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

"**Encroachment Area**" is defined in Section 3.4 below.

"**Encroachment Area Charge**" is defined in Section 3.4 below.

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

"**Environmental Regulatory Action**" when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials in, on or about the Premises, 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.

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

"**Event Operations**" means event-related parking operations at the Premises beyond those necessary to operate a typical parking operation that result from serving Ballpark Events, Special Events on the Premises, events on SWL 337 or the Chase Center, but specifically excludes operations necessary for commuter parking and parking for Project occupants.

"**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.

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

"**Extraordinary Expense Cap**" is defined in Section 5.4(b).

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

"**Facility**" means each and every pier, building or other structure in or on Pier 48.

"**Facility Fee**" is defined in the Basic Lease Information.

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

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

"**Force Majeure**" means events which result in delays in a party's performance of its obligations hereunder due primarily to causes beyond such party's control, including, but not limited to acts of nature or of the public enemy, acts of the government, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, lockouts, lack of transportation or materials, riots, civil commotion, freight embargoes, and unusually severe weather. Force Majeure does not include litigation, acts of the other party (other than defaults or events that upon notice and/or following the expiration of applicable cure periods, would constitute defaults by such party), failure to obtain financing or a party's failure otherwise to have adequate funds.

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

"**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.

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

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

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

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

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

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

"**HEPA**" is defined in Section 13.2(g) below.

"**High Season**" means April 1 through September 30 of each Lease Year.

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

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

"**Improvements Pertaining to the Realty**" means machinery or equipment installed for use on the Premises 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 property in place considered as part of the realty should be compared with its value if it were removed and sold.

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

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

"**Interest Rate**" is defined in Section 5.11 below.

"**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 any of Tenant's licensees, assignees, or subtenants that are Tenant Affiliates or are approved as Transferees under Section 20 (Assignment and Subletting) shall not be "**Invitees**" for purposes of this Lease.

"**Late Charge**" means a fee equivalent to ten percent (10%) annually of Rent that is due and unpaid.

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

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

["**Lease Year**" means the period from and after the Commencement Date until [March 31, 2019] and each one-year period thereafter commencing on April 1 and ending on March 31 of the following year.]

"**Low Season**" means October 1 through March 31 of each Lease Year.

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

"**Mission Rock Project**" means the development project described in the DDA. **[Note: Expand description.]**

"**Mortgage**" means one or more mortgage, deed of trust or other security agreement encumbering the leasehold estate, or Tenant's interest, if any, in any Improvements or Tenant's interest in its personal property or trade fixtures, as security for a loan or loans to benefit Tenant's improvement or use of the Premises or the development, improvement or use of the Ballpark.

"**Mortgagee**" means the holder or holders of a Mortgage. Multiple lenders participating in a single loan secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

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

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

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

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

"OSHA" is defined in Section 15.6 below.

"PACMs" is defined in Section 15.6 below.

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

"**Parking Operator**" means a person who enters into a Parking Operator Agreement with Tenant.

"**Parking Operator Agreement**" is defined in the Basic Lease Information.

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

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

"**Pier 48 Development Lease**" is defined in *Section 4.2(b)*.

"**Pier 48 Solicitation**" is defined in *Section 4.2(b)*.

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

"**Port program or project**" shall mean any development, removal, or renovation, by public and/or private parties, of the pier, seawall, or seawall lot in, or on the vicinity of the Premises.

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

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

"**Premises**" is defined in the Basic Lease Information and in Section 3.1 below and depicted on *Exhibit A*.

"**preservative-treated wood containing arsenic**" is defined in Section 29.13 below.

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

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

"**Regulatory Agency**" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), the San Francisco Planning Commission, 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. Regulatory Approvals for Special Events may also include the following as they may be amended, revised or expanded from time to time: Alcoholic Beverage Control License from the California Alcohol Beverage Commission; Port of San Francisco Fire Marshall approval and any required permits from SF Fire Department; Itinerant Show Permit from the SF Entertainment Commission; Mechanical Contrivance Permit from the SF Entertainment Commission; One Night Event Permit from the SF Entertainment Commission; Security Plan approved by Port and SF Police Department; Traffic Plan approved by Port and SF Police Department; Emergency Medical Services Plan from the SF Department of Public Health.

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

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

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

"Rent" means the Base Rent, Percentage Rents specified in the Basic Lease Information for Parking Operations, Facility Fees, Percentage Rent for Promotional Signage; Port share of Sublease rent; Additional Rent; and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge assessed pursuant to Section 5.9 below and any interest assessed pursuant to Section 5.11 below.

"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 operations of Tenant at the Premises or to the Facility, as may be amended from time to time.

"saltwater immersion" is defined in Section 29.13 below.

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

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

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

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

"SWL 337" means Seawall Lot 337.

"SWPPP" is defined in Section 15.10(a) below.

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

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

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

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

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

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

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

Notwithstanding the foregoing, as used herein, the term "**Transfer**" does not include (i) a Transfer of the Premises under any Parking Use Agreements or for use by Special Events by Tenant, its Agents, or licensees (as described in the Basic Lease information); (ii) any hypothecation, encumbrance or mortgage of this Lease made in accordance with Section 22; (iii) any transaction which would otherwise constitute a Transfer if the transferee is a Permitted Transferee of the leasehold estate created by the Ballpark Ground Lease (as said term "Permitted Transferee" is defined in the Ballpark Ground Lease) or (iv) any transaction in which the transferee also has become the transferee of the leasehold estate created by the Ballpark Ground Lease in accordance with the provisions of the Ballpark Ground Lease.

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

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

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

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

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

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

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

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

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

3. PREMISES; AS-IS CONDITION.

3.1. *Premises.*

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises 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 and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

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

3.2. *Accessibility Inspection Disclosure.*

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

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

3.3. *San Francisco Disability Access Disclosures.* Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in Section 9 (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port (other than any Maintenance Rent Credits Tenant is

entitled to in accordance with this Lease) 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 waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in the last paragraph of this Section), at law or in equity.

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

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

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.3 and the reasonableness of the amount of the charges described in this Section 3.3.

Initials:

Port_____
Tenant

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

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

3.7. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; (b) the Facility is located along the waterfront adjacent to, on top of, and bay ward of a 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 or the Mission Rock Project or other Development Projects 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 (f) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of the Lease.

3.8. Seawall. The Premises is located over and bay ward of a seawall. The seawall is in need of seismic strengthening. There are currently no plans or funds to seismically strengthen the seawall. Damage to the seawall or its failure, whether due to seismic event or other causes, may cause additional or increased injury to persons or death or additional damage to property at or near the Premises as compared to locations away from the seawall. The seawall is not part of the Northern Waterfront Seawall that is currently in planning stages for strengthening. Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the seawall's condition or the proximity of the Premises to the Bay and the seawall.

3.9. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as **Schedule 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. To the extent reasonably practicable, Port shall not materially and adversely interfere with Tenant's use of the Premises during the Baseball Season. 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; provided, however, if portions of the Premises are blocked off and cannot be used for parking during the Baseball Season, Base Rent for any affected month will be reduced for the period during which Tenant is unable to fully utilize the Premises for parking on a pro-rata basis based on the number of unavailable spaces compared to the number of overall Parking Spaces in the Premises. To the extent that such unavailable spaces would not have been utilized by Tenant during such period, there shall be no reduction in Base Rent. If the parties cannot reach agreement on the amount of the reduction, the Executive Director shall reasonably determine the final reduction. Except in an emergency, Port will not block off portions of the Premises for such work during the days Special Events are scheduled in the Quarterly Calendar or Notice Sheet previously delivered to Port. 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 gross negligence or 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. Tenant acknowledges receipt of a copy of the Rules and Regulations regarding Special Events currently in force and agrees to abide by them and by any amended Special Events rules or other rules and regulations Port later imposes, provided that Port delivers written notice and copies of all such new or revised Rules and Regulations to Tenant. 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.

3.13. Possible Realignment of Terry A. Francois Blvd. The parties acknowledge that during the Term hereof, Mission Rock Street may be realigned to accommodate the Mission Rock Project. **[Note: Include additional description as necessary.]**

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.

4.2. Port Early Termination Rights. Port has the right to terminate this Lease ("Termination Option") in accordance with this *Section 4.2*. Port may exercise its Termination Option by delivering to Tenant written notice that it is exercising such Termination Option ("Early Termination Notice") upon the occurrence of any of the following:

(a) **Port program or project.** The Premises is needed in connection with a Port program or project; provided, however, that the conditions for Port to exercise its Termination Option with respect to a long-term Pier 48 rehabilitation project is set forth in *Section 4.2(b)*). Notwithstanding the provisions of *Section 4.3(a)*, Port may not terminate this Lease pursuant to this *Section 4.2(a)* during the Baseball Season.

(b) **Pier 48 Long-Term Development.** Port reasonably believes there is a feasible long-term Pier 48 rehabilitation project and the conditions in *Sections 4.2(b)(i)* and *4.2(b)(ii)* have been satisfied or otherwise waived by Tenant:

(i) Port has selected a developer/tenant of a Pier 48 Rehabilitation project in accordance with DDA *Section 7.7* (Pier 48), following Port's delivery to Master Developer of a Pier 48 Negotiation Notice:

(1) Master Developer and Port agree on the terms of a Pier 48 Development Lease within the negotiation period under **[DDA Section 7.7(d)]** (Pier 48 Term Sheet Negotiations); or

(2) (A) Master Developer and Port are unable to agree on the terms of a Pier 48 Development Lease within the negotiation period under **[DDA Section 7.7(d)]** (Pier 48 Term Sheet Negotiations); (B) Port issues a Pier 48 Solicitation; and (C) Port selects a

qualified respondent to the Pier 48 Solicitation and enters into a lease disposition and development agreement with such third-party.

(ii) Alternative parking spaces during the Major League Baseball season, commencing on the first exhibition game played at AT&T Park and ending on the last day of season, including any playoff games (“**Baseball Season**”), are made available by one of the following two options:

(1) All conditions for Port to issue a final certificate of occupancy for the Parcel D2 Garage on the Mission Rock Site are satisfied or if not satisfied, either Master Developer elected to defer construction of the Parcel D2 Garage in accordance with [DDA Section 2.5(b)(ii)] or Master Developer is in default under the DDA with respect to construction of the Parcel D2 Garage; or

(2) Until the *Section 4.2(b)(ii)(1)* is satisfied, Port has identified and offered to Tenant other locations where standard passenger vehicles may park on a self-park or valet basis during Giants’ home games during the Baseball Season (“**Alternate Parking Spaces**”) equal to the lesser of (A) the number of useable Parking Spaces at the Premises at the time the Early Termination Notice is delivered, or (B) the average number of Parking Spaces used on a game day during the Baseball Season during the prior thirty-six (36) months at the Premises. At least one-half (1/2) of the Alternate Parking Spaces must be located at Pier 38 or Pier 50 or in other locations that are closer than Piers 38 or 50 to AT&T Park. Additionally, the cost to park at the Alternate Parking Spaces will be comparable to the cost to park at the Premises.

Upon satisfaction of the conditions of this *Section 4.2(b)*, this Lease will terminate on the ninetieth (90th) day following delivery to Tenant of the Early Termination Notice.

“**Pier 48 Development Lease**” means a long-term lease of Pier 48 that would implement a Pier 48 Rehabilitation Plan.

“**Pier 48 Negotiation Notice**” means a Party’s notice to the other Party that the Noticing Party seeks to enter into exclusive negotiations based on a proposed Pier 48 Rehabilitation Plan.

“**Pier 48 Solicitation**” means a request for proposals or similar public solicitation of proposals for the rehabilitation of Pier 48 in accordance with a Pier 48 Rehabilitation Plan under a Pier 48 Development Lease.

(c) **Facility Condition.** The Chief Harbor Engineer determines, in its sole and absolute discretion, that the condition of the Facility’s structure, substructure or Utilities systems have deteriorated to a condition that would create a foreseeable risk of hazard to health or safety if the Premises were to continue to be occupied, and Port has not budgeted for the required repairs. Port may exercise this right without liability or expense. Port will attempt to provide Tenant with at least ninety (90) days’ prior written notice of the effective date of Lease termination, 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. For a period ending thirty (30) calendar days after receipt of the Early Termination Notice, Tenant may request Port’s consent to allow Tenant to make the required repairs in accordance with this Lease and any additional conditions reasonably imposed by Port, in consideration of Concessions from Port. If Port consents, Port’s Early Termination Notice will be deemed rescinded and of no further effect. Additionally, if the Chief Harbor Engineer makes such determination, Tenant may terminate this Lease upon not less than five (5) days’ notice to Port and no more than ninety (90) days from the date the Chief Harbor Engineer makes such determination.

4.3. *Effect of Termination.*

(a) This Lease will terminate on the ninetieth (90th) day following delivery to Tenant of the Early Termination Notice (“**Early Termination Date**”). Tenant must surrender

possession of the Premises in accordance with this Lease by the Early Termination Date, but Tenant will have no obligation to repair the portion of the Premises that has been “red-tagged.”

(b) Other than the provisions that survive the expiration or earlier termination of this Lease, this Lease will terminate as of the later of the date set forth in the Termination Notice or the end of the period set forth in *Section 4.3*.

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

Initials: _____
Port Tenant

5. RENT.

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

5.1. Base Rent.

(a) From and after the Commencement Date, Tenant shall pay the monthly Base Rent as specified in the Basic Lease Information, in advance on a quarterly basis, on or before the first day of each calendar quarter throughout the Term. If the Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month.

(b) Annual Base Rent will be allocated ninety-five percent (95%) to the High Season and five percent (5%) to the Low Season.

5.2. Adjustment of Base Rent and Facility Fees. Base Rent and Facility Fees will be adjusted as set forth in the Basic Lease Information.

5.3. Variable Rent . Tenant agrees to pay to Port throughout the Term, in addition to the Base Rent payable by Tenant pursuant to Section 5.1 above, each of the following (collectively, “**Variable Rent**”): (i) a monthly Percentage Rent for Parking Operations in the amount specified in the Basic Lease Information; (ii) the Facility Fees and the Special Event Bonus Fee in the amounts specified in the Basic Lease Information, and (iii) Percentage Rent for Promotional Signage in the amount specified in the Basic Lease Information.

5.4. Exclusions from Gross Revenues .

(a) **Exclusions.** The following shall be excluded from Gross Revenues from Parking Operations for purposes of calculating Percentage Rent due Port from Parking Operations, provided Tenant shall 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 Quarterly and/or Annual Statements: (A) sums collected by Tenant to pay the San Francisco parking tax required by Article 9 of the Business and Tax Regulations Code, to the extent such amounts are in fact paid to the appropriate governmental entities for which they are collected (“**Parking Taxes**”); and (B) substantiated annual Extraordinary Expenses directly associated with Ballpark Event Parking Operations up to the Extraordinary Expense Cap for the applicable period. Tenant may also deduct from Gross Revenues from Promotional Signage rent, the actual cost paid by Tenant for fabrication and installation of the Promotional Signage by outside vendors as documented to Port's satisfaction.

(b) **Extraordinary Expense Cap.** [The maximum amount of Extraordinary Expenses that may be excluded from Gross Revenues is \$170,000.00 during any Lease Year; provided, however, the Parties will confer on an appropriate adjustment of such amount when the Shed B Expansion Site is added to the Premises. Additionally, from and after the second Lease

Year, and each Lease Year thereafter, if the Percentage Rent for All Parking Operations during such Lease Year exceeds the Percentage Rent for All Parking Operations during the first Lease Year, the Extraordinary Expense Cap will be increased by three percent (3%) for such Lease Year (as may be adjusted from time to time, “**Extraordinary Expense Cap**”).]

(c) **Allocation of Extraordinary Expense.** The Extraordinary Expense Cap during any Lease Year will be allocated as follows: ninety-five percent (95%) during the High Season and five percent (5%) during the Low Season.

(d) **Carryover of Extraordinary Expense between Quarters.** If the Gross Revenues from Parking Operations minus Parking Taxes in any given quarter is less than the Extraordinary Expenses (up to the Extraordinary Expense Cap) in such quarter, any uncovered Extraordinary Expenses (up to the Extraordinary Expense Cap) shall carry-forward to the next quarter and may be excluded from the following quarters and so forth until the earlier of: the Extraordinary Expense Cap for the applicable period is reached or the last quarter of the applicable period. Tenant agrees and acknowledges that it will not receive any reimbursement, rent credit, concessions or other consideration from Port for any uncovered Extraordinary Expenses.

By way of example, Tenant shall calculate monthly Percentage Rent from Ballpark Event Parking Operations as follows:

Parking fees	\$80,000
Parking tax @ 25% collected from customers and paid to SF Tax Collector	<u>\$20,000</u>
Total collected	<u>\$100,000</u>
 Total collected	 \$100,000
Less Parking Tax paid	\$ <u>(20,000)</u>
Less Extraordinary Expenses	<u>\$ (50,000)</u>
Gross Revenue subject to % rent	\$ 30,000
 Port % Rent @ 66%	 \$ 19,800

5.5. Quarterly and Annual Statements.

(a) **Statements.** Within twenty (20) days after the end of the prior calendar quarter, Tenant shall furnish a statement (the "**Quarterly Statement**") substantially in the form of **Exhibit E** setting forth in reasonable detail the computation of Variable Rent for the previous calendar quarter, including an itemized list of all adjustments and deductions relating to the calculation of Variable Rent, accompanied by all Variable Rent due Port for such calendar quarter. In addition, Tenant shall furnish to Port, within thirty (30) days after the expiration of each Lease Year, a complete statement, showing in reasonable detail the computation of Variable Rent, including an itemized list of all adjustments and deductions relating to the calculation of Variable Rent, for the immediately preceding Lease Year ("**Annual Statement**") substantially in the form of **Exhibit E**. The Annual Statement is for verification and certification of Quarterly Statements and Extraordinary Expenses (for the applicable period) only and shall not result in any averaging of monthly Base Rent or Percentage Rent. Each Quarterly Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar quarter or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim at that time and which are expressly permitted under this Lease, and a computation of the Variable Rent for the immediately preceding calendar quarter or Lease Year, as applicable. Tenant shall substantiate actual Extraordinary Expenses with proof of expenditure, which may include: (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked

"Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonably approved by Port. Port shall have the right to examine and audit Extraordinary Expenses and deductions with reasonable advance notice. All actual Extraordinary Expenses shall be documented no later than in the Annual Statement.

(b) Certification of Statements. Each Quarterly 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 Quarterly 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 Base or 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.

(c) If Port receives the proper payment but does not receive the Quarterly Statement therewith by the twentieth (20th) day of the calendar month for the immediately prior calendar quarter, such failure, until cured, shall be treated as a late payment of Variable Rent, subject to a Late Charge, until Port receives the applicable Quarterly Statement. Additionally, if Tenant shall fail to deliver any Quarterly Statement within the time period set forth in this **Section 5.5** (irrespective of whether any payment is actually due or paid by Tenant to Port) and such failure shall continue for ten (10) 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 Tenant's Transferee or Agent) 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.

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

5.6. Books and Records. Tenant shall keep at the Premises (and shall cause its Transferees and Agents for Parking Operations, Special Events and Promotional Signage to keep) at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom, including without limitation Extraordinary Expenses, that are in accordance with this Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records for a period of the later of (i) five (5) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is terminated (the "**Audit Period**"). If Tenant operates the Premises, or causes the Premises to be operated, as part of a larger parking lot involving adjacent or other non-Port property, Tenant shall maintain its records to allow a determination of expenses incurred and revenues generated directly from the Premises.

5.7. 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.

5.8. *Audit.*

(a) Tenant agrees to make its and its relevant Transferee's and Agent's 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 Rent for a period not to exceed the Audit Period after a Quarterly or Annual 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 or Rent due 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 Revenue Rent due 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 Revenue or Rent due 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.

5.9. *Late Charges.* Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant's failure to provide the Variable Rent Statement to Port, will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in a Tenant Event of Default, Tenant will pay a late charge (the "**Late Charge**") equal to the higher of (a) five percent (5%) of all Rent or any portion thereof which remains unpaid more than five (5) days following the date it is due (or with respect to a failure by Tenant to deliver the Variable Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Variable Rent due for the subject period of the Variable Rent Statement), or (b) One Thousand Dollars (\$1,000); provided, however, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Variable Rent Statement to Port, as applicable, within five (5) days of written notice from Port of such failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant. Amounts due under this Section are in addition to, not in lieu of, amounts due under **Sections 5.10 and 5.11.**

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

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

5.12. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections 15.3(a), 15.10, 29.1(d), and 33 below, or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.9 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 5.12 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 5.12 and the reasonableness of the amount of the charges described in this Section 5.12.

Initials:

_____ Port _____ Tenant

5.13. No Abatement or Setoff. Tenant will pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, credit (other than the Maintenance Rent Credits), deduction, or counterclaim.

5.14. Survival. Tenant's obligation to pay any unpaid Rent due and payable will survive the expiration or earlier termination of this Lease.

5.15. Limited Port Obligations. 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.

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 the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the Port to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

Initials: _____
Tenant

7. DEPOSITS.

7.1. Security Deposit. Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Base Rent, the Security Deposit, in cash or, if approved by the Port's Executive Director, subject to the provisions of subsections (b)-(e)

below, in the form of a standby letter of credit totaling sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. If Base Rent is increased beyond the amount set forth in the Basic Lease Information for the last year of the Term, then from and after such increase, Tenant shall increase the amount of the Security Deposit to maintain the same ratio of the Security Deposit to Base Rent as existed on the date immediately prior to such Base Rent increase. Any increase in the Security Deposit shall be delivered to Port on the same date that such increase in Base Rent is first due.

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

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

7.2. Environmental Assurances [Note: Discussing whether applicable].

(a) [Before the Commencement Date, Tenant must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Tenant's operations under this Lease; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

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

(c) If an Environmental Notice is delivered to Tenant, and Tenant has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply a maximum of \$500 from the Environmental Oversight Deposit as Additional Rent for each Environmental Notice delivered to Tenant to reimburse Port for its administrative costs.

(d) Tenant must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies.

(e) Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Tenant within a reasonable time after the expiration or earlier termination of this Lease. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.]

7.3. *Letter of Credit.*

(a) If Tenant provides any portion of the Security Deposit in the form of a letter of credit, the provisions of this subsection and subsections (c)-(e) below apply ("the **Letter of Credit**"). Neither 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. Port will not be required to keep LC Proceeds segregated from its other funds or to deposit them into an interest-bearing account;

(b) 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 default of the Secured Obligations 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.

(c) Port may use any portion of LC Proceeds in a manner consistent with use of the Security Deposit as described above. 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.

(d) Tenant agrees that Port

(i) may apply all or any portion of the LC Proceeds in a manner consistent with manner consistent with use of the Security Deposit as described above;

(ii) may retain all or any portion of the LC Proceeds in a manner consistent with use of the Security Deposit as described above;

(iii) 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

(iv) 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 overload or cause damage to the Premises;
- (d) any activity which constitutes waste or nuisance to owners or occupants of adjacent properties, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any unusually objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound apparatus which can be heard outside the Premises in violation of applicable Law, provided, that the Construction Impacts reasonably expected for the construction of the Horizontal Improvements will not be considered or deemed a nuisance;
- (e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants and licensees including, but not limited to, rights of ingress and egress or of owners or occupants of adjacent properties;
- (f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;
- (g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;
- (h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;
- (i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;
- (j) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;
- (k) the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;
- (l) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;
- (m) the washing of any vehicles or equipment;
- (n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the load restrictions, if any, described in the Basic Lease Information; or

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

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

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 8.3 and the reasonableness of the amount of the charges described in this Section 8.3.

Initials: _____
Port Tenant

9. COMPLIANCE WITH LAWS AND REGULATIONS.

Without limiting Tenant's right to terminate this Lease in accordance with the Basic Lease Information in certain instances due the requirement to comply with Laws, Tenant, at Tenant's sole cost and expense (subject to the application of Maintenance Rent Credits), 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 (subject to the application of Maintenance Rent Credits).

Without limiting Tenant's right to terminate this Lease in accordance with the Basic Lease Information in certain instances due the requirement to comply with Laws, the parties acknowledge and agree that Tenant's obligation to comply with all Laws (subject to the application of Maintenance Rent Credits), 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 repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved is related to Tenant's particular use of the Premises.

Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent (subject to the application of Maintenance Rent Credits), or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

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

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

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

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

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to Indemnify 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 initialing below, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its

capacity as a landowner with a proprietary interest in the Facility and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Facility. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

Initials:

Tenant

10.3. Compliance with City's Risk Manager's Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase rates under a standard form fire insurance policy or subject Port to potential premises liability. Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

11.1. Tenant Maintenance and Repair Obligations. **[Note: Subject to further discussion.]** [Tenant shall maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon in accordance with this Lease.] **[Note: Definition of Routine Maintenance under discussion]**. Except as may otherwise be provided under Articles 17 (Damage and Destruction) and 18 (Condemnation), throughout the Term, Tenant will perform routine maintenance of and minor repairs to: (a) interior and exterior doors and windows; (b) electrical, mechanical and plumbing systems, facilities, fixtures and components; (c) interior lighting facilities and bulbs; (d) utility facilities serving the Premises [to the point provided by the respective utility service provider (whether on or off the Premises)]; (e) telephone, telecommunications, data and other communication lines and equipment (each less reasonable wear and tear); (f) maintenance and repair of the Premises floor (not including the substructure) in order to use the Premises for the Permitted Uses; (g) painting and repainting parking stripes; (h) removing or painting over graffiti on the exterior and interior of the Premises; (i) cleaning and litter pick up; and (j) other routine maintenance and repair necessary to use the Premises for the Permitted Uses (collectively, "**Routine Maintenance**"). **[Except as specifically provided in this Lease and other than Routine Maintenance, Tenant shall have other obligation to maintain or repair the Premises or the Utilities serving the Premises, except that,** i] In the event that Tenant, its Agents, Subtenants or Invitees or the Permitted Uses cause any damage to the Premises, Improvements, or the Utilities serving the Premises, Tenant is responsible for the full cost of repair and if Tenant fails to timely repair any such damage, Tenant agrees that Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the roof, substructure, aprons, deck, 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.

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

11.2. Port's Right to Inspect. In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, the appropriate maintenance or repair and complete the same with due diligence. Without limiting Section 24 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises to the extent required by this Lease in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. Port's Right to Repair. In the event Tenant fails to maintain the Premises in accordance with Sections 11.1 and 11.2 above, or Tenant fails to promptly repair any damage to the Facility caused by Tenant or its Agents, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees.

With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section 11.3 shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

Initials: _____
Tenant

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

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

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

12. UTILITIES AND SERVICES .

12.1. Utilities. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant.

Subject to *Article 11*, Tenant shall be obligated, at its sole cost and expense (subject to the Maintenance Rent Credits), 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). 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. If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

Tenant will not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises, including without limitation, electronic data processing machines and machines using current in excess of the existing electrical current supplied to the Premises. If Tenant shall require electric current in excess of that usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the City and County of San Francisco or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed. The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or, except as explicitly provided below, 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 (subject to any Maintenance Rent Credits) or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. Port shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

Without Port's prior written consent, which Port may give or refuse in its sole and absolute discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Facility or the pier, as applicable, and as may be further described in the Basic Lease Information. If Port consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to the Port, (subject to the Maintenance Rent Credits) 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. Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises for Tenant's use, 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; provided that such installation or use does not materially and adversely impact Tenant's use of the Premises for Parking Operations unless otherwise agreed to by the Parties. Unless the cost per kilowatt of power to Tenant from such Renewable Energy System is greater than the cost per kilowatt Tenant would otherwise pay for power, Tenant shall purchase all or a portion of its power needs from the operator of the Renewable Energy System.

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

Initials: _____
Tenant

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

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

(b) As a condition to giving consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and (ii) a payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount 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 the Alterations or Improvements within forty-five (45) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's objection within the 45-day period shall be deemed Port's disapproval of the Alterations.

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

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

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

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

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

(d) At the completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. 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 Pier 48 Shed A and [] is within the Embarcadero National Register Historic District. 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 the

Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibit D* ("**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 California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

(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 3423 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.2(g), lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.3. Improvements Part of Realty. Except as set forth in Section 13.4 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Sections 13.4, 13.5 and 25 below (Surrender) below.

13.4. Removal of Improvements. Prior to the Expiration Date or earlier termination of this Lease, Port shall give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. Any such removal is subject to the requirements of this Section,

including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

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

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

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

13.8. *Improvements on Roof.* Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent, which consent may be withheld in Port's sole discretion. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Premises necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.7, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's

Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts if possible to notify Port in advance of such entry.

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

14. LIENS.

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

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

15. HAZARDOUS MATERIALS.

15.1. *Requirements for Handling.* Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other Port property without the prior written consent of Port, which consent shall not be unreasonably withheld so long as Tenant demonstrates to Port's reasonable satisfaction that such Hazardous Material is necessary to Tenant's business, will be Handled in a manner which strictly complies with all Environmental Laws and will not

materially increase the risk of fire or other casualty to the Premises. Port may request an Operations Plan and other information necessary to provide its consent. Notwithstanding the foregoing and provided that Handling is at all times in full compliance with all Environmental Laws, Tenant may Handle janitorial and office supplies in limited amounts customarily used for general office purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled at the Premises 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 (not to be unreasonably withheld or delayed) before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

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

judgment to protect the value of the Premises or the Facility, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises or the Facility in any manner related directly, or indirectly to Hazardous Materials.

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

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

15.6. Notification of Asbestos. Port hereby notifies Tenant, in accordance with the United States Occupational Safety and Health Administration ("OSHA") Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and the Division of Occupational Safety and Health of the California Department of Industrial Relations ("Cal-OSHA") General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in 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 defend and 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 San Francisco Building Code § 3423.

Tenant agrees that its waiver of Claims set forth in Section 19 below 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 defend and 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. Failure to Comply. Failure to comply with Section 15 shall constitute a material default under the Lease. In the event of such default, Port shall have all rights available under the Lease and at law or equity including, without limitation, the right to either:

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

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

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

15.10. 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") to the extent necessary, and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning on-site.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction 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.

15.11. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in *Schedule 1* attached hereto, and the Hazardous Materials described in the reports listed on the attached *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 15.11 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

For purposes of this Section 15, the term "**Commencement Date**" shall mean the commencement date (including any early entry period, if any) of the Prior Lease.

16. INSURANCE [UNDER REVIEW]

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

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

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

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

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

(e) 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 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) 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. 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) [Business Interruption Insurance. Tenant shall maintain business interruption insurance on an actual loss sustained basis or to cover loss of income and rental payments for twenty-four (24) months for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to *Sections 16.1(d) and 16.1(e).*]

(g) Garagekeepers' Liability Insurance. Garagekeepers' Legal Liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, insuring against all risks of loss or physical damage to vehicles (and property left in vehicles) in the care, custody or control of Tenant, its subtenants, Agents, or Invitees, with any deductible not to exceed \$10,000 each occurrence.

(h) [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 [XXX] Million Dollars (\$[XXX],000,000.00).]

(i) Other Coverage. Such other insurance or different coverage amounts as is required by Port for certain Special Events or by Law or as is generally commercially reasonable,

character, age and location as the Facility, as may change from time to time, or as may be required by the City's Risk Manager.

(j) Notwithstanding the foregoing, Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this Section 16 with insurance coverage maintained by one or more of Tenant's Agents, Invitees or Transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this Section 16.

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

(c) Tenant shall provide thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port. Such notice shall be given in accordance with the notice provisions of Section 30 below.

(d) 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.

(e) Tenant shall deliver to Port certificates of insurance and additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to 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.

(f) Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth in Section 16.1 above if Port finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with the use of the Premises.

17. DAMAGE AND DESTRUCTION.

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

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

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

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

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

Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes or 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) all or 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 Parking Operations in that portion remaining, then this Lease shall remain in effect as to the portions remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount proportionate to the expected reduction in historic/comparable monthly Base Rent in light of the reduced Parking Operations revenues for the remainder of the Term. If the parties cannot reach agreement on the amount of the reduction, the Executive Director shall reasonably determine the final reduction. If, after a partial taking, Tenant is not reasonably able to continue Parking Operations, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination which shall be not less than thirty (30) or more than sixty (60) days after the date of notice. Port, at its option, may elect to restore the Premises to an architectural whole.

18.3. 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 perform all of the terms, conditions and covenants of this Lease, provided, however, that Base Rent payable from the Date of Taking shall be reduced by an amount proportionate to the expected reduction in historic/comparable monthly Base Rent in light of the reduced Parking Operations revenues for the affected months. If the parties cannot reach agreement on the amount of the reduction, the Executive Director shall reasonably determine the final reduction. 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.

18.4. Award; Waiver; Termination of Lease; Rent and Award. Upon termination of this Lease in its entirety pursuant to Section 18.1 or partially pursuant to 18.2, then: (i) Tenant's obligation to pay Rent as stated above 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, if requested, shall defend them, without cost to the Indemnified Parties, against any and all Claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant its Agents and/or Invitees 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 its Agents and/or Invitees on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

19.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material Condition, except (A) where caused by the Indemnified Parties' sole willful misconduct or (B) arising before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier, except to the extent covered in (ii); and (ii) Tenant's Exacerbation of any Hazardous Material Condition. For purposes of this Section 19.2(a), the term "Commencement Date" shall mean the commencement date (including any early entry period, if any) of the Prior Lease.

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

19.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on

the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. The Indemnification obligations of Tenant set forth in this Lease includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

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

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

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

The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, and (vi) any other acts, omissions or causes. Nothing in this Section 19.4 shall relieve the Indemnified Parties from liability caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

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

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

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

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

BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials: _____
Tenant

19.6. Tenant's indemnity for Claims relating to "the Facility or any other Port property" as set forth in Sections 19.1(a) and (e), 19.2(a)(i), 19.3, and 19.4 of this Lease applies only to the extent that such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence relating to this Lease or the Premises.

20. ASSIGNMENT AND SUBLETTING.

20.1. Transfer to Affiliate.

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

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

20.2. Transfer to Non-Affiliate.

(a) Except for an Affiliate Transfer, Tenant must obtain Port's prior written consent to any Transfer, which Port may be withheld in its sole discretion.

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

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

(c) If Port consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within 90 days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 90-day period, then Port's consent

will expire, unless Tenant gives Port a new Transfer Notice, in which case Port again will be entitled to exercise any of the options under this Section.

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

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

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

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

Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Transfer of all or any part of the Premises; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right to receive, collect and enjoy such rents; and provided, however, that the foregoing assignment shall be subject and subordinate to any assignment to a Mortgagee under Section 27 until such time as Port has terminated this Lease (but subject to the rights of the Mortgagee to a new lease under Section 27.9(c)). Such subordination shall be self-operative. However, in confirmation thereof, Port shall, upon the request of each Mortgagee, execute a subordination agreement in form and substance reasonably satisfactory to such Mortgagee and to Port. Notwithstanding the foregoing, if this Lease terminates by reason of an event of default on the part of Tenant, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any rent, including any and all Additional Rent, through the date of termination of this Lease. Port shall apply any net amount collected by it from such Subtenants to the payment of Rent due under this lease.

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

Term of Sublease:	5 years x 12 months = 60 months
Subletting Expenses:	\$15,000 + \$15,000 = \$30,000
Amortized Subletting Expenses:	\$30,000/60 months = \$500/month

Excess Rent: \$5,000/month - \$3,000/month = \$2,000/month

Additional Rent: \$2,000/month - \$500/month = \$1,500/month

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

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

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

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

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

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

20.5. 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 Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer for a period of no less than one year after the Expiration Date. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Affiliates where applicable.

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

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

21. DEFAULT BY TENANT.

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

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

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

(c) subject to Section 34.2, failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing Port to immediately terminate this Lease without notice or demand to Tenant; or

(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 33 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

(f) failure 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 failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

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

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

(i) 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) business 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

(j) [delivery to Tenant of three (3) or more notices of default, irrespective of whether Tenant actually cures such default within the specified time period, may, at the sole and absolute discretion of Port, be deemed an incurable breach of this Lease allowing Port to immediately terminate this Lease without further notice or demand to Tenant; or]

(k) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day

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

(l) 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

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

(n) 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

(o) failure to comply with Tenant's management covenants set forth in Section 34 and such failure continues for a period of five (5) days following written notice from Port; or

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

22. PORT'S REMEDIES.

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

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

rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Port, as soon as ascertained, any costs and expenses incurred by Port in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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

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

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

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

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

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

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

22.4. Port's Right to Cure Tenant's Default. Port, at any time after Tenant commits a default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the

payment of any sums, or otherwise incurs any costs, damages, or liabilities, (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

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

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

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

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

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

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

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

22.9. *Remedies Not Exclusive.* The remedies set forth in Section 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 23 shall include, without limitation, a party who substantially obtains or defeats, as

the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2. Appeals. Attorneys' fees under this Section 23 shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

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

24. PORT'S ENTRY ON PREMISES.

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

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

- (a) To perform any necessary maintenance, repairs or restoration to the Premises or 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 (including potential respondents to a Pier 48 Solicitation) or other interested parties;
- (e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or
- (f) To obtain environmental samples and perform equipment and facility testing.

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

24.4. No Liability. Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other

damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

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

25. SURRENDER AND QUITCLAIM.

25.1. [Surrender.] Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair in accordance with Article 11 (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 (other than Hazardous Materials existing as of the commencement date of the Prior Lease), and free and clear of all liens and encumbrances caused by Tenant or its Agents or Subtenants other than liens and encumbrances existing as of the date of this Lease and any other liens and 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.] **[Note: Subject to further refinement based on Routine Maintenance.]**

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26 until the Premises are 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 Areas 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 Mortgages and without payment therefore by Port and shall be surrendered to Port upon such date. Upon the expiration or earlier termination of this Lease, Tenant shall promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any that Port agrees are to remain part of the Premises.

25.3. Abandoned Property. Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or

otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code 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 be deemed a month-to-month tenancy upon the terms, conditions, and covenants of this Lease, except as provided in this Section. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. Tenant shall Indemnify Port from and against any and all loss or liability resulting from Tenant's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

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

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

26.4. *Renewal Letter of Credit.* During any holding over period after the expiration of the Term (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. MORTGAGE OF LEASEHOLD.

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

(a) Restrictions on Financing. Except as permitted in this Section, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances.

(b) No Subordination of Fee Interest or Rent. Under no circumstance shall any lien or encumbrance placed by Tenant on its leasehold estate under this Lease attach to Port's fee interest in the Premises. Except as specifically provided in this Lease, Port shall not be required to subordinate its interest in the Premises nor its right to receive Rent hereunder to any Mortgagee of Tenant.

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

27.2. Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. At any time, and from time to time during the Term, Tenant shall have the right to assign, mortgage or encumber the leasehold estate created by this Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby; provided, however, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent, including any and all Additional Rent, to the extent provided in this Lease, and for the performance of all other obligations contained in this Lease.

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

(c) Limitation on Number of Mortgagees. Notwithstanding anything to the contrary set forth in this Lease, any rights given to Mortgagees under this Section shall not apply to more than three (3) Mortgagees at any time. Tenant shall notify Port in writing of the three (3) Mortgagees to which such rights apply, if there are ever more than three. If Tenant fails to give such notice, however, Tenant shall not be in default under this Lease, but in such case only the three (3) Mortgagees having the most senior lien priority shall be entitled to exercise the rights given to Mortgagees under this Section.

27.3. Notice of Liens. Tenant shall notify Port promptly of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate created by this Lease, other than any such matters existing on the date this Lease is executed.

27.4. Port Statement Port agrees within thirty (30) days after request by Tenant to give to any holder or proposed holder of a leasehold mortgage, deed of trust, sale-leaseback or other security instrument a statement in recordable form as to whether such mortgage, deed of trust, sale-leaseback or other security instrument is permitted hereunder to secure all of the advances and indebtedness stated by the terms of the applicable financing documents. Except as set forth in such statement, such a statement shall estop Port from asserting that such mortgage, deed of trust, sale-leaseback or other security instrument (if done in the way described in the statement) is not permitted hereunder, but shall create no liability on Port. In making a request for such statement, Tenant shall furnish Port copies of such of the financing documents as are required reasonably by Port to permit Port to make the determination whether such security instrument is permitted hereby. In no event, however, shall any failure by Tenant to request such a statement or to comply with the terms of any Mortgage, including without limitation the use of any proceeds of any debt, the repayment of which secured by a Mortgage, be deemed to invalidate the lien of a Mortgage.

27.5. Interest Covered by Mortgage.

A Mortgage may attach to any of the following interests in the Premises: (i) Tenant's leasehold estate in the Premises created hereby, and Tenant's interest in the Improvements or any portion thereof, (ii) Tenant's interest in Subleases, including the right to receive rents and other income due from Subtenants; (iii) any personal property of Tenant, (iv) products and proceeds of the foregoing, and (v) any other property rights and interests of Tenant arising under this Lease, including any real property interests of Tenant appurtenant or related to Tenant's interest in or use of the foregoing interests.

27.6. Institutional Lender; Other Permitted Mortgagees.

A first Mortgage may be given only to (i) a Bona Fide Institutional Lender (as said term is defined in the Ballpark Ground Lease), or (ii) another lender which has been approved by Port (such approval not to be unreasonably withheld, delayed or conditioned). In any instances in which Port's consent is so required, Port shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within thirty (30) days after the receipt of such written notice constitutes approval, and Port sends no notification of disapproval within such period. Mortgages which are junior in lien priority to a first Mortgage are permitted at any time.

27.7. Rights Subject to Lease. Except as provided in this Lease or as otherwise specifically waived by Port in writing, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease. None of such covenants, conditions and restrictions shall be deemed waived by Port by reason of the giving of such Mortgage, except as provided in this Lease or otherwise specifically waived by Port in writing.

27.8. Required Provisions of any Mortgage. Tenant agrees with respect to each Mortgage, either to record a request under California Civil Code Section 2924b that notice of default and of sale under such Mortgage be sent to Port, or to have such Mortgage provide:

- (a) that the Mortgagee shall by registered or certified mail give written notice to Port of the occurrence of any event of default under the Mortgage; and
- (b) that Port shall be given notice at the time any Mortgagee initiates any foreclosure action.

27.9. Notices to Mortgagee.

(a) Copies of Notices. Port shall give a copy of each notice Port gives to Tenant from time to time of (i) any default under this Lease, (ii) the occurrence of an Event of Default, or (iii) Port's consent to a Transfer, to each Mortgagee who has given to Port a written notice substantially in the form provided in Section 27.13. Copies of notices shall be given to Mortgagees at the same time as notices are given by Port to Tenant, addressed to each such Mortgagee at the address last furnished to Port. Port shall acknowledge in writing its receipt of the name and address of a Mortgagee delivered to Port under Section 27.13. Port's failure to give notice to a Mortgagee as required by this Section 27.13 shall not be deemed to constitute a default on the part of Port under this Lease, but no such notice shall be deemed to have been validly given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Section 30.

(b) Notice From Mortgagee to Port. The Mortgagee under any Mortgage shall be entitled to receive notices from time to time given to Tenant by Port under this Lease in accordance with subsection (a) above provided such Mortgagee shall have delivered a notice to Port in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County

of San Francisco, acting through the San Francisco Port Commission, as Port, and China Basin Ballpark Company LLC, as Tenant, dated January 1, 2012 for reference purposes, L-14980 (the "Lease"), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as *Exhibit A* and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Port be sent to the undersigned at the following address:
 _____."

27.10. Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) **Cure Periods.** In the case of any notice of default given by Port to Tenant and Mortgagee in accordance with Section 27.9, the Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of such cure period, or (ii) the date that Port has served such notice of default upon Mortgagee, and Port shall accept such performance as if the same had been made by Tenant; provided, however, if such default cannot reasonably be cured or remedied by Mortgagee within such additional thirty (30) day period, such cure period shall be extended (and no Event of Default shall be deemed to have occurred under this Lease by reason of such default) so long as the Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure and delays caused by bankruptcy or insolvency proceedings. In addition, the Mortgagee shall have the right to extend the additional thirty (30) day period for curing or commencing cure of a default by Tenant, as specified above, by an additional sixty (60) days (so as to equal an additional ninety (90) day period after the later of the events specified in clauses (i) or (ii) above), by paying for such additional sixty-day (60) period the Rent when due under this Lease.

(b) **Foreclosure.** Anything herein contained to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money, Port shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to each Mortgagee (or, if such Mortgagee elects to extend such period to ninety (90) days under subsection (a) above, if within such ninety (90) day period), a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified Port of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch (subject to Force Majeure and delays caused by bankruptcy or insolvency proceedings). Upon obtaining possession or acquiring Tenant's interest under this Lease, a Mortgagee or foreclosure purchaser shall be required promptly to cure any monetary defaults and any other defaults then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults or Events of Default hereunder referred to shall have been cured; and (ii) nothing herein contained shall preclude Port, subject to the provisions of this Section 27, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings. Notwithstanding anything to the contrary, Mortgagee shall have the right at any time to notify Port that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event,

Port shall be entitled to seek the termination of this Lease as otherwise herein provided. Upon any such termination, the provisions of Section 22 shall apply.

(c) **New Lease.** In the event of the termination of this Lease (including, but not limited to, a termination due to the rejection of this Lease in a bankruptcy proceeding in which Tenant is the debtor) before the expiration of the Term, except (i) by a Taking, or (ii) as the result of damage or destruction as provided in Section 17, Port shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Mortgagee shall thereupon have the option to obtain a new lease (a “**New Lease**”) in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within sixty (60) days after service of such notice that this Lease has been terminated, Port shall enter into a New Lease of the Premises with the most senior Mortgagee giving notice within such period or its designee; and

(ii) Such New Lease shall be entered into at the reasonable cost of the Mortgagee, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, and in substantially the same form as this Lease. The parties intend that such New Lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Such New Lease shall require the Mortgagee to perform any unfulfilled obligation of Tenant under this Lease which is reasonably susceptible of being performed by such Mortgagee. Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable attorneys’ fees and costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such New Lease.

(d) **Nominee.** Any rights of a Mortgagee under this Section, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, that such nominee or designee is not a Person otherwise not permitted to become Tenant hereunder; and provided, further that a Mortgagee may in any event acquire title to this Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

(e) **Subleases.** Effective upon the commencement of the term of any New Lease executed pursuant to this subsection, all subleases then in effect shall be assigned and transferred without recourse by Port to Mortgagee and all monies on deposit with Port which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by Mortgagee for the purposes of and in accordance with the provisions of such New Lease. Between the date of termination of this Lease and commencement of the term of the New Lease, Port shall not consent to (1) any new Subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a New Lease, (2) cancelation or material modification of any of the existing Subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (3) any cancellation, termination or surrender thereof without the written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed. Effective upon the commencement of the term of the New Lease, Port shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all personal property used in the operation of the Premises that Port acquired when this Lease terminated.

(f) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages which are permitted hereunder.

(g) No Merger. No union of the interests of Port and Tenant herein shall result in a merger of this Lease in the fee interest, so long as any Mortgage permitted hereunder shall be unsatisfied.

(h) Limitation on Liability of Mortgagee. Anything herein contained to the contrary notwithstanding, no Mortgagee, or its designee or nominee, shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created by this Lease.

(i) Limitation on Obligation to Cure. Anything herein contained to the contrary notwithstanding, a Mortgagee, or its Affiliated designee or nominee (other than Tenant), (i) shall have no obligation to cure (A) any non-monetary Event of Default by Tenant under this Lease which is not reasonably susceptible of being cured by such Mortgagee, and (ii) if it acquires the leasehold estate or obtains a New Lease, shall not be required to restore the Improvements following damage or destruction, except to the extent that the cost of Restoration can be paid from the net insurance proceeds received by Mortgagee (or such Affiliate) by reason of such damage.

(j) Use. After any transfer of the leasehold estate pursuant to, or in lieu of, foreclosure of a Mortgage, the Premises must be operated by the Mortgagee or foreclosure purchaser, or its successor, for the Permitted Activities under the provisions of this Lease and in compliance with all provisions of this Lease.

27.11. Assignment by Mortgagee.

If a Mortgagee shall acquire Tenant's interest in this Lease as a result of a sale under said Mortgage pursuant to a power of sale contained therein, pursuant to a judgment of foreclosure, through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure, bankruptcy or insolvency action, or in the event a Mortgagee becomes Tenant under this Lease or any New Lease obtained pursuant to Section 22, such Mortgagee's right thereafter to assign or transfer this Lease or such New Lease shall be subject to the restrictions of Section 20. In the event such Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any New Lease obtained pursuant to Section 22, and in connection with any such assignment or transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such assignment or transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Section and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

27.12. Modification of Lease. Port will not (A) accept any surrender or termination of this Lease, (B) agree to the cancellation or enter into any modification of this Lease, or (C) permit the demolition of any Improvements (except for safety repairs), without the prior written consent thereto of each Mortgagee, except that this provision shall not limit the rights of Port for an Event of Default on the part of Tenant, subject to the rights of a Mortgagee under this Lease. Without limiting the generality of the foregoing, no termination of this Lease under Section 365(h) of the United States Bankruptcy Code, as amended, with respect to a bankruptcy by Port shall be effective against any Mortgagee without the prior written consent of such Mortgagee.

27.13. Transfer of Mortgage. Port hereby consents to transfer or encumbrance by any Mortgagee, absolutely or as collateral security for performance of obligations, of any Mortgage

or any interest therein, provided, in the case of a first Mortgage, such transfer is to a Bona Fide Institutional Lender (or other lender approved by Port, such approval to be governed by the provisions of Section 22), and in the event of any such transaction the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate created by this Lease.

27.14. *Appointment of Receiver.* In the case of any default under any Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage, and to enter or have its receiver enter and take possession of the Premises, and manage and operate the same.

27.15. *Subordination of Liens.* Port hereby subordinates to the lien of any Mortgage any lien covering any personal property of Tenant which Port may have for unpaid rentals under contract or at law or equity.

27.16. *Conflicts.* In the event of any conflict between the provisions of this Section 27 and the other provisions of the Lease, the provisions of this Section 27 shall govern and control.

28. MINERAL RESERVATION.

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of these Statutes, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract subsurface minerals, including oil and gas deposits, from such area.

In no event shall Port be liable to Tenant for any Claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

29. 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.

29.1. *Nondiscrimination.*

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Chapter 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 29.1(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 the CMD.

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

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

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 29.2(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.

29.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements.

Tenant agrees to comply with the applicable provisions of the ordinance through compliance with the following:

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

(b) Tenant shall follow all requirements of the San Francisco Workforce Development System, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable.

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

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

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

29.5. 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.

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

29.7. 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.

29.8. Prohibition of Alcoholic Beverages Advertising. Except for Special Events at which the sale, production or consumption of alcohol is expressly permitted, Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

29.9. Graffiti Removal.

Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Improvements 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. The term "**Graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of 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.).

29.10. *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>.

29.11. *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.

29.12. *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.

29.13. *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.

29.14. Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the Campaign and Governmental Conduct Code (the "**Conduct Code**") which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making 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 commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six 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 \$50,000 or more. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that if this Section 28.13 applies, Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

29.15. 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.

29.16. 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.

29.17. 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.

29.18. Prevailing Wages and Working Conditions. 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 the remedies 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).

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

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

29.21. 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.

29.22. 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.

29.23. 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 in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the Premises with attendance of more than 100 people.

29.24. Prevailing Wage Rate Requirement For Theatrical Workers. City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b). Capitalized terms in this Section shall have the meanings provided in Section 21.C4. Accordingly, Tenant, as a condition of this Lease, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.4, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, the City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Lease.

(2) The City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises.

(3) Tenant shall provide to the City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises.

For current Prevailing Wage rates, see the Office of Labor Standard Enforcement's website or call the Office of Labor Standard Enforcement at 415-554-6235.

29.25. Local Truckers. As material consideration for Port's agreement to enter into this Lease, Tenant agrees that, for all directly contracted or service agreement trucking opportunities associated with Tenant's operations at the Premises, including, without limitation, hauling of materials on and off the Premises, Tenant shall make good faith efforts to first use Local Truckers.

For purposes of this Section, "**truckers**" means a business that provides trucking services for a profit. "**Local truckers**" means those truckers that are certified by the Contract Monitoring Division of the City's General Services Agency as "Local Business Enterprises" pursuant to the

City's Local Business Enterprise and Non-Discrimination in Contracting Ordinance as amended from time to time (Administrative Code Chapter 14B.)

To the extent that Tenant in its sole discretion directly contracts or enters into a service agreement with truckers for trucking opportunities as described in this Section, Tenant shall use Local Truckers for a minimum of sixty percent (60%) of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the sixty percent (60%) requirement; equipment rental and disposal fees will not be counted. Notwithstanding the foregoing, if Tenant fails to meet the sixty percent (60%) minimum, Tenant shall not be in default of this provision so long as Tenant first offered trucking opportunities to Local Truckers, and such Local Truckers were unavailable or unwilling to perform the work.

Tenant shall submit a monthly report to the Port and CMD stating the total cost to Tenant of trucking through a contract or service agreement during the preceding month and identifying the total amount paid to Local Truckers by the Tenant. The monthly report shall document all truckers who conducted contract or service agreement work for Tenant, and identify those truckers which are Local Truckers. If Tenant fails to meet the 60% minimum in any month, the report shall document Tenant's good faith outreach efforts to contact Local Truckers and the reasons that such work could not be conducted by Local Truckers. At Port or CMD's request, Tenant shall provide additional documentation required to ensure Tenant's compliance with this provision. Tenant's failure to comply with this Section shall be deemed a material breach under the Lease subject to the default provisions of Section 21 of this Lease.

29.26. 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.

30. 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.

31. MISCELLANEOUS PROVISIONS.

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

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

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

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

31.5. Interpretation of Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31.17. *Approvals by Port.* Wherever this Lease requires or permits Port to give its consent or approval or whenever an amendment or other instrument or document is to be executed by or on behalf of Port or where Fees are to be determined or established for Special Events, the Executive Director, or his or her designee, will be authorized to execute the instrument on behalf of Port, except as otherwise provided by applicable Law, including the City's Charter and provided that such consent, approval or amendment does not materially increase the obligation of the Port or City.

32. LIMITATION ON DAMAGES.

32.1. *No Recourse Beyond Value of Premises.* 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's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

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

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

obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

33. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than twenty (20) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as *Exhibit C*. If Tenant shall fail to provide such certificate within twenty (20) days of receipt by Tenant of a written request by Port as herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

34. TENANT'S MANAGEMENT COVENANTS.

34.1. Covenants. Tenant shall operate the Premises in a manner consistent with standards for the maintenance and operation of other parking facilities within Pier sheds and special event venues located in San Francisco. Except as otherwise provided in this Lease, 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 Premises, as more fully described in Section 11, [(b) utility and telecommunications services on the Premises, if such repairs are Routine Maintenance,] (c) litter pick up, cleaning, janitorial, extermination, and trash removal, (d) adequate security services, including crowd control and management, parking and traffic control and first aid, during and for a reasonable period before and after a Special Event, and (e) such other services as may be necessary or appropriate for a professionally-run parking facility and Special Events.

34.2. Parking. Port understands that Tenant's use of the Premises may fluctuate with the schedule and nature of baseball games or other events at the Ballpark and Special Events and that there will be periods of the year when the Premises may be largely unoccupied or unused and such conditions shall not be considered by Port to be a violation of the provisions of this Lease so long as Tenant uses commercially reasonable efforts to use the Premises for parking during Giants home games during the Baseball Season.

35. APPROVAL OF BOARD OF SUPERVISORS.

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

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

Port: **City and County of San Francisco,**
a municipal corporation, operating by and through the
San Francisco Port Commission

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

Date Signed: _____

Tenant: **China Basin Ballpark Company, LLC, a Delaware limited liability company**

By: _____
Name:
Title:

Date Signed: _____

Approved As To Form:
Dennis J. Herrera, City Attorney

By: _____
Name: _____
Deputy City Attorney

Lease Prepared By: Phil Williamson, Senior Project Manager: _____
(initial)

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

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

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

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

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

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately ____ square feet of the Property (the "**Premises**").
2. That the Lease has not been modified, assigned, supplemented or amended except by:
3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.
4. That the commencement date under the Lease was _____, 20__, the expiration date of the Lease is _____, 20__.
5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by Port under the terms of the Lease is \$_____ and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.
9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.
10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.
11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

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EXHIBIT D

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 Waterfront National Register 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 Landmarks Preservation Advisory Board – 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.

I. 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 (see Figures 1 and 2). 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 E
QUARTERLY AND ANNUAL STATEMENT FORM

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EXHIBIT F

PUBLIC PARKING PLAN

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EXHIBIT G

RULES FOR SPECIAL EVENTS AND ZERO WASTE EVENTS AND ACTIVITIES POLICY

RULES FOR SPECIAL EVENTS

(a) Tenant shall provide notice of the following pending Special Events at least one week prior to such Special Event to the Central Waterfront Advisory Group (or its successor advisory group), neighbors or neighborhood organizations requesting notice and others as requested by Port: Special Events with a duration of five (5) days or more (excluding set up and take down); Special Events with an estimated attendance of 5,000 people or more; and Special Events which require an amplified sound permit under the SF Police Code.

(b) All Special Events in non-enclosed areas on the Premises involving amplified music or other events where the Special Event may involve similar noise impacts shall conclude by 11:00 p.m.

(c) Tenant shall remove from the China Basin Shoreline Park and adjacent Port facilities all debris and refuse resulting from the Special Event within 12 hours of the conclusion of any Special Events.

(d) With respect to any special Event requiring the consent of the Port Executive Director, the Executive Director and Tenant shall negotiate in good faith with each other and with any affected City departments to determine what, if any, Designated Services would be reasonably required in connection with such Special Event(s), and the incremental costs of providing such Designated Services with respect to such Special Event(s) taking into account all the facts and circumstances, including the security, transportation plan, litter pick-up, parking and traffic control and other such services to be provided by Tenant and/or sponsor of such Special Event(s). Without limiting the approval rights as to certain Special Events under this Lease, the Executive Director shall not withhold consent hereunder for any such Special Event as to which Tenant has agreed to pay (or pay to City, as applicable) for the actual and reasonable incremental cost of providing Designated Services with respect to such Special Event, in an amount (A) agreed to in advance by Tenant and the Executive Director, or (b) reasonably determined by the Executive Director. The term "**Designated Services**" shall mean, with respect to any Special Event, such levels of incremental police services, fire marshal services, public transportation, litter pick-up, street and sidewalk cleanup, first aid and paramedic services, and parking and traffic control services, as the parties agree in advance are reasonably required by, and will be provided by City to the Premises and/or surrounding area in connection with, such Special Event. Tenant shall not be required to reimburse City or Port for any costs of providing City services to or in connection with any Special Event, except to the extent of the incremental costs of Designated Services as agreed in advance, or as Tenant and the Executive Director otherwise agree in writing. In particular, the parties intend that such an agreement may, with respect to any particular Special Event, include provisions for the payment by Tenant (or the sponsor of a Special Event), if the actual attendance at such Special Event materially exceeds the estimated attendance, of costs directly resulting from the provision of Designated Services in excess of the levels which were agreed upon based on estimated attendance.

EXHIBIT H

**SF ZONING ADMINISTRATOR'S TEMPORARY USE
AUTHORIZATION**

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SCHEDULE 1

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

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SCHEDULE 2

SUBSTRUCTURE REPORT(S)

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SCHEDULE 3
FEMA Disclosure Notice

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA 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..

In November 2015, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "**A zones**" (areas subject to inundation by tidal surge) and "**V zones**" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the 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. FEMA plans to finalize the FIRM in the near future. Six months after this date, the FIRM will become effective and will be used for flood insurance and floodplain management purposes. During this six-month period, the City plans to amend the Floodplain Ordinance to adopt the FIRM.

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>

[http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20\(2\).pdf](http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20(2).pdf)

SCHEDULE 4

HAZARDOUS MATERIALS DISCLOSURE

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