

File No. 201210

Committee Item No. 7

Board Item No. 17

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date December 2, 2020

Board of Supervisors Meeting

Date December 8, 2020

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong

Date November 24, 2020

Completed by: Linda Wong

Date December 4, 2020

1 [Lease Agreement - Andre-Boudin Bakeries, Inc. - Seawall Lot 301 (2890 Taylor Street) -
2 Minimum Base Rent of \$19,087 Per Month]

3 **Resolution approving Lease L-16697 between the Port Commission and Andre-Boudin**
4 **Bakeries, Inc. for the Chowder Hut, located at Seawall Lot 301 (2890 Taylor Street), for a**
5 **term of ten years with one five-year option to extend for a monthly minimum base rent**
6 **of \$19,087 to commence following Board approval.**

7
8 WHEREAS, California Statutes of 1968, Chapter 1333 (the “Burton Act”) and Charter,
9 Sections 4.114 and B3.581, empower the San Francisco Port Commission (“Port
10 Commission”) with the power and duty to use, conduct, operate, maintain, manage, regulate,
11 and control the lands within Port Commission jurisdiction; and

12 WHEREAS, In September 2020, through Resolution 20-44, the Port Commission
13 approved Lease No. L-16697 (“Lease”) with Andre-Boudin Bakeries, Inc. (“Boudin”) for
14 premises in Fisherman’s Wharf known as the Chowder Hut which consists of a one-story free
15 standing building with mezzanine of about 2,651 square feet and which includes a restaurant
16 and public restrooms and about 2,749 square feet of exterior dining seating area; and

17 WHEREAS, The permitted uses under the Lease are a continuation of existing and
18 related uses and are not a project under California Environmental Quality Act; and

19 WHEREAS, Since January 2010, Boudin has operated the Chowder Hut under Lease
20 L-14814 (Port Commission Resolutions 10-76 and 12-94) which expired on December 31,
21 2019, and has since been on month to month holdover status with the Port’s consent; and

22 WHEREAS, On March 8, 2011, the Port Commission adopted Resolution No.11-15,
23 which establishes its Retail Leasing Policy which includes conditions for consideration for
24 lease renewals without competitive bidding, and obligations to be included in renewed leases
25

1 (“Retail Leasing Policy”); and

2 WHEREAS, The Lease has a ten-year term with one five-year extension option at
3 tenant’s option (“Extension Option”); and

4 WHEREAS, As material consideration for the Lease, as further described in the
5 Memorandum to the Port Commission dated September 18, 2020, the proposed Lease
6 includes the following significant terms: (1) Tenant will pay base rent of \$19,087 and a
7 percentage of 9% of its gross sales which is greater, monthly; (2) On each fifth (5th)
8 anniversary of the Lease, base rent shall be adjusted to the greater of a defined percentage of
9 the previous three (3) years gross sales or the increase in the Consumer Price Index; (3) as a
10 condition precedent to the Extension Option, Tenant must invest a minimum of \$800,000 in
11 specified tenant improvements by specified dates and meet a minimum sales per square foot
12 threshold over the prior year; (4) At the end of the ten (10) Term, should Tenant elect to
13 exercise its Extension Option, percentage rent due to Port will be reset to fair market value
14 through an appraisal process; (5) Port’s transfer participation in net proceeds from sales and
15 re-financing will increase from the current 10% to 12%; (6) the proposed Lease sets forth the
16 parties’ respective obligations with respect to the public restrooms that are part of the leased
17 premises including, as under the current lease, an indemnity by Port which has been
18 approved by the City’s Risk Manager under San Francisco Administrative Code, Section 1.24;
19 and (6) the Lease contains all standard Hazardous Materials, Insurance, Indemnity and
20 Release, Damage and Destruction, Sea Level Rise and Seawall provisions and all current
21 City ordinances and requirements as necessary; and

22 WHEREAS, Under the new lease, rent relief will continue on the same bases as under
23 the current lease per Port rent relief programs adopted in Port Commission Resolutions 20-
24 18, 20-27, 20-30 and 20-41 including rent forgiveness for up to 14 months under an
25 anticipated amendment to the new lease; and

1 WHEREAS, San Francisco Charter, Section 9.118, requires Board of Supervisors'
2 approval of the modification, amendment or termination of any lease which when entered into
3 was for a period of ten or more years or having anticipated revenue to the City of One Million
4 Dollars (\$1,000,000) or more; and

5 WHEREAS, The Port Commission has determined that the Lease meets the criteria of
6 the Retail Leasing Policy and that, in this circumstance, competitive bidding is impractical
7 and/or impossible and that approval of the Lease is in the best interest of the Port; and

8 WHEREAS, The proposed rent under the Amended Lease, along with the other
9 negotiated terms, is not less than Market Rent as defined in Administrative Code,
10 Section 23.2; and now, therefore, be it;

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

12 FURTHER RESOLVED; That the Board of Supervisors authorizes the Executive
13 Director of the Port ("Executive Director") to execute the Lease in a form approved by the City
14 Attorney and in substantially the form on file with the Clerk of the Board of Supervisors in
15 File No. 201210; and, be it;

16 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
17 Director to enter into any additions, amendments or other modifications to Lease (including,
18 without limitation, preparation and attachment of, or changes to, any or all of the exhibits and
19 ancillary agreements) that the Executive Director, in consultation with the City Attorney,
20 determines when taken as a whole, are in the best interest of the Port, do not materially
21 increase the obligations or liabilities of the Port or City or materially decrease the public
22 benefits accruing to the Port, and are necessary or advisable to complete the transactions
23 contemplated and effectuate the purpose and intent of this Resolution, such determination to
24 be conclusively evidenced by the execution and delivery by the Executive Director of any such
25 documents; and, be it;

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

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Item 7 File 20-1210	Department: Port of San Francisco (Port)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would authorize a new lease between the Port and Andre-Boudin Bakeries, Inc. (Boudin) for the Chowder Hut Restaurant. The new lease would be for an initial ten-year term with an option to extend the lease for another five years, for a total term of fifteen years. The proposed resolution would also find that a competitive bidding process to award this lease is impractical. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • Boudin had a lease with the Port that expired on December 31, 2019 and has been on holdover basis since that time. • The proposed new lease retains percentage rent rate of 9 percent of sales and requires the Boudin to invest \$800,000 in tenant improvements within 24 months. Boudin plans to build a patio enclosure that will allow for year-around outdoor dining, which is expected to increase revenues. • In response to COVID-19, the Port has implemented a rent forgiveness program for its percentage rent tenants, which allows for base rent forgiveness through April 2021. Tenants approved for rent forgiveness must still pay their percentage rent on eligible revenues. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Under the proposed lease, Boudin pays the greater of the base rent or percentage rent. The base rent is \$19,087 a month minus a rent credit of \$4,000 per month in exchange for Boudin maintaining public bathrooms on the premises. As noted above, the percentage rent is 9 percent of sales. • After accounting for the rent credit and the Port's rent forgiveness program, the proposed lease would generate \$1,750,092 over the initial ten-year term. If percentage rent is higher than base rent during the term, the rent to the Port would be higher. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The Port's 2011 Retail Leasing Policy allows the Port to renew existing leases if (1) tenants are in good standing, (2) the tenant is the most suitable economic tenant, and (3) the value of capital improvement serves a public purpose. • Analysis commissioned by the Port found that the capital improvements would increase sales and therefore percentage rent to the Port. The consultant also determined that competitive process would provide a lower lease value to the Port, primarily because the proposed lease has above-market percentage rent and because of the time lost to a competitive bidding process. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed lease. 	

MANDATE STATEMENT

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

Administrative Code Section 2.6-1 states that leases subject to Board of Supervisors approval are subject to competitive solicitations unless doing so is impractical or impossible.

BACKGROUND

In January 2010, the Port Commission approved a seven-year lease between the Port and Andre-Boudin Bakeries, Inc. (Boudin) for the premises located at 2890 Taylor Street, where Boudin operates the Chowder Hut Restaurant. The leased space consists of approximately 5,400 square feet of space used for a restaurant, indoor/outdoor dining and a public restroom. The current lease, which was later amended to extend the term, expired on December 31, 2019 and the tenant is currently operating on a month to month holdover basis.¹

In September 2020, the Port Commission approved a new Chowder Hut lease for an additional 10 years, with an option to extend the lease for another five years.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize a new lease between the Port and Boudin for the Chowder Hut Restaurant. The new lease would be for an initial ten-year term with an option to extend the lease for another five years, for a total term of fifteen years.

Table 1 below summarizes the key provisions of the proposed lease.

¹ According to the Port, staff intended to finalize the new lease prior to expiration of the existing lease but could not due to unplanned staff absences followed by the onset of the COVID-19 pandemic.

Table 1: Summary of Lease Provisions

Tenant	Andre-Boudin Bakeries. Inc. (Boudin)
Term	10 years
Options to Extend	One option for five years
Premises	“Chowder Hut Restaurant” at 2890 Taylor Street; 5,400 square feet
Public Restrooms	Tenant responsible for cleaning and maintaining public restrooms on the premises. Requires providing janitorial services seven days a week and reimbursing Port’s costs, up to \$25,000, for repairing or replacing restroom fixtures. \$4,000 monthly credit to tenant for providing these services. Port responsible for providing utilities.
Total Rent	Higher of Base or Percentage Rent calculated on a monthly basis
Base Rent	\$19,087/month (before \$4,000/month credit for public bathroom maintenance)
Base Rent Adjustments	5 th year of lease and upon exercising the option to extend, greater of: 70% of average annual total rent for previous three years or inflation adjusted Base Rent.
Percentage Rent	9% of gross sales for food, beverage and retail sales.
Required Capital Improvements	Tenant required to invest at least \$800,000 to construct a patio enclosure for the outdoor seating area within 24 months of lease commencement.
Transfer Participation	12% of net proceeds to Port if restaurant is sold or mortgaged.
COVID 19 Rent Relief	Eligible for rent forgiveness for up to 14 months under the Port’s Rent Forgiveness Program.

Source: Proposed Lease

Public Restrooms

The proposed lease also continues to require Boudin to clean and maintain the public restrooms on the premises seven days a week. Port staff estimates the value of these services to be \$4,000 per month and provides for a rent credit in this amount. Additionally, the tenant will reimburse the Port up to \$25,000 for costs accumulated towards the installation, repair or replacements of fixtures in the restrooms.

Required Capital Improvements

According to the Port, the length of the lease term allows Boudin time to amortize the required minimum capital investment of \$800,000. The capital investment must be completed within 24 months of the commencement of the lease and result in a patio enclosure that will allow for year-around use and increased revenues. According to an analysis commissioned by the Port, the patio enclosure will allow for outdoor dining year-round that could increase restaurant annual sales by 4.3 percent to 9 percent.

Base Rent and Percentage Rent

Under the terms of the lease, Boudin pays the greater of the base rent or percentage rent. The base rent, \$19,087 a month, is 70 percent of the average annual total rent paid to the Port in FY 2017-18, FY 2018-19 and FY 2019-20. The percentage rent is 9 percent of gross sales for food, beverages and retail sales. According to Mr. Jay Edwards, Senior Property Manager at the Port, the percentage rent for most other Port food and drinking establishments is between 6 percent and 7.5 percent.

FISCAL IMPACT

The proposed lease calls for the tenant to pay the greater of base rent of \$19,087 per month or a percentage rent of 9 percent of its total gross sales. After accounting for the \$4,000 per month rent credit for the public bathroom maintenance, Boudin would pay at least \$1,810,440 in annual rent over the initial ten-year term of the lease.² If Boudin receives the maximum rent forgiveness available under the Port's Rent Forgiveness Program through April 2021, no base rent would be due during the first four months of 2021, and the minimum annual rent payable over the initial ten-year period would be \$1,750,092.³ However, Boudin would still need to pay rent based on percentage of sales, which would offset all or a portion of the base rent that could be forgiven during early 2021.

According to the Controller's Office FY 2020-21 Three-Month Budget Status Report dated November 10, 2020, the Port's FY 2020-21 operating expenditures are expected to remain within budget, which includes revenue impacts from the Port's rent forgiveness program.

² Base rent = \$19,087 - \$4,000 bathroom rent credit = \$15,087 rent per month. Multiplied by ten-year initial lease period = \$1,810,440. Calculation does not account for base rent adjustment after year five of the lease or for percentage rent.

³ Under the Port's COVID-19 Rent Relief Program, percentage rent tenants may apply to have their base rent forgiven for up to fourteen months from March 1, 2020 through the earlier of (a) April 30, 2021 or (b) when a tenant's percentage rents equal or exceed the base rent otherwise payable under the lease for 3 consecutive months. Assuming the proposed lease is effective January 1, 2021, the tenant could be eligible for up to four months of rent forgiveness, or \$60,348 (\$76,348 base rent less \$16,000 rent credit)

POLICY CONSIDERATION**Port Retail Leasing Policy**

Port leases that require Board of Supervisors approval must abide by the competitive bidding policy in the Administrative Code Section 2.6-1, unless a competitive bidding process is impractical or impossible. According to the Port's 2011 Retail Leasing Policy, the Port may bypass the competitive solicitation process and use a Direct Negotiation Exception to renew or extend a lease with an existing tenant. In such cases, the Port Commission must determine:

1. The tenant is in compliance with the Tenant in Good Standing Policy
2. The tenant is the most suitable economic tenant based on reasonably projected sales and revenues to the Port.
3. The value of the capital improvements serves a public purpose

The Port Commission determined that the tenant was in good standing and hired Seifel Consulting Inc. to determine if the tenant met criteria numbers 2 and 3.

Determination of Most Suitable Economic Tenant

In comparing sales in 2018 with comparable restaurants in the area, Seifel's analysis found that the Chowder Hut's sales compared favorably on a per seat and per square footage basis. Furthermore, Seifel analyzed projected sales for an alternate scenario whereby the current lease was terminated and the Port issued a request for bids for a new lessee. At the request of the Port, Seifel analyzed the proposed lease taking into account the effects of the COVID pandemic and concluded that the proposed lease's net present value was \$1.2 million higher than the net present value of a new lease in the alternate scenario primarily because of the time lost to the competitive bidding process and because the proposed lease has an above market percentage rent rate.

Value of Capital Improvements

As noted above, comparing the seasonality of sales between Chowder Hut and a nearby restaurant that has seating that is largely enclosed, Seifel's analysis found that the Chowder Hut's sales could be expected to increase by 4.3 percent to 9 percent once the capital improvements that created enclosed seating were completed. The Port determined that the capital improvements in the proposed lease serve a public purpose by increasing the rent Boudin would pay to the Port.

Approval of the proposed resolution would find that a competitive bidding process is impractical for the premises under the proposed lease.

RECOMMENDATION

Approve the proposed resolution.



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

LEASE NO. L-16697

BY AND BETWEEN

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

AND

**ANDRE-BOUDIN BAKERIES, INC.,
A CALIFORNIA CORPORATION**

CHOWDER HUT RESTAURANT

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

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SCHEDULE 4 HAZARDOUS MATERIALS DISCLOSURE

**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	September 8, 2020
<i>Lease Number:</i>	L-16697
<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>	Andre- Boudin Bakeries, Inc., a California corporation
<i>Tenant's Main Contact Person and Mailing Address:</i>	Paul Miller Director of Operations Boudin Bakery 160 Jefferson St San Francisco, CA 94133 Telephone: (415) 928-8888 Cell: (415) 283-8323 Facsimile: (415) 913-1818 Email: pmiller@boudinbakery.com
<i>Tenant's Billing Contact and Address:</i>	Dwight Simpson Boudin Bakery 50 Francisco Street, Ste. 200 San Francisco, CA 94133 Telephone: (415) 287.1736 Cell: (714) 264.4795 Facsimile: (415) 287.1728 Email: dsimpson@boudinbakery.com
<i>Tenant's Emergency Contact and Address:</i>	Same as Main Contact
<i>Tenant's Insurance Contact and Address (not broker):</i>	Same as Main Contact
<i>Contact Information for Tenant's Agent for Service of Process (including address):</i>	Dwight Simpson Boudin Bakery 50 Francisco Street, Ste.200 San Francisco, CA 94133 Telephone: (415) 287.1736

<i>Facility:</i>	2860 Taylor Street Seawall Lot 301 San Francisco, California 94133
<i>Premises:</i>	Parcel A: approximately 1,226 square feet of interior restaurant first floor area Parcel B: approximately 660 square feet of mezzanine space Parcel C: approximately 2,749 sq. ft. of exterior dining and seating Parcel D: approximately 765 sq. ft. of restrooms (“Restrooms”) in the City and County of San Francisco as more particularly shown on Exhibit A attached hereto.
<i>Length of Term:</i>	Ten (10) years
<i>Commencement and Expiration Dates:</i>	This Lease shall commence on the first day of the calendar month following full execution by the parties after Port Commission and Board of Supervisor’s approval, each in its sole discretion (“ Commencement Date ”). This Lease shall expire on the date that is ten (10) years from the Commencement Date (“ Expiration Date ”). 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.
<i>Base Rent:</i>	On the Commencement Date, Monthly Base Rent for the entire Premises shall be equal to the amount that is seventy percent (70%) of the average annual aggregate total Rent due for Fiscal Years 2017-2018, 2018-2019 and 2019-2020 under the Prior Lease divided by twelve (12) which equates to Nineteen Thousand Eighty-Seven Dollars (\$19,087.00) per month. Base Rent shall be adjusted on the fifth (5 th) Anniversary Date as described in Section 4.2 .
<i>Percentage Rent:</i>	Percentage Rent shall be nine percent (9%) of Gross Revenues. As further described in Section 4.3 , in addition to the monthly Base Rent specified above, Tenant shall pay monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.

<i>COVID-19 Rent Relief:</i>	Port agrees that, any rent relief available to Tenant under the Port's COVID-19 Rent Relief programs adopted in Port Commission Resolutions 20- 18, 20-27, 20-30 and 20-41 as applicable to the Prior Lease will continue to be available to Tenant under this Lease notwithstanding any provision to the contrary in such policies.
<i>Security Deposit:</i>	An amount equal to two (2) months' Base Rent on the Commencement Date which equates to thirty-eight thousand one hundred seventy four dollars (\$38,174.00). The Security Deposit shall increase as described in Section 7. Port acknowledges that it holds a security deposit under the Prior Lease (as defined below) in the amount of twenty thousand five hundred twenty-one dollars and seventy-four cents (\$20,521.74), which will be applied towards the Security Deposit due under this Lease.
<i>Permitted Use:</i>	<p>The Premises shall be used solely for indoor and outdoor casual dining, including the sale of on-site only alcoholic beverages, subject to securing all necessary governmental permits and approvals, and for no other purpose. Tenant shall be permitted to hold special events within the Premises.</p> <p>The Restrooms are to be open and available for public use during the restaurant's opening hours.</p>
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities without the prior written consent of Port in its sole discretion:</p> <ul style="list-style-type: none"> a) unless approved in advance in writing by Port in its sole discretion: use of the Premises for uses charging a cover charge or requiring a donation to gain entry to the Premises such as raves, D. J. parties, dance hall or dances/events; operation of a private club; or activities that are managed by an outside promoter; b) operation of a Formula Restaurant as defined in Section 38; c) offsite sale of alcoholic beverages; d) use of garbage disposal or garbage grinder; e) disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drains leading to sewer laterals;

	<p>f) storage of Hazardous Materials other than janitorial and office supplies in limited amounts customarily used for general office and restaurant purposes, handled in accordance with Section 16 or storage of hazardous waste;</p> <p>g) Discharge of any material into Bay waters or storm drains;</p> <p>h) Washing floor mats, kitchen equipment, or other items outdoors; and</p> <p>i) Parking/storage of catering vehicles.</p> <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>
<p><i>Initial Tenant Improvements:</i></p>	<p>Tenant must Complete the following Initial Tenant Improvements more fully described in the Scope of Development attached to the Work Letter (Exhibit C): construction of a patio enclosure around the outdoor seating area (Parcel C) including a pony wall with wood facade and retractable glass windows and ceiling that can be opened and closed. (“Initial Tenant Improvements”). Completion of the Initial Tenant Improvements is material consideration for this Lease and Port would not have entered into this Lease absent such terms. The Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with the Work Letter and Section 13 below. Tenant agrees that it will invest a minimum of \$800,000 in the Initial Tenant Improvements.</p> <p>Tenant must Complete the Initial Tenant Improvements no later than the date that is twenty-four (24) months after the Commencement Date (“Initial Tenant Improvements Completion Date”).</p> <p>Except for the Extension Option as explicitly provided for in this Lease, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements including without limitation the Initial Tenant Improvements discussed above and agrees that it will not seek additional term for the purpose of amortizing any improvements. The obligation to construct the Initial Tenant Improvements is separate and in addition to any required repair and maintenance obligations under Section 11 and Damage and Destruction obligations under Section 18.</p>
<p><i>Extension Option:</i></p>	<p>As further described below and in compliance with Section 6, if Tenant Completes the Initial Tenant Improvements by the Initial Tenant Improvements</p>

	<p>Completion Date, then Tenant shall have one (1) option (“Extension Option”) to extend the term for a period of five (5) years (“Extension Term”). Tenant must exercise the Extension Option by providing written notice to Port no less than eighteen (18) months and no more than twenty-four (24) months prior to the Expiration Date (“Option Notice”).</p> <p>Notwithstanding any other provision of this Lease, Port may reject Tenant’s exercise of the Extension Option if Tenant’s Gross Revenues per square foot of Parcels A, B and C for the twelve (12) month period preceding the date of Tenant’s Option Notice is less than seventy percent (70%) of Tenant’s Gross Revenues per square foot of Parcels A, B and C for the preceding twelve (12) months. Port must reject Tenant’s Option Notice under this provision within sixty (60) days of actual receipt of the Option Notice. If Port elects to Tenant to reject Tenant’s exercise of the Extension Option, the Extension Option shall be null and void.</p> <p>The Parties acknowledge and agree that the prerequisite conditions to Tenant’s extension option right and Port’s right to reject Tenant’s exercise of such Extension Option set forth above are a material part of the bargained-for consideration under this Lease.</p> <p>For the Extension Term, if any, Base Rent shall be established as provided in Section 6.3 and Percentage Rent shall be established as provided in Section 6.4.</p>
<i>Transfer Participation:</i>	As provided in Sections 21.4 and 21.5 , the Port’s Transfer participation from defined capital transactions will be 12%.
<i>Additional Requirements:</i>	<p>Tenant shall:</p> <ul style="list-style-type: none"> - Comply with San Francisco’s Fats, Oils, Grease (FOG) Control Ordinance. - Comply with San Francisco’s Mandatory Recycling and Composting Ordinance. - Comply with the Port’s “Restaurant Rules and Regulations” attached hereto as (Exhibit D). -
<i>Obligations Regarding Restrooms:</i>	<p>Notwithstanding any other provision of this Lease, this Section "Obligations Regarding Restrooms" sets forth the parties’ obligations with respect to the Restrooms. The parties agree that nothing in this Lease is intended to require or imply that Tenant will open the Restrooms for general public use during non-restaurant hours.</p> <p>(A) <u>Tenant</u>. Except as provided in this Section, Tenant shall, at its sole cost, undertake the following: (i) clean and maintain the Restrooms; (ii) perform janitorial services seven (7) days a week, including supplies and</p>

	<p>re-stocking, on a mutually agreeable schedule with a mutually agreeable scope of services; and (iii) reimburse the Port's costs, of up to twenty-five thousand (\$25,000), as a one-time contribution towards the hard and soft costs of installation, repair and/or replacement of Restroom fixtures; subject to Port providing Tenant with at least sixty (60) days' prior written notice detailing the type of fixture being installed, repaired or replaced and the estimated date and costs of repair. Tenant shall pay Port the contribution amount under (iii) within thirty (30) days of Port's invoice.</p> <p>(B) <u>Security</u>. Port and Tenant acknowledge and agree that neither Port nor Tenant is responsible for security for the Restrooms when the Restrooms are open to the general public.</p> <p>(C) <u>Port</u>. Provided that Tenant continues to operate the Restrooms as restrooms open to the public during the open hours of the restaurant with clearly visible signage that the Restrooms are open to the public, and for so long as there is no material uncured Tenant Event of Default, Port shall, at its sole cost, undertake the following: (x) provide water, sewer and electric utilities for the Restrooms and maintain such utilities; (y) install, maintain, repair and replace Restroom fixtures; and (z) provide a rent credit of four thousand dollars (\$4,000) a month against Base Rent to offset Tenant's costs of cleaning, supplies and light maintenance directly associated with the Restrooms under (A) ("Cleaning Rent Credit"). The parties agree that the Cleaning Rent Credit is reasonable and that Port's contribution will remain at a \$4,000/month throughout the Term, including any Extension Term, without adjustment or reconciliation, irrespective of whether the cost of service increases or decreases.</p> <p>(D) <u>Emergency Repairs</u>. Each party will immediately notify the other in the event emergency repairs are needed. For purposes of this Section, emergency repairs are those that need to be undertaken Monday through Friday after 4:00 p.m., or on holidays or weekends. Port, in its sole discretion, may elect to either perform the repairs at Port's cost or authorize Tenant to perform the repairs. If Tenant will perform the repairs, Tenant agrees to hire a plumbing vendor from the City's approved vendor list or as otherwise approved by Port to perform the repairs. The cost estimate and scope of repairs must be pre-approved in writing by the Port's property manager or maintenance supervisor. Tenant will use reasonable efforts to contact and obtain prior approval by the Port's property manager or maintenance supervisor of the cost estimate and scope of repairs to be performed, but if Tenant cannot reach the property manager or</p>
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	<p>maintenance supervisor, Tenant shall be authorized to make emergency repairs without such approval if the failure to promptly undertake such repair would cause an unsafe condition or otherwise lead to materially increased costs or damage (e.g., without limitation, broken water line, overflowing toilet or urinal or structural damage).</p> <p>Port shall reimburse Tenant's actual costs in an amount up to the total amount of the pre-approved costs (or, if not pre-approved due to the circumstances described above, its otherwise reasonable costs) for materials, labor and installation through a rent credit ("Repairs Rent Credit"). Tenant shall be entitled to receive the Repairs Rent Credit only if all of the following conditions are met: (i) Port's property manager or maintenance supervisor has authorized Tenant to perform the repairs, approved the vendor, cost estimate and scope of repairs including the type, kind, and quality of any new fixtures prior to the work being commenced; provided that, if, under the circumstances described above, Tenant was unable to reach Port's property manager or maintenance supervisor after making reasonable efforts, Port's consent will be and the cost estimate will be deemed to have been approved for repairs that are reasonably necessary and are of the type, kind and quality of the new fixtures that are consistent with the quality of the Premises; (ii) within thirty (30) days following completion of the repairs, Tenant has provided to Port and Port has reviewed and approved Tenant's Proof of Payment; (iii) Tenant has complied with the provisions of Section 13 in connection with Tenant's performance of the repairs; and (iv) there is no uncured Tenant Event of Default. New fixtures shall become the property of Port and shall affix to the realty.</p> <p>The Repairs Rent Credit shall be applied against the Base Rent due immediately following Port's approval of Tenant's Proof of Payment until the earlier to occur of (a) the Repairs Rent Credit being fully applied, (b) the expiration or earlier termination of this Lease, or (c) an uncured Tenant Event of Default.</p> <p>(E) <u>Rent Credits</u>. Tenant agrees and acknowledges that any right or claim Tenant may have to any form of Rent Credit, including the Cleaning Rent Credit and the Repairs Rent Credit, that has not yet been actually applied against Base Rent ("unused rent credit") shall, upon the earlier to occur of (x) an uncured Event of Default by Tenant; (y) Tenant's failure to submit to Port within thirty (30) days following completion of the repairs Proof of Payment in the case of the Repairs Rent Credit; or (z) the expiration or earlier termination of this Lease, be immediately terminated, without notice, and</p>
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	<p>Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.</p> <p>Rent Credits due but not applied during any period of Base Rent deferral or forgiveness under COVID - 19 tenant relief policies will be credited against future Base Rent payments, without interest; provided that any unused rent credit shall, upon the earlier to occur of (x) an uncured Tenant Event of Default; (y) Tenant's failure to submit to Port within thirty (30) days following completion of the repairs Proof of Payment in the case of the Repairs Rent Credit; or (z) the expiration or earlier termination of this Lease, be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.</p> <p>(F) <u>Closure</u>. Tenant must provide Port with at least fifteen (15) days prior written notice of its intention to close the Restrooms to the public for any period longer than necessary to perform routine maintenance and repair and obtain Port's written consent to do so prior to closing the Restrooms. Failure to provide such notice or to obtain Port's written consent is a material breach of this Lease.</p> <p>(G) <u>Indemnity</u>. Subject to the limitations in this paragraph (G), Port shall Indemnify Tenant from and against any Claim directly resulting from any accident, bodily injury to or death of any person, with the exception of any employee, Agent or Invitee of Tenant, which occurs in the Restrooms at a time when the Restrooms are open to the general public as described in (C) above. Port's obligation under this paragraph (G) shall only arise if Tenant has maintained the insurance required by <i>Section 17</i> of this Lease and (i) such insurance coverage has been completely exhausted for the applicable policy period in which the Claim occurred or (ii) the Claim is uninsured. Notwithstanding any other provision herein, in no event shall Port's indemnification obligation exceed \$100,000 per Claim or \$300,000 per year. The Indemnification obligations of Port set forth in this paragraph shall exclude Claims to the extent resulting from the negligence or willful misconduct of Tenant, its Agents or Invitees. In the event of any Claim that requires the Port to Indemnify Tenant under this paragraph, Tenant shall provide written notice to the Port no later than ten (10) days following Tenant's receipt of any written notice of such Claim, and Port shall have the right to select or approve legal counsel to defend such Claim, provided that any failure to provide such notice shall not affect Port's Indemnity obligations under this paragraph (G) except to the extent Port is prejudiced by such failure.</p>
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	(H) Port shall be responsible for compliance with San Francisco Administrative Code Section 4.1-3 which requires all-gender toilet facilities in certain circumstances, as applicable.
<i>Maintenance and Repair:</i>	Except as explicitly provided with respect to the Restrooms, all maintenance and repairs is Tenant's sole responsibility, as further described in this section and Section 11 below.
<i>Utilities:</i>	Except as explicitly provided with respect to the Restrooms, Tenant shall be solely responsible for all Utilities and the costs of all services for the Premises, as further described in this section and Section 12 below.
<i>Development Projects:</i>	Port Seawall Improvement Project
<i>Reporting to County Assessor:</i>	<p>Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.</p> <p>Assessor-Recorder's Main Office 1 Dr. Carlton B. Goodlett Place, City Hall, Room 190 San Francisco, CA 94102-4698 Phone: (415) 554-5596 Fax: (415) 554-7915 Email: assessor@sfgov.org</p> <p>Business Personal Property Division 1155 Market Street, Fifth Floor San Francisco, CA 94103 Phone: (415)554-5531 Fax: (415)554-5544 Email: askbpp@sfgov.org</p>
<i>Prior Lease:</i>	The parties agree that as of the Commencement Date, Lease No. L-14814 dated as of October 25, 2010 for reference purposes, as amended (the " Prior Lease "), between Andre-Boudin Bakeries, Inc. and Port is hereby terminated; provided, however, that the parties shall continue to be liable for any obligations under the Prior Lease which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Lease.
<i>Lease Prepared By:</i>	Jay Edwards, Senior Property 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 to herein as this "**Lease**". In the event of any conflict or inconsistency between the Basic Lease Information and this Lease Agreement, the Basic Lease Information will control.

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. PREMISES; AS-IS CONDITION.

2.1. *Premises.*

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

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

2.2. *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.”

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

2.4. No Right to Encroach.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in this **Section 2.4(c)**), at law or in equity.

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

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in **Section 20 below** (Indemnity and Exculpation) shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

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

2.5. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, 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. If a Port program or project and/or the Development Project(s) described in the Basic Lease Information result in a direct documented loss of customers in any month such that Tenant's Percentage Rent due is less than that Tenant's Base Rent due for such month, then, upon satisfactory documentation, Port will provide rent abatement to Tenant in the form of a prorata reduction in Base Rent on a per square footage lost basis for up to a maximum of six (6) months. In the event that Tenant's Percentage Rent due is less than that Tenant's Base Rent due as the result of a Port program or project and/or the Development Project(s) described in the Basic Lease Information for more than six (6) consecutive months, Tenant shall thereafter have the right to terminate this Lease upon thirty (30) days' prior written notice to the Port. Except to the extent provided in this **Section 2.5**, (A) in no event will inconvenience or disturbance caused by Port's activities with respect to with respect to a Port program or project and/or the Development Project(s) described in the Basic Lease Information 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; and (B) Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

2.6. 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.

2.7. Unique Nature of Facility. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) the Facility is located along the waterfront adjacent to, on top of, and bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in **Section 2.8**; (c) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the

Facility; (d) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (e) there is a risk that sea level rise will increase the cost of Substructure repairs and/or prevent or limit the ability to make repairs to the Substructure; and/or (f) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

2.8. Seawall. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("Seawall") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: <https://www.sfportresilience.com>. Tenant agrees that its waiver of Claims set forth in **Section 20** (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.

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, 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 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. If Port's activities under this **Section 2.8** result in a direct documented loss of customers in any month such that Tenant's Percentage Rent due is less than that Tenant's Base Rent due for such month, then, upon satisfactory documentation, Port will provide rent abatement to Tenant in the form of a prorata reduction in Base Rent on a per square footage lost basis for up to a maximum of six (6) months. In the event that Tenant's Percentage Rent due is less than that Tenant's Base Rent as the result of Port's activities under this **Section 2.8** for more than six (6) consecutive months, Tenant shall thereafter have the right to terminate this Lease upon thirty (30) days' prior written notice to the Port. Except to the extent provided in this **Section 2.8**, (A) in no event will inconvenience or disturbance caused by Port's activities with respect to the Seawall 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; and (B) 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 with respect to the Seawall. Port will have the absolute right to use the Premises without charge in the event of an emergency involving the Seawall.

2.9. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in **Section 2.8** including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information on the Port's website; the disclosures regarding flooding and 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.

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

2.11. 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 and Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility, provided that Port delivers written notice and copies of all such new or revised Rules and Regulations to Tenant and such Rules and Regulations apply in a non-discriminatory way to Tenant. Tenant further acknowledges receipt of a copy of the Restaurant Rules and Regulations currently in force for the Facility and agrees to abide by them. Tenant also acknowledges that Port's exercise of any of its rights regarding Rules and Regulations or the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

3. TERM OF LEASE; TERMINATION BY PORT.

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

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated

Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

3.2. Termination Rights.

(a) Port has the right to terminate this Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's structures, substructure or Utilities has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as specifically set forth in this Section. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Section.

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

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

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

4. RENT.

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

4.1. Base Rent. From and after the Commencement Date, Tenant shall pay the monthly Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month. Under no circumstances shall the Commencement Date be

delayed due to failure to Complete the Initial Tenant Improvements, Force Majeure, Port delays or other reasons.

4.2. Base Rent Adjustment . Effective on the fifth (5th) Anniversary Date, Monthly Base Rent shall be adjusted to the greater of: (i) the amount that is seventy percent (70%) of the average annual aggregate total Rent due for the preceding thirty-six (36) month period divided by twelve (12); or (ii) the amount determined by multiplying the Monthly Base Rent in effect in the last month prior to the Base Rent Adjustment by a fraction, the numerator of which is the Current Index less the Prior Index and the denominator of which is the Prior Index (a "**Base Rent Adjustment**"). The parties shall document the adjusted Monthly Base Rent by countersigned agreement.

4.3. Percentage Rent.

(a) Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to **Section 4.1** above, a monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.

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

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

If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Monthly Percentage Rent Statement or Annual Statement within the time period set forth in this **Section 4.3** (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary

to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent and Annual Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.

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

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

4.5. 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.

4.6. Audit.

(a) Tenant agrees to make its Books and Records available to Port, or to any City auditor, or to any auditor or representative designated by Port or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than thirty (30) business days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after a Percentage Statement is delivered to the Port. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office, or at such other location in San Francisco where the Books and Records are kept, and no books or records shall be removed by Port Representative without the prior express written consent of Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Premises through one or more Subtenants or Agents (other than Port), Tenant shall require each such Subtenant or Agent to provide the Port with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, Port shall promptly deliver a copy of the audit report to Tenant.

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

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

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

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

4.10. *Net Lease.* It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset except as otherwise expressly set forth in this Lease. 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.

4.11. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in *Sections: 12.1* (Utilities), *16.3* (Tenant's Environmental Condition Notification Requirements), *16.8* (Storm Water Pollution Prevention), *30.1(c)* (CMD Form), and *36* or to provide evidence of the required insurance coverage described in *Section 17 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 4.11* 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 4.11* and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this *Section 4.11* and the reasonableness of the amount of the charges described in this *Section 4.11*.

5. TAXES AND ASSESSMENTS.

5.1. 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.

5.2. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created

hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction.

6. EXTENSION OPTION.

6.1. Option to Extend Term. Provided that (i) Tenant Completes the Initial Tenant Improvements no later than the Initial Tenant Improvements Completion Date and all the terms and conditions of this Section are satisfied by Tenant, Tenant shall have one (1) Extension Option for the Extension Term as to the entire Premises only commencing upon the first day after the Expiration Date. Any Option Notice must be given within the timeframes specified in the Basic Lease Information and shall be irrevocable by Tenant.

If (i) any Event of Default by Tenant is outstanding hereunder either at the time of Tenant's delivery of the Option Notice or at any time prior to the first day of the Extension Term and remains uncured after notice and the expiration of all applicable cure periods; or (ii) Tenant fail to Complete the Initial Tenant Improvements by the Initial Tenant Improvements Completion Date to Port's satisfaction in its reasonable discretion; or (iii) Tenant's Gross Revenue per square foot of Parcels A, B and C for the twelve (12) month period preceding the date of Tenant's Option Notice is less than seventy percent (70%) of Tenant's Gross Revenues per square foot of Parcels A, B and C for the preceding twelve (12) months, then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. Notwithstanding the prior sentence, if Port's rejection of Tenant's Option Notice is under (iii), Port must notify Tenant within sixty (60) days of Port's actual receipt of the Option Notice. If Tenant fails to exercise the Extension Option or Port rejects Tenant's exercise of the Extension Option in accordance with this Section then this Lease will terminate as of the original Expiration Date.

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

6.3. Base Rent During Extension Term . Base Rent during the Extension Term, if any, shall be determined by a Base Rent Adjustment as described in *Section 4.2*. The parties shall document the adjusted Monthly Base Rent by countersigned agreement

6.4. Percentage Rent During Extension Term Percentage Rent for the Extension Term shall be the fair market value percentage of Gross Revenues ("FMV Percentage") as determined as follows.

(a) The methodologies and standards for determining FMV Percentage shall be consistent with the Uniform Standards of Professional Appraisal Practice (or, in the case of its discontinuance, with any successor standards applicable to commercial properties similar to the Premises). Any appraisal conducted under this *Section 6.4* shall be by California licensed commercial real estate appraisers with at least ten (10) years of commercial appraisal experience who hold the MAI designation from the Appraisal Institute or if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations (a "Qualified Appraiser").

(b) All timeframes described below may be extended by mutual agreement of the Parties, but the final FMV Percentage for the Extension Term shall be effective on the commencement date of the Extension Term. Upon final determination of the FMV Percentage, the Parties shall acknowledge by an addendum hereto the FMV Percentage, provided that failure to do so shall not affect the effectiveness of the FMV Percentage. In the event that the FMV Percentage is not finally determined on the commencement date of the Extension Term, the FMV Percentage as proposed by Port pursuant to **Section 6.4(c)** shall take effect on such date and shall be adjusted with an invoice or credit once the FMV Percentage is finally determined as provided hereunder.

(c) Port shall determine the FMV Percentage for the Extension Term by using its good faith judgment, but such FMV Percentage shall not exceed ten percent (10%) and shall not be below eight percent (8%), and shall submit to Tenant its written determination of the FMV Percentage no later than ninety (90) days after the date of Tenant's Option Notice. If the Parties fail to mutually agree on the FMV Percentage within ninety (90) days of the date Port submitted its determination of the FMV Percentage to Tenant or by such earlier date as mutually agreed in writing by the Parties (the "**Negotiation Period**"), then the FMV Percentage shall be set by the appraisal process described below, provided, however that the Parties may mutually agree to the FMV Percentage at any time prior to the appraisal process being completed.

(d) No later than thirty (30) days after the expiration of the Negotiation Period, the Parties shall meet and confer on appraisal instructions. The Parties shall negotiate in good faith to agree on a single set of joint appraisal instructions, but nothing in this Lease shall be construed as requiring the Parties to agree on appraisal instructions. No later than sixty (60) days after the Parties meet and confer on appraisal instructions, each Party, at its own cost and by giving notice to the other Party, shall appoint a Qualified Appraiser to prepare an appraisal of the FMV Percentage using the single set of agreed-upon joint appraisal instructions if the Parties have agreed, or using their own instructions if the Parties have not agreed ("**Appraisal Instructions**"). If a Party does not appoint a Qualified Appraiser within such 60-day period, the single Qualified Appraiser appointed shall be the sole appraiser and shall prepare the appraisal. Each Qualified Appraiser shall conduct an independent appraisal based on the Appraisal Instructions within ninety (90) days after appointment. Each Qualified Appraiser may utilize the services of special experts, including experts to determine without limitation, property condition, market lease rates, leasing commissions, renovation or upgrade costs and other pertinent matters. Further, either Party may submit simultaneously to both Qualified Appraisers any information regarding the Premises or Lease terms and conditions that is deemed by the Party pertinent to the determination of the FMV Percentage. The Parties shall cause each Qualified Appraiser to submit simultaneously to both Parties his or her written opinion of the FMV Percentage with supporting data and analysis. Neither of the Qualified Appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted to the Parties.

(e) If the higher appraised percentage value is ten basis points (.1) or less than the lower appraised percentage value, then the appraised value shall be the average of such two (2) figures rounded to the nearest .0005%.

(f) If the difference in appraised value is more than ten basis points (.1), then the Parties shall cause the first two Qualified Appraisers to agree upon and appoint an independent third Qualified Appraiser from the City's list of approved vendors (San Francisco Department of Real Estate) within ninety (90) days after both of the first two (2) appraisals have been submitted to the Parties and shall inform the Parties of their appointment at or before the end of such 90-day appointment period. The third Qualified Appraiser shall also have experience acting as a third appraiser in cases of disputes.

(g) Within ten (10) days of appointment, the third Qualified Appraiser shall submit a declaration to the Parties disclosing any work performed by such Qualified Appraiser

for either Party, any entity related to either Party, or their attorneys, principals, or officers, and any relationship between the third Qualified Appraiser and either Party that could reasonably be construed as a conflict of interest. Within ten (10) days of receipt of such declaration, either Party may, by written notice to the other Party and the two Qualified Appraisers, raise a good faith objection to the selection of the third Qualified Appraiser based on his or her failure to meet the requirements of this Section, experience, past working relationships with the Parties, and any other matters relevant to the appraisal set forth in this Agreement. In such event, if the two (2) Qualified Appraisers determine that the objection was made in good faith, the Parties shall cause the two (2) Qualified Appraisers to promptly select (but in no case longer than ten (10) days) another third Qualified Appraiser from the City's list of approved vendors (San Francisco Department of Real Estate), subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third Qualified Appraiser within ten (10) days after receipt of the declaration, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third Qualified Appraiser or any other matter relating to the selection of the third Qualified Appraiser under this Agreement. If for any reason the two Qualified Appraisers do not appoint a third Qualified Appraiser within the designated period after they have submitted their two (2) appraisals to the Parties (or within a reasonable period thereafter not to exceed sixty (60) days in the event a good faith objection is made as provided above), then either Party may apply to the American Arbitration Association or any similar provider of professional commercial arbitration services for appointment in accordance with the rules and procedures of such organization of an independent third Qualified Appraiser meeting the foregoing qualifications.

(h) Each Party shall bear the fees, costs and expenses of the Qualified Appraiser it selects and of any experts and consultants used by that Qualified Appraiser. Each Party shall bear one-half (1/2) of the cost of any fee associated with selecting and charged by the third Qualified Appraiser (if any).

(i) The third Qualified Appraiser shall not perform another independent appraisal, but, within sixty (60) days after his or her appointment, shall review the first two appraisals and, after prior written notice to the Port and Tenant, convene a meeting with the first two (2) Qualified Appraisers to review and discuss the appraisals prepared by each of the Parties' Qualified Appraisers. Prior to this meeting, the Port and Tenant may each submit supplemental written information to all three (3) Qualified Appraisers. If the third Qualified Appraiser utilizes, obtains or considers any information other than that provided in the first two appraisals or in submittals made by the Port and Tenant, he or she must provide a written report of such information to the Parties and to the first two Qualified Appraisers prior to the meeting. Within thirty (30) days following the initial meeting, the third Qualified Appraiser shall convene a second meeting limited in attendance only to the three Qualified Appraisers and the three Qualified Appraisers shall reach a majority agreement on the FMV Percentage based on the record of information provided as part of the process described in this Section. The third Qualified Appraiser shall prepare a letter indicating the final determination of the FMV Percentage with the written signatures of each concurring Qualified Appraiser.

(j) In the event that the final appraised value is less than eight percent (8%) or higher than ten percent (10%), then the FMV Percentage shall be 8% (if lower) or 10% (if higher).

(k) The FMV Percentage so determined shall be conclusive, final and binding on the Parties, except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time). Except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time), the provisions of Title 9 of the California Code of Civil Procedure shall not have any application to the appraisal procedure set forth herein."

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

7. SECURITY DEPOSIT.

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

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

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

8. USE OF THE PREMISES.

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

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

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use;
- (b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- (c) any activity or object which will exceed load restrictions, if any, or cause damage to the Premises;
- (d) any activity which constitutes waste or nuisance including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

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

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

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

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

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

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

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

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

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

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's

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

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

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

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

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

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

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

10.3. *Compliance with City's Risk Manager's Requirements.* Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise consistent with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

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

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

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

11.2. *Port's Right to Inspect.* Without limiting *Section 25 below*, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

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

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with **Section 11** ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with **Section 11**, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

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

11.4. Acts of Nature. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to **Section 18** in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES.

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

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

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

The parties agree that any and all Utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that Utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

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

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

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

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

12.4. Energy Consumption Disclosure. Tenant consents to Tenant's Utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

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 for any Subsequent Alterations of One Million dollars (\$1,000,000) or more, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and/or (ii) a payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount up to one hundred fifty percent (150%) but not less than one hundred percent (100%) of the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

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

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

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

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

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

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

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

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

(e) Tenant expressly acknowledges that the facility is a contributing resource to the Port of San Francisco Embarcadero Historic District on the National Register. Accordingly, all interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the Facility) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "Secretary's Standards") and summarized in the attached *Exhibit E*, and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibit F* ("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 16 below* (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA

regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

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

13.4. Improvements Part of Realty. Except as set forth in **Section 13.3(g)**, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in **Section 26** (Surrender).

13.5. Removal of Improvements. Prior to the Expiration Date or earlier termination of this Lease, Port may 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 26**. 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.

13.6. Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with **Section 13.2**

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

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

13.8. 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. If Port's activities under this **Section 13.8** result in a direct documented loss of customers in any month such that Tenant's Percentage Rent due is less than that Tenant's Base Rent due for such month, then, upon satisfactory documentation, Port will provide rent abatement to Tenant in the form of a prorata reduction in Base Rent on a per square footage lost basis for up to a maximum of six (6) months. In the event that Tenant's Percentage Rent due is less than that Tenant's Base Rent as the result of Port's activities under this **Section 13.8** for more than six (6) consecutive months, Tenant shall thereafter have the right to terminate this Lease upon thirty (30) days' prior written notice to the Port. Except to the extent provided in this **Section 13.8**, (A) in no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease; and (B) 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. FLOOD RISK AND SEA LEVEL RISE.

14.1. Sea Level Rise. On September 22, 2014, acting through its Capital Planning Committee, the City and County of San Francisco adopted "Guidance for Incorporating Sea Level Rise Into Capital Planning in San Francisco: Assessing Vulnerability and Risk to Support Adaptation" (the "**SLR Guidance**"), a copy of which can be accessed at <http://onesanfrancisco.org/staff-resources/sea-level-rise-guidance/>. The SLR Guidance quotes the findings of the 2012 National Research Council Report, Sea-Level Rise for the Coasts of California, Oregon and Washington: Past Present and Future, which projects sea level rise estimates for San Francisco Bay relative to the year 2000 of 11 inches (+/- 4 inches) by 2050 and 36 inches (+/- 10 inches) by 2100 as the most likely scenarios for sea level rise (the report quotes 66 inches of sea level rise by 2100 as a worst case scenario).

14.2. Flood Protection Measures. In addition to Tenant's obligations to comply with Laws under **Section 9** (Compliance with Laws) and to repair and maintain the Premises (including, but not limited to the structure and Substructure under **Section 11** (Maintenance and Repairs), if, at any time during the Term of this Lease, and subject to compliance with the

California Environmental Quality Act (“CEQA”), the Chief Harbor Engineer determines in his or her regulatory capacity in accordance with applicable Laws that there is a need for temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with flooding (“**Flood Protection Measures**”) at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety (“**CHE Determination**”), Tenant shall be responsible at no cost to Port for permitting, constructing and implementing any such Flood Protection Measures in the manner described in this Section. Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Flood Protection Measures and agrees that it will not seek additional term for the purpose of amortizing the cost of any Flood Protection Measures. Port and Tenant agree that a CHE Determination under this *Section 14* shall not be a Condemnation for purposes of this Lease.

If Tenant fails to implement any required Pier Flood Protection Measures within the time required in the CHE Determination, Port shall provide Tenant with thirty (30) days written notice and the right to cure such failure. If Tenant fails to cure within the 30-day period, Port shall have the right but not the obligation to implement the measure(s) on Tenant’s behalf following an additional thirty (30) days’ written notice of Port’s intent to do so (unless Tenant’s failure to cure gives rise to an emergency which creates an imminent danger to public health or safety as determined by the CHE) and Tenant shall reimburse Port for its actual costs as Additional Rent.

14.3. Termination. If, at any time during the Term, the CHE determines conditions at the Premises pose an ongoing threat to public health and safety due to flood risk and sea level rise conditions (even despite construction of the Pier Flood Protection Measures) (“**Threat Determination**”), this Lease will terminate within ninety (90) days of the CHE’s written notice to Tenant of the Threat Determination (“**Threat Determination Notice**”), or the termination date set forth in the Threat Determination Notice, whichever is earlier, without cost or liability to Port.

14.4. Required Flood Protection Improvements for Other Port Property. If the CHE determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing in this *Section 14* shall imply any duty upon the part of Port to perform any work that under this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises.

14.5. Limitations; Waiver.

(a) No occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations under this *Section 14*, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant’s right to terminate under the terms and conditions specified in *Section 18* (Damage and Destruction) or *Section 19* (Condemnation). Without waiving the right to terminate as provided in *Section 18* (Damage and Destruction) or *Section 19* (Condemnation), Tenant waives any rights now or later conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws or on account of any such occurrence or situation.

(b) If the CHE determines that there is a need for Pier Flood Protection Measures or makes a Threat Determination as described in this Section, the rights and obligations of the Parties shall be as set forth in this *Section 14*. Accordingly, Port and Tenant each waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the

prior sentence, Port and Tenant do not intend to waive their rights under *Section 18* (Damage and Destruction) or *Section 19* (Condemnation).

14.6. Additional Improvements To Address Sea Level Rise. At any time during the Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option and at its cost that (i) are beyond the scope of the potential Flood Protection Measures contemplated in this Section; and (ii) are not otherwise Tenant's obligation under this Lease (including under *Section 9* (Compliance with Laws) and *Section 11* (Maintenance and Repairs)). Tenant acknowledges that additional Regulatory Approvals will be required for such improvements.

15. LIENS.

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

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

16. HAZARDOUS MATERIALS.

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

16.2. 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 16.1*;

(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.

16.3. 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 16.1*, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

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

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

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

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

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

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

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

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

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

all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

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

16.4. Requirement to Remediate.

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

(i) After notifying Port in accordance with *Section 16.3(a)*, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

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

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

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

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

16.5. 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 25* (Port's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

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

Asbestos), in the locations identified in the summary/table, if any, set forth in **Schedule 1** attached hereto.

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

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

Tenant agrees that its waiver of Claims set forth in **Section 20 below** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises.

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

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

Tenant agrees that its waiver of Claims set forth in **Section 20 below** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of lead in or about the Premises may limit Tenant's ability to perform any Improvements or Alterations to the Premises without Tenant first performing abatement of such lead. The presence of lead in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

16.8. Storm Water Pollution Prevention.

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

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

16.9. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in *Schedule 1* attached hereto, naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in *Schedule 4*, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this *Section 16.9* to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

16.10. Survival. Tenant's obligations under *Section 16* shall survive the expiration or earlier termination of this Lease.

17. INSURANCE.

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

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

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

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

(c) **Workers' Compensation; Employer's Liability.** Worker's Compensation Insurance, with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this **Section 17.1(b)**, it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

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

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

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

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

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

(f) **Property Insurance; Earthquake and Flood Insurance.** Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement), including earthquake, subject to provisions of **Section 17.6(b)**, and flood, subject to the provisions of **Section 17.6(c)**, in an amount not less than one hundred percent (100%) of the then-current full

replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage). Port acknowledges that Tenant may request a waiver from the requirements of this **Section 17.1(f)** as it relates to Tenant's obligation to carry earthquake insurance and flood insurance from the Port.

(g) Builders Risk Insurance. At all times prior to Completion of the Initial Tenant Improvements and during any period of Subsequent Alteration, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of **Section 17.6(c)**).

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

(i) Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to **Sections 17.1(f) above**, with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

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

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

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

17.2. Claims-Made Policies. If any of the insurance required in **Section 17.1 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.

17.3. Annual Aggregate Limits. If any of the insurance required in **Section 17.1 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.

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

17.5. 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.

17.6. General Insurance Matters.

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

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

(c) As to flood insurance only: such insurance shall be in an amount at least equal to the amount available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized insurance carriers, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, as determined not less frequently than every five (5) years by the City's Risk Manager.

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

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

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

18. DAMAGE AND DESTRUCTION.

18.1. *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 17 above**, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

If at any time during the last six (6) months of the Term, the Premises or the Facility is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

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

18.2. *Waiver.* Port and Tenant intend that the provisions of **Section 18** 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.

19. EMINENT DOMAIN.

19.1. 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.

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

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

19.4. Temporary Takings. Notwithstanding anything to the contrary contained in *Section 19*, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

19.5. Award; Waiver; Termination of Lease; Rent. Upon termination of this Lease in its entirety pursuant to *Section 19.3*, or pursuant to an election under *Section 19.2*, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of *Section 19* 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.

20. INDEMNITY AND EXCULPATION.

20.1. General Indemnity. Except as may be otherwise explicitly provided in the Basic Lease Information, Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility

or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of **Section 21**, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

Without limiting Tenant's Indemnity obligations with respect to the Premises, Port agrees that Tenant's Indemnity for Claims relating to "other Port property" as set forth above in subsection (a) applies only if such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence.

20.2. Hazardous Materials Indemnity.

(a) Except as may be otherwise explicitly provided in the Basic Lease Information, in addition to its obligations under **Section 20.1**, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

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

(c) Without limiting Tenant's Indemnity obligations with respect to the Premises, Port agrees that Tenant's Indemnity for Hazardous Material Conditions relating to "other Port property" as set forth above in subsection (a) applies only if such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence.

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

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

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

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

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

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

20.5. *Survival.* The provisions of *Section 20* shall survive the expiration or earlier termination of this Lease.

21. TRANSFERS.

21.1. *Transfer to Affiliate.*

(a) Tenant may make a Transfer to an Affiliate without obtaining Port's consent, provided: (1) at the time Tenant provides Port with notice, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) if the proposed Transferee is a successor to Tenant by purchase, such proposed Transferee shall acquire all or substantially all of the stock or assets of Tenant's business or, if such proposed Transferee is a successor to Tenant by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Tenant; (3) such proposed Transferee must have a net worth sufficient to meet the financial obligations under this Lease as of the day prior to the proposed purchase, merger, consolidation or reorganization as evidenced to Port's reasonable satisfaction; (4) such proposed Transferee operates the business in the Premises for the Permitted Use and no other purpose; and (5) Tenant gives Port written notice at least sixty (60) days prior to the

effective date of the proposed Transfer and provides copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date. A Transfer to an Affiliate that does not meet the criteria specified in this **Section 21.1(a)** (1)- (5) **Section 21.2** shall be subject to Port's prior written consent under **Section 21.3**.

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

(c) 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.

21.2. Transfer to Non-Affiliate.

(a) Except for a Transfer to an Affiliate meeting the requirements of **Section 21.1**, Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

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

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

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

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

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

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

21.3. 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. *Sublease.* In addition to all requirements in *Section 21.2*, the following provisions apply to any Transfer in the form of a Sublease.

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

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

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

21.4. *Port's Participation in Sale Proceeds.* In addition to all requirements in *Section 21.2*, the following provisions apply to any Transfer in the form of a Sale.

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

(b) As soon as available after Port consents to the Sale, Tenant must deliver to Port an estimated closing statement that includes Tenant's best estimate of: (i) Gross Sale Proceeds; (ii) Costs of Sale; (iii) Net Sale Proceeds; and (iv) Port's Sale Participation. The closing statement must be updated and delivered to Port the business day before the Sale

Closing. If an escrow account is not established for the Sale, Tenant's chief financial officer or independent accountant must certify to Port under penalty of perjury the accuracy of the final closing statement or provide a detailed accounting of and documentation supporting any variances from the estimated closing statement in form and content reasonably acceptable to Port. Tenant must submit the amount of any underpayment with the certificate or accounting. Tenant's obligation to pay Port's Sale Participation will survive the Sale Closing and the expiration or termination of this Lease.

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

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

For example, if: (i) Initial Tenant Improvements have a Class Life of 15 years; (ii) Certified Construction Costs are \$1 million; (iii) Gross Sale Proceeds are \$5 million; (iv) Costs of Sale are \$200,000, leaving Net Sale Proceeds of \$4.8 million; and (v) the Sale Closes on the sixth (6th) anniversary of the "placed in service" date of the Initial Tenant Improvements, then Port's Sale Participation is \$525,960, as shown in the calculation below.

Gross Sale Proceeds:	\$5,000,000
Costs of Sale:	\$200,000
Net Sales Proceeds before Adjusted Basis reduction:	\$4,800,000
Certified Construction Costs of Initial Tenant Improvements:	\$1,000,000
Adjusted Basis (10/15 years unamortized):	\$417,000
Net Sales Proceeds less Adjusted Basis:	\$4,383,000
Port's Sale Participation @ 12% of adjusted Net Sales Proceeds:	\$525,960

(d) Port may reference in any estoppel certificate or other representation that, payment to Port of Port's Sale Participation is a material obligation under this Lease, due and owing upon the closing of any Sale; provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's Sale Participation. Tenant's obligation to pay Port's Sale Participation will survive the Sale Closing and the expiration or termination of this Lease.

21.5. Port's Participation in Mortgage Proceeds. In addition to all requirements of this *Section 21*, Tenant and all subsequent assignees must pay to Port twelve (12%) of Tenant's Net Mortgage Proceeds from each Mortgage as Port's Mortgage Participation, concurrently with and as a condition to the Mortgage Closing.

(a) Tenant must deliver to Port with its request for Port's consent to a Mortgage an estimated closing statement that includes Tenant's best estimate of: (i) Gross Mortgage Proceeds; (ii) a detailed separate line item for each of the costs permitted to be

deducted from the Mortgage Proceeds, as applicable to arrive at Net Mortgage Proceeds along with supporting documentation reasonably satisfactory to Port; and (iii) the estimated amount of Port's Finance Participation.

The closing statement must be updated and delivered to Port on the business day before the Mortgage Closing. If escrow is opened for the Mortgage, Port's Mortgage Participation will be distributed through escrow. If no escrow is opened for the Mortgage, Port's Mortgage Participation will be paid upon the Mortgage Closing. If an escrow account is not established for the Mortgage, Tenant's chief financial officer or independent accountant must certify to Port under penalty of perjury the accuracy of the final closing statement. Tenant must submit the amount of any underpayment with the final Closing Statement for the Mortgage Closing.

For example, if: (i) Gross Mortgage Proceeds are \$3 million;(ii) deductible costs are \$200,000; (iii) outstanding debt is \$1,000,000; and (iv) new capital improvements, as applicable and documented to Port's satisfaction are \$300,000; then Port's Mortgage Participation is \$180,000, as shown in the calculation below.

Gross Mortgage Proceeds:	\$3,000,000
Deductible Costs:	\$200,000
Net Mortgage Proceeds:	\$2,800,000
Amount of outstanding indebtedness:	\$1,000,000
New Capital Improvements	\$300,000
Net Mortgage Proceeds:	\$1,500,000
Port's Mortgage Participation @ 12%:	\$180,000

(b) Port may reference in any estoppel certificate or other representation requested from Port by a mortgagee, that payment to Port of Port's Mortgage Participation is a material obligation under this Lease, due and owing upon the closing of any Mortgage; provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive Port's Mortgage Proceeds. Within forty-five days (45) after any Mortgage, Tenant will submit to Port a statement, prepared in accordance with sound accounting principles consistently applied, and certified by Tenant's chief executive officer or chief financial officer (or equivalent position) as complete and correct in all material respects, confirming the actual amount under Subsection (a) (i)-(iii). At Port's option, any overpayments shall be either refunded to Tenant, applied to any other amount then due and unpaid, or credited against Rent due. Tenant will accompany the final closing statement of Port's Mortgage Participation with the amount of any underpayments. The statements delivered to Port under this **Section 21.5** are subject to the audit provisions of **Section 4.6** for determination of the accuracy of Tenant's reporting of Port's share of Mortgage Proceeds.

(c) Port may reference in any estoppel certificate or other representation requested from Port by a mortgagee, that payment to Port of Port's Mortgage Participation is a material obligation under this Lease, due and owing upon the any Mortgage Closing; provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's Mortgage Proceeds. Tenant's obligation to pay Port's Mortgage Participation will survive the Mortgage Closing and the expiration or termination of this Lease.

21.6. Leasehold Mortgage.

(a) No Mortgage Except as Permitted.

(i) Restrictions on Mortgage. Except as expressly permitted in this **Section 21.6**, Tenant cannot:

(ii) Engage in any Mortgage or other transaction creating any mortgage, deed of trust, lien, or similar security interest upon Tenant's leasehold estate or Tenant's interest in the Improvements; or

(iii) Place or suffer to be placed upon Tenant's leasehold estate or interest in the Improvements, any lien or other encumbrance other than as permitted by this **Section 21.6**; or

(iv) Assign, mortgage, or encumber Tenant's leasehold estate by any Mortgage without Port's prior consent, which consent may be withheld in its sole and absolute discretion, if (i) the loan secured by the Mortgage is cross-collateralized with any other debt of Tenant, or (iii) the loan secured by the Mortgage is cross-defaulted against any other debt of Tenant.

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

(c) Purpose of Mortgage. A Mortgage may be granted only for the purposes of financing the Initial Tenant Improvements or any Subsequent Alteration. With respect to any issuance of corporate debt or other securitized financings, Tenant is not permitted to create any structure that would create an obligation or security of Port.

(d) Violation of Covenant. Any mortgage, deed of trust, encumbrance, or lien not permitted by this **Section 21.6** will be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

(e) Assurances for Mortgage. Port agrees to reasonably cooperate in good faith with any effort by Tenant to obtain and consummate any permitted Mortgage and, in connection therewith, to execute and acknowledge, if necessary, such additional or expanded agreements, certificates, or instruments as may be reasonably requested that are consistent with prevailing custom and practice for similar types of loans, so long as doing so will have no adverse effect on any rights or benefits of Port under this Lease or increase Port's liabilities under this Lease.

21.7. Notice to Port. In addition to the obligations under **Section 5.2**, 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).

21.8. 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 20** (Indemnity and Exculpation);

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

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

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

(f) A provision under which the Transferee expressly agrees to report the transfer to the County Assessor in accordance with *Section 5.2* of this Lease.

21.9. 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 until the later of (i) four (4) years after the end of each Lease Year to which such records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties as to the accuracy of Tenant's financial reporting on the Transfer, until such audit or controversy is concluded. 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.

21.10. 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 21*.

21.11. 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 38*.

22. DEFAULT BY TENANT.

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

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

(b) failure by Tenant to deliver the Monthly Percentage Rent Statement or Annual Statement when due and such default continues for a period of three (3) business days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12) month period shall, at the option of Port, constitute an Event of Default by Tenant hereunder without any further action by Port (including, but not limited to, notice to Tenant of such failure) or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

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

(d) failure to comply with Tenant's covenants set forth in *Section 33.2* (Continuous Operations), as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

- (e) abandonment or vacation of the Premises by Tenant; or
- (f) failure to pay Port at close of escrow of any Sale, Port's Participation in Net Sale Proceeds and such default continues for a period of three (3) days following written notice from Port.
- (g) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing Port to immediately terminate this Lease upon written notice without an opportunity to cure; or
- (h) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by **Section 35.3 below**, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or
- (i) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provisions of **Section 21 above**; or
- (j) failure by Tenant or Tenant's insurance broker as applicable to provide evidence of insurance coverage complying with the provisions of **Section 17 above**, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or
- (k) failure by Tenant to comply with the provisions of **Section 16 above** and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or
- (l) failure by Tenant to discharge any lien or encumbrance placed on the Facility or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Facility or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or
- (m) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this **Section 22**, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or
- (n) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code

or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

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

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

(q) without limiting the provisions of *Sections 22(b) above* or *22(f) above* or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

23. PORT'S REMEDIES.

Upon Tenant's Event of Default, Port shall, without further notice or demand of any kind to Tenant or to any other person, have the remedies described in *Sections 23.1* through *23.4* below:

23.1. *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 of an uncured Tenant Event of Default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of an Event of Default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this *Section 23.1* shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's Event of 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.

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

The "worth at the time of award" of the amounts referred to in *Sections 23.2(a)* and *23.2(a)* 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 23.2(b)* 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%).

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

23.4. *Port's Right to Cure Tenant's Default.* Port, at any time, may, at Port's sole option, cure Tenant's Event of Default at Tenant's cost. If Port at any time, by reason of Tenant's Event of 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.

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

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

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

23.8. Remedies Not Exclusive. The remedies set forth in *Section 23* 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.

24. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

24.3. 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.

25. PORT'S ENTRY ON PREMISES.

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

25.2. General Entry. In addition to its rights pursuant to *Section 25.1 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 of an uncured Tenant Event of Default;

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

(f) To obtain environmental samples and perform equipment and facility testing.

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

25.4. *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 25** or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

25.5. *Nondisturbance.* Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in **Section 25** in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

26. SURRENDER AND QUITCLAIM.

26.1. *Surrender.* Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in **Sections 18** and **19** hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this **Section 26** and **Section 13.4**, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to **Section 27.2** or **27.3** below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability

resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

26.3. *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.

26.4. *Survival.* Tenant's obligation under this *Section 26* shall survive the expiration or earlier termination of this Lease.

27. HOLDING OVER.

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

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

(b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

27.3. 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.

28. FEES FOR REVIEW. Within ten (10) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including reasonable attorneys' fees and costs, consultant's costs, and costs for Port staff time, incurred in connection with the review, investigation, processing, documentation, disapproval and/or approval of any proposed Transfer. Tenant will pay such costs regardless of whether or not Port consents to such proposal.

29. MINERAL RESERVATION.

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

30. 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.

30.1. Nondiscrimination.

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

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of *Section 30.1(a) above*. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work

is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

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

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

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

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with *Section 30.2(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.

(ii) 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.

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

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

30.5. 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.

30.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does

not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

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

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

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

30.10. *Tropical Hardwood and Virgin Redwood Ban.* Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide

any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

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

30.12. *Notification of Limitations on Contributions.* If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this **Section 30.12** shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this **Section 30.12** applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

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

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

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

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

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

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

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

30.18. *Food Service and Packaging Waste Reduction Ordinance.* Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging

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

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

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

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

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

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

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

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

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

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

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

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

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

30.22. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9- 1(c), as may be amended from time to time (the "Nutritional Standards Requirements"). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section shall be deemed a material breach of this Lease. Without limiting Port's other rights and remedies under this Lease, Port shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Premises is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in San Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

30.23. Employee Signature Authorization Ordinance. The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor

union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

30.24. Tenant's Compliance with City Business and Tax Regulations Code.

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this **Section 30.24** to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

30.25. Consideration of Salary History. Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

31. 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.

32. REPRESENTATIONS AND WARRANTIES OF TENANT.

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

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

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

the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) **No Limitation on Ability to Perform.** No applicable Law prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

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

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

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

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

33. TENANT'S MANAGEMENT COVENANTS.

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

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

casualty, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

34. MISCELLANEOUS PROVISIONS.

34.1. *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.

34.2. *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.

34.3. *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.

34.4. *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.

34.5. *Interpretation of Lease.*

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

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

(c) Whenever a section, section or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. The captions preceding the sections 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 section, section, subdivision, or paragraph of this Lease.

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

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

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

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

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

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

34.6. 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.

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

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

34.9. 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.

34.10. 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.

34.11. *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.

34.12. *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.

34.13. *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.

34.14. *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.

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

34.16. *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.

35. LIMITATION ON DAMAGES.

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

35.2. *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.

35.3. *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.

36. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) business 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 G*. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

37. 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.

38. 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 16.6 above*.

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

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

"Adjusted Basis" means the value of the Certified Construction Costs of the Initial Tenant Improvements to the extent unamortized on the Transfer Date.

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

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

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

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

"**Annual Statement**" is defined in *Section 4.3(a) above*.

"**Appraisal Instructions**" is defined in *Section 6.4*.

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

"**Audit Period**" is defined in *Section 4.4 above*.

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

"**Base Rent**" means the monthly Base Rent specified in the Basic Lease Information and described further in *Section 4.1* hereof.

"**Base Rent Adjustment**" is defined in *Section 4.2*.

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

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

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

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

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

"**Certified Construction Costs**" are Construction Costs that Port has approved through the procedures described in *Section 21.4*.

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

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

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

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

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

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

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

"**Common Areas**" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other tenants or permittees, and that are designated by Port from time to time for the general common use or convenience of Port, Tenant, or other tenants of Port, and the respective authorized Agents and

Invitees of the same. The Common Areas include, without limitation, driveways, delivery areas, pedestrian walkways, service corridors accessing loading docks, utility rooms, and other areas or improvements provided or designated by Port for common use. The Common Areas shall not include any parking areas located outside the boundaries of the Facility.

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

"**Concession**" is defined in *Section 34.16 above*.

"**Conduct Code**" is defined in *Section 30.11 above*.

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

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

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

"**Core Benefits**" is defined in *Section 30.1*.

"**Costs of Sale**" means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable (as determined by the Port in its reasonable discretion) brokerage commissions; (b) customary closing fees and costs, including title insurance premiums, survey fees, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys' fees; and (d) new tenant improvements to be made solely in connection with a Sale and performed in compliance with *Section 13*. Costs of Sale exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

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

"**Current Index**" means the Index for the calendar month immediately preceding the applicable adjustment date.

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

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

"**Encroachment Area**" is defined in *Section 2.4 above*.

"**Encroachment Area Charge**" is defined in *Section 2.4 above*.

"**Environmental Laws**" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or

environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Facility.

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

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

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

"Event of Default" is defined in *Section 22 above*.

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

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

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

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

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

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

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

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

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

"Flood Protection Measures" is defined in *Section 14.2*.

"FMV Percentage" is defined in *Section 6.4*.

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

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

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

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

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

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

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

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

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

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

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

“Gross Mortgage Proceeds” means all sums actually disbursed in connection with a financing or refinancing.

"Gross Revenue" means, subject only to the exceptions stated below, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises, including without limitation, all returns and refunds, employee meals, discounted and complimentary meals, beverages and services or similar benefits and/or goodwill,

the total value, based on price, for the tickets, cover charges, merchandise and any other items and the operation of any event, including any special or fundraising event, and catering or food delivery business conducted by, from or at the Premises (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed). Except as specified below, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.

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

- (i) The amount of any refund made or credit allowed due to a bona fide complaint from a customer concerning the quality of food, beverages, merchandise or service by Tenant;
- (ii) Sales by redemption of gift certificates or like vouchers, but only to the extent previously reported as part of Gross Revenues;
- (iii) Sums collected for any sales or excise tax imposed directly upon Tenant by any duly constituted governmental authority, but only if stated separately from the selling price of the goods or merchandise, or services, and collected from customers and such amounts are in fact paid to the appropriate governmental entities for which they are collected; and
- (iv) All food and beverage sales to employees of Tenant, not to exceed, however, one percent (1%) of Gross Revenues in any single month, and provided further that said sales are at a discount; and
- (v) Tips paid to Tenant's employees by its customers, so long as such tips go directly to Tenant's employees (and not Tenant or Tenant's management); and
- (vi) Intra and inter-company transfers of inventory and supplies between and among Tenant and Affiliates (as defined in *Section 21.1*); and
- (vii) Bona fide promotional discounts to Tenant's customers for food, beverages and other sales, up to a maximum of five percent (5%) of Gross Revenues in any single month; and
- (viii) Ticket sales and cover charges, but only to the extent that such revenue is less than Tenant's actual monthly entertainment costs payable to promoters, musicians, performers, licensors, agents and booking companies and agents that are not Tenant's employees or Affiliates ("Entertainment Costs").

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

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

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

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

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

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

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

"**HEPA**" is defined in *Section 13.3(f) above*.

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

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

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

"**Improvement Costs**" is defined in *Section 3.2 above*.

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

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

"**Indemnified Parties**" is defined in *Section 20.1 above*.

"**Indemnify**" means to indemnify, protect, defend, and hold harmless forever.

"Indemnification" and "Indemnity" have correlating meanings.

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

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

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

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

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

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

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

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

"**Monthly Percentage Rent Statement**" is defined in *Section 4.3(a) above*.

"**Mortgage**" means a Transfer affecting ownership of the beneficial interests in or business assets of Tenant through a mortgage, deed of trust, or similar security instrument using Tenant's leasehold interest in the Premises or this Lease as collateral.

"**Mortgage Closing**" means the date that a Mortgage closes through close of escrow or otherwise.

"**Negotiation Period**" is defined in *Section 6.4*.

"**Net Mortgage Proceeds**" means Gross Mortgage Proceeds after subtracting the following items, as applicable, in the following order of priority: (i) to pay all actual lenders' costs of such Mortgage paid by Tenant including application fees, closing costs, points, and other customary

lenders' fees such as lenders' attorneys' fees and costs and title insurance costs paid at close of escrow; (ii) to pay down the amount of outstanding indebtedness secured by a permitted Mortgage by an amount, if any, desired by Tenant or required by any lender; (iii) to pay Tenant's costs including reasonable attorneys' fees and costs associated with the Mortgage; and (iv) if any of the Gross Mortgage Proceeds are to be used for replacements, repairs, and/or improvements to the Premises, that would be deemed capital assets under general accounting principles consistently applied, then the amount of such capital items, as applicable and as documented to Port's satisfaction.

"**Net Sale Proceeds**" means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made Initial Tenant Improvements at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with *Section 21.4(b)*.

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

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

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

"**Notice to Vacate**" is defined in *Section 2.4 above*.

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

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

"**PACMs**" is defined in *Section 16.6 above*.

"**Percentage Rent**" means the Percentage Rent set forth in the Basic Lease Information and *Section 4.3 above*.

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

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

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

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

"**Port's Mortgage Participation**" means the amount due to Port in connection with a Mortgage as described in *Section 21.5*.

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

"**Port Work**" is defined in *Section 13.8 above*.

"**Premises**" means the real property described in *Section 2.1* above and depicted on *Exhibit A*.

"**preservative-treated wood containing arsenic**" is defined in *Section 30.11*.

"**prevailing party**" is defined in *Section 24.1 above*.

"**Prior Index**" means the Index published closest (but prior) to the month five years prior to the applicable adjustment date.

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

"**Proof of Payment**" means approved copies of receipts, cancelled checks, invoices marked "paid," unconditional lien waivers from all contractors, subcontractors, suppliers and materialmen who provided any labor, materials or services related to the repairs, and other items reasonably acceptable to Port evidencing proof of such expenditures.

"**Qualified Appraiser**" is defined in *Section 6.4*.

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

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

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

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

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

"**Rent**" means the Base Rent, Percentage Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to *Section 4*.

"**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 Restaurant Rules and Regulations attached hereto as *Exhibit D*, as may be amended from time to time any other rules and regulations adopted, from time to time, by Port pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility.

"**Sale**" means Tenant's Transfer of its entire interest in this Lease or the entire leasehold estate, including the sale of Tenant's Property at the Premises and Tenant's goodwill to any other Person or entity.

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

"**saltwater immersion**" is defined in *Section 30.11*.

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

"**Seawall**" is defined in *Section 2.8*.

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

"**Security Deposit**" means the amount specified in the Basic Lease Information and as further described in *Section 6*.

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

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

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

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

"**SWPPP**" is defined in *Section 16.8(a) above*.

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

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

"**Tenant's Property**" means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant's Property, in either case without cost to Port.

"**Term**" is defined in *Section 3.1 above*.

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

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

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

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

"**Transfer Notice**" means Tenant's prior written notice to Port of an intent to Transfer to a non-Affiliate, specifying: (a) the Transferee's name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee's proposed use of the Premises, including any

required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee's personal, business, and credit references.

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

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

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

"**Waiving Party**" is defined in *Section 17.5 above*.

"**Work**" when used in reference to construction is defined in *Section 30.11 above*.

"**worth at the time of award**" is defined in *Section 23.2 above*.

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

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

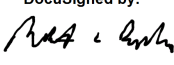
By: _____
Michael J. Martin
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **ANDRE-BOUDIN BAKERIES, INC., A CALIFORNIA CORPORATION**

By:  _____
Name: EEAD56D073A042... Dan Girardo
Title: _____ Chairman

Date Signed: 9/30/2020

By:  _____
Name: 7EBFE09A903F4CE Matt Dowling
Title: _____ President

Date Signed: 9/30/2020

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

By: _____
Rona H. Sandler
Deputy City Attorney


Lease Prepared By:  _____
(initials) DS JE Jay Edwards, Senior Property Manager

EXHIBIT A
DESCRIPTION OF PREMISES

[Attachment on following page]

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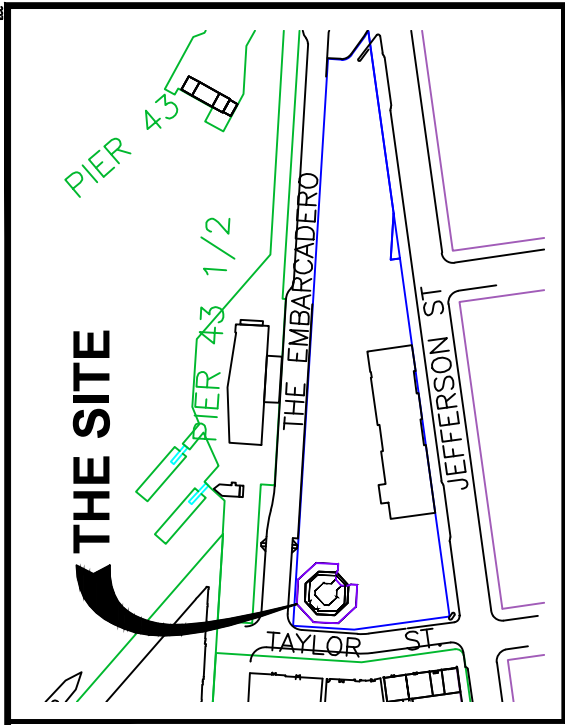
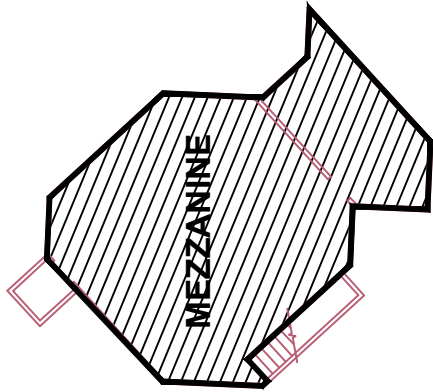


EXHIBIT A



LEASE NO. L-16697	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT SEAWALL LOT 301 ANDRE BOUDIN BAKERIES, INC.	DRAWN BY: ECC. E.D. CHECKED BY: J. EDWARDS PLACE CODE NO.	DATE: JULY 1, 2020 SCALE: 1" = 100' SHEET NO. 1
		3010-BL001-1	OF 1 SHEETS	

INITIALS: PORT JE TENANT: DE MD

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
Anniversary Date is hereby established as _____, 20____, and the Expiration Date as
_____, 20____.

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

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

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

WORK LETTER

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

1. General Terms

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

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

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

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

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

2. Construction of the Initial Tenant Improvements

2.1. Tenant's Construction Obligations.

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

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

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

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

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

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

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

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

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

2.7. Port Rights of Access. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the work being performed in constructing the Initial Tenant Improvements upon reasonable prior written notice to Tenant during regular business hours; provided, however, Port shall take such reasonable action necessary to minimize any interference with Tenant's construction activities. Port will provide Tenant promptly upon request with a copy of any written reports prepared by Port or its Agents with respect to the Initial Tenant Improvements under any such inspection, subject to withholding documents otherwise privileged or confidential. Port disclaims any warranties, representations and statements made in any such reports, will have no liability or responsibility with respect to any such warranties, representations and statements, and will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Initial Tenant Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

2.8. Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Initial Tenant Improvements, and shall post the signs on the Premises during the period of construction. The size, design, text and location of such signs and the composition and appearance of any non-

moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably.

3. Preparation And Approval Of Plans

3.1. The Construction Documents.

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

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

(1) Perspective drawings sufficient to illustrate the Initial Tenant Improvements.

(2) A site plan at appropriate scale showing relationships of the Initial Tenant Improvements with their respective uses, designating public access areas, open spaces, walkways, buildings, loading areas, streets, parking, and adjacent uses. Adjacent existing and proposed streets, piers, arcades and structures should also be shown.

(3) Building plans, floor plans and elevations sufficient to describe the development proposal, the general architectural character, and the location and size of uses.

(4) Building sections showing height relationships of those areas noted above.

(ii) "Preliminary Construction Documents" in sufficient detail and completeness to show that the Initial Tenant Improvements and the construction thereof shall comply with the Project Requirements, and which shall generally include, without limitation:

(1) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

(5) Preliminary interior improvement plans.

(6) Plans for proposed public access areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.

(7) Outline specifications for materials, finishes and methods of construction.

(8) Interior and Exterior Signage Plans.

(9) Exterior lighting plans.

(10) Material and color samples.

(11) Roof plans showing all mechanical and other equipment.

(iii) "Final Construction Documents" which shall include all plans and specifications required under applicable codes to be submitted with an application for a Premises Permit.

(b) **Exclusion.** As used in this Work Letter "**Construction Documents**" do not mean any contracts between Tenant and any contractor, subcontractor, architect, engineer or consultant.

(c) In preparing the Construction Documents, Tenant shall use good faith efforts to include energy conservation and other green building improvement measures including but not limited to solar panels, energy efficient light fixtures; Energy Star appliances; recycling of demolition debris and use of recycled building materials; composting services for customers including in Restrooms (for paper towels).

3.2. *Scope of Tenant Submissions of Construction Documents.* The following provisions apply to all stages of Tenant's submission of Construction Documents. Each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. The elements of the Preliminary Construction Documents requiring Port's approval shall be in substantial conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by Port or required as a condition of Regulatory Approvals as approved by Port. Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Initial Tenant Improvements and the construction of the Initial Tenant Improvements will be in compliance with the Project Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The elements of the Final Construction Documents requiring Port approval shall incorporate conditions, modifications and changes required by Port for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Initial Tenant Improvements to be constructed and completed in accordance with this Work Letter.

3.3. *Construction Document Review Procedures.*

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

(b) Timing of Port Disapproval/ Conditional Approval and Tenant Resubmission. If Port disapproves of the Construction Documents in whole or in part, Port in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a time shall be stated for satisfying the conditions. Tenant shall make a resubmittal as expeditiously as possible. Tenant may continue making resubmissions until the approval of the submissions or the time specified in any conditional approval.

3.4. *Changes in Construction Documents.*

(a) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any Port-approved Construction Documents without Port's express written approval in its reasonable discretion as provided in Section 3.4(b) below. Prior to making any changes that Tenant considers to be non-material to any Port-approved Construction Documents, including, without limitation, substituting materials which are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant shall notify Port in writing. If Port in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Port's approval under Section 3.4(b).

Port's determination of whether such changes are material will be conclusive. Without otherwise limiting the requirements of this Section 3.4(a), any changes that cost Five Thousand Dollars (\$5,000.00) or less in the aggregate and that would not otherwise affect the structural elements of the Initial Tenant Improvements shall be presumed to be non-material changes.

(b) Response. Tenant shall request in writing Port's approval in connection with all material changes to the Construction Documents. Port shall respond to Tenant in writing within thirty (30) days after receipt of Tenant's request. If Port fails to respond within five (5) business days after Tenant's second written request made to Port after the thirty (30) day period, such changes will be deemed disapproved.

3.5. Progress Meetings/Consultation. During the preparation of Construction Documents, Port staff and Tenant agree to hold regular progress meetings, as appropriate considering Tenant's Construction Document progress, to coordinate the preparation of, submission to, and review of Construction Documents by Port. Port staff and Tenant (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration.

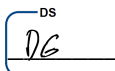
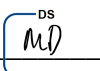
4. No Force Majeure

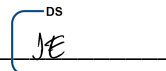
4.1. Completion of Construction. Tenant shall use its best efforts to commence, prosecute and Complete the Initial Tenant Improvements by the dates set forth in the Schedule of Performance. During construction of the Initial Tenant Improvements, Tenant shall submit written progress reports to City, in form and detail as may be required reasonably by Port, but at least on a monthly basis.

4.2. No Force Majeure. Tenant's obligation to Complete construction of the Initial Tenant Improvements as set forth in Section 4.1 above shall be final and absolute and shall not be subject to Force Majeure, Port delays, Regulatory Approval delays or any other delays.

4.3. Port's Remedy for Tenant's Failure to Timely Complete Construction. Without affecting any other provision of this Lease including without limitation the requirement that Tenant Complete the Initial Tenant Improvements by the Initial Tenant Improvements Completion Date as a condition of the Extension Option as provided in the Basic Lease Information and **Section 6.1**; Port's right to revoke the Extension Option as set forth in **Section 6.2**; or Port's remedies upon an Event of Default as provided in **Section 23**, in the event Tenant fails to Complete the Initial Tenant Improvements in a manner sufficient to cause Port to determine the Initial Tenant Improvements to be Completed by the Initial Tenant Improvements Completion Date, Port shall provide written notice to Tenant requiring Completion of the Initial Tenant Improvements within sixty (60) days after notice. In the event Tenant fails to Complete the Initial Tenant Improvements after notice, Tenant shall pay to Port an amount equaling Fifty Dollars (\$50.00) per day for the initial 120 days after notice and One Hundred Dollars (\$100.00) per day commencing on the Initial Tenant Improvements Completion Date and shall continue at such rate until Completion in addition to the Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Force Majeure, Port delays or other reasons.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES IN THE EVENT OF TENANT'S FAILURE TO COMPLETE CONSTRUCTION OF THE INITIAL TENANT IMPROVEMENTS BY THE INITIAL TENANT IMPROVEMENTS COMPLETION DATE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE AGREED UPON THE SUM SPECIFIED ABOVE, AFTER NEGOTIATION, AS THEIR REASONABLE ESTIMATE OF PORT'S DAMAGES IN SUCH EVENT.

TENANT  

PORT 

5. Completion

5.1. *Completion.*

(a) Issuance Process.

(i) Before the Completion Date, Tenant may not occupy the Premises except for construction purposes under this Work Letter or the Lease.

(ii) After the Completion Date, Tenant may request a determination of Completion for the Initial Tenant Improvements in writing. Port shall act on Tenant's request within sixty (60) days of receipt.

(iii) Port's determination that the Initial Tenant Improvements have been Completed does not relieve Tenant or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including Port) that may be required for the occupancy or operation of the Initial Tenant Improvements.

(b) *Condition to Approval.* If there remain uncompleted (i) finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "**punch list**", (ii) landscaping, (iii) exterior finishes (to the extent Tenant can demonstrate to Port's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of Interior Improvements), or (iv) any other item that Port approves in writing in its sole and absolute discretion (collectively "**Deferred Items**"), Port may reasonably condition approval upon provision of security or other assurances in form, substance and amount satisfactory to Port that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to Port) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by Port. The obligations set forth in this subsection shall survive a termination of the Lease.

(c) *Definition of Completed.* For purposes of this Work, "**Completed**" means completion by Tenant of all aspects of the Initial Tenant Improvements as the case may be in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Project or provision of security satisfactory to Port for Deferred Items under Section 5.1(b), and Port's sign off on the Job Card or other customary documentation of completion by the Port's Chief Harbor Engineer or his or her designee. The "**Completion Date**" shall mean the date of Port's sign off on the Job Card or the date of the Port's Chief Harbor Engineer's or designee's written approval of completion of the Initial Tenant Improvements.

6. Termination Of Lease

6.1. *Plans and Data.* If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Tenant Improvements, Tenant shall assign and deliver to Port (without cost to Port) any and all copies of reports in its possession regarding the Premises and all Construction Documents in the possession of or prepared for Tenant, for the contracting of the Initial Tenant Improvements within thirty (30) days after written demand from Port. Port may use said reports and Construction Documents for any purpose whatsoever relating to the Premises; provided, however, Port shall release Tenant and Tenant's contractor, architect, engineer, agents, employees and other consultants from any losses arising out of Port's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Port to complete the Initial Tenant Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Tenant Improvements an express agreement by the Person performing such services that Port may use such reports or Construction Documents as provided in this Section 6.1 without compensation or payment from Port in the event such reports or Construction Documents are used.

Documents are delivered to Port under the provisions of this Section 6.1, provided that Port agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

6.2. *Return of Premises.* If the Lease terminates pursuant to this Section 6, Tenant shall, at its sole expense and as promptly as practicable, return the Premises to Port in a safe condition, and unless otherwise requested by Port, shall promptly remove all Improvements, loose building materials and debris present at the Premises resulting from Tenant's construction activities. In the event that Tenant is required to return the Premises as aforesaid, Tenant shall obtain those permits customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Port shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Port will not be required to expend any money or undertake any obligations in connection therewith. The provisions of this Section shall survive any termination of the Lease.

ATTACHMENTS

ATTACHMENT 1 SCOPE OF DEVELOPMENT

ATTACHMENT 1
SCOPE OF DEVELOPMENT

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CHOWDER HUT LEASE

EXHIBIT C

Description of Construction Project:

Tenant will demolish existing patio enclosure which surrounds the Premises and replace with a new attractive patio enclosure with retractable windows. The enclosure will provide a more comfortable dining experience for guests during periods of inclement weather and will allow the business to continue to operate at increased capacity during such time.

The patio enclosure will be constructed to match the architectural design attached to this Exhibit as prepared by Tenant's Architect. The cost of the project is estimated to be \$800,000 as estimated by Tenant's contractor and attached to this Exhibit. The estimated time of construction is 90 days and will be completed during non-peak season.



CHOWDER HUT

RENDER PACKAGE

REVISED SCHEME

04.05.19

CASS CALDER SMITH
ARCHITECTURE + DESIGN

EXISTING

FRONT CONDITIONS



PROPOSED

FULLY OPEN



PROPOSED

HALF-OPEN



PROPOSED

FULLY CLOSED



EXISTING

REAR CONDITIONS



PROPOSED

FULLY OPEN



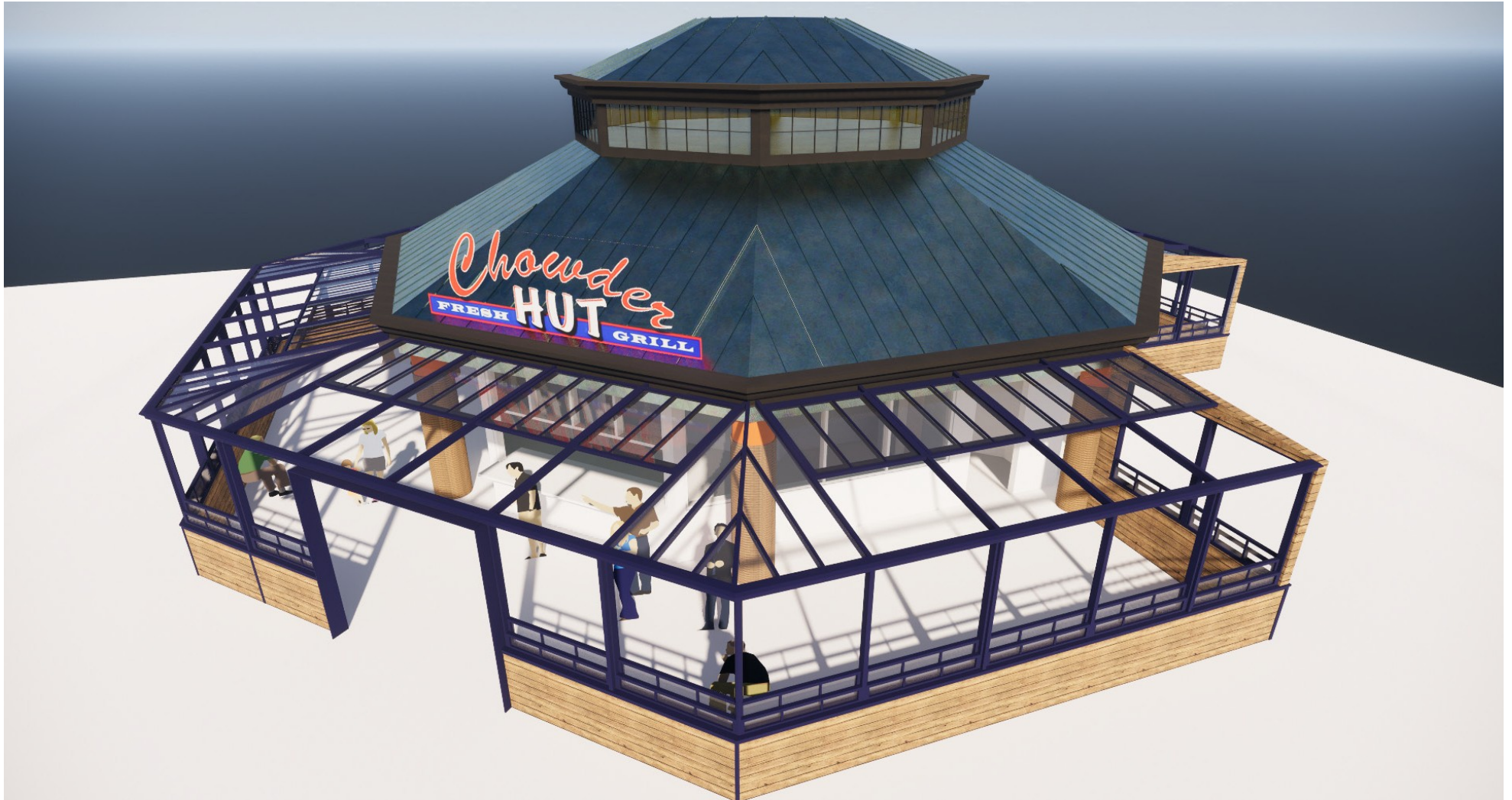
DETAIL

FRONT



DETAIL

ABOVE





PROJECT: Chowder hut remodel

LOCATION: 2890 Taylor St.
San FranciscoProject Duration
Months 2.3
Weeks 10.0GROSS SQ FT : 1,000
DATE : 5/15/2019
REV: 0

ARCHITECT: XX

COST SUMMARY		AREA	NOTES	QUANTITY		UNIT COST	TOTAL COST	TOTAL DIVISION
				#	UOM			
PRECONSTRUCTION SERVICE								
DIVISION 1 - General Conditions			SEE BELOW			\$ - / GSF	\$ -	
CONSTRUCTION PHASE								
DIVISION 1 - General Conditions						\$ 60.55 / GSF	\$ 60,550	
	General Conditions			1	LS	\$ 60,550	\$ 60,550	
	Crane, traffic control and permit		NIC					
	Parking permit		NIC					
DIVISION 2 - SITEWORK/DEMOLITION						\$ 25.00 / GSF	\$ 25,000	
02220	SOFT DEMOLITION							
	Interior/exterior demo			1	LS	\$ 20,000	\$ 20,000	
	Break and remove interior concrete			1	LS	\$ 5,000	\$ 5,000	
DIVISION 3 - CONCRETE						\$ 24.00 / GSF	\$ 24,000	
03300	CAST-IN-PLACE CONCRETE							
	Concrete interior patching			1	LS	\$ 4,000	\$ 4,000	
	Concrete interior finish floor-patch and polish			1	LS	\$ 20,000	\$ 20,000	
03400	PRECAST CONCRETE							NIC
03500	CEMENTITIOUS DECKS AND UNDERLAYMENT							NIC
DIVISION 4 - MASONRY								\$ 70,000
	Sandstone blocks at perimeter walls			1	LS	\$ 48,000	\$ 48,000	
	Stone counter- \$55 sq ft material with install			1	LS	\$ 22,000	\$ 22,000	
DIVISION 5 - METALS						\$ 10.00 / GSF	\$ 10,000	
05500	MISC METALS							
	Stainless steel corner guards, caps and trim			1	LS	\$ 6,000	\$ 6,000	
	Footrail			1	LS	\$ 4,000	\$ 4,000	
	DECORATIVE METALS							NIC
DIVISION 6 - WOOD & PLASTICS						\$ 55.00 / GSF	\$ 55,000	
06100	ROUGH CARPENTRY							
	Framing			1	LS	\$ 15,000	\$ 15,000	
06400	FINISH CARPENTRY							
	Wainscot on walls			1	LS	\$ 12,000	\$ 12,000	
	Base board			1	LS	\$ 4,000	\$ 4,000	
	Bar wall			1	LS	\$ 18,000	\$ 18,000	
06600	PLASTIC FABRICATIONS							
	FRP-1 (white-smooth)			1	LS	\$ 6,000	\$ 6,000	
DIVISION 7 - THERMAL & MOISTURE PROTECTION						\$ 11.00 / GSF	\$ 11,000	
07100	DAMP-PROOFING AND WATERPROOFING							
	Flashing			1	LS	\$ 4,000	\$ 4,000	
07200	INSULATION -perimeter low walls							
				1	LS	\$ 4,000	\$ 4,000	
07900	SEALANTS							
				1	LS	\$ 3,000	\$ 3,000	
DIVISION 8 - DOORS, WINDOWS & GLASS						\$ 235.20 / GSF	\$ 235,200	
08100	DOORS, FRAMES, & HARDWARE							
	5-entry doors			1	LS	\$ 25,000	\$ 25,000	



COST SUMMARY		AREA	NOTES	QUANTITY		UNIT COST	TOTAL COST	TOTAL DIVISION
				#	UOM			
08200	SPECIALTY DOORS Access doors			1	LS	\$ 200	\$ 200	
08800	GLAZING							
	Perimeter windows			1	LS	\$ 40,000	\$ 40,000	
	Glass manual roof system			1	LS	\$ 170,000	\$ 170,000	
DIVISION 9 - FINISHES						\$ 49.00 / GSF	\$ 49,000	
09100	GYPSUM BOARD & NON-LOAD BEARING FRAMING Drywall patching, and low walls at perimeter			1	LS	\$ 12,000	\$ 12,000	
09200	PLASTER				NIC			
09220	PORTLAND CEMENT PLASTER				NIC			
09300	WATERPROOFING				NIC			
09300	CERAMIC TILE Patching quarry tile at kitchen			1	LS	\$ 7,000	\$ 7,000	
09510	ACOUSTICAL CEILING				NIC			
09 6410	WOOD FLOORING				NIC			
09670	FLUID APPLIED FLOORING				NIC			
09600	EPOXY FLOORING				NIC			
09720	WALL COVERING				NIC			
09900	PAINTING (interior)			1	LS	\$ 30,000	\$ 30,000	
DIVISION 10 - SPECIALTIES(NOT USED)						\$ 1.00 / GSF	\$ 1,000	
10300	FIREPLACES AND STOVES(NOT USED)				NIC			
10800	RESTROOM ACCESSORIES ADA signage			1	LS	\$ 1,000	\$ 1,000	
DIVISION 11 - EQUIPMENT						\$ - / GSF	\$ -	
11400	FOOD SERVICE EQUIPMENT				NIC			
DIVISION 12 - FURNISHINGS - NIC								
DIVISION 13 - SPECIAL CONSTRUCTION - NOT USED								
DIVISION 14 - CONVEYING SYSTEMS-NIC							\$ 45,000	
	Replace doubt waiter-demo and install			1	LS	\$ 45,000	\$ 45,000	
DIVISION 15 - MECHANICAL						\$ 81.00 / GSF	\$ 81,000	
15300	FIRE SPRINKLERS Relocate sprinklers as needed				NIC			
15400	PLUMBING							
	Interior plumbing, no sinks or fixtures			1	LS	\$ 31,000	\$ 31,000	
15500	HVAC							
	Fans and piping, no hoods			1	LS	\$ 50,000	\$ 50,000	
DIVISION 16 - ELECTRICAL						67.00 / GSF	\$ 67,000	
16100	ELECTRICAL							



COST SUMMARY	AREA	NOTES	QUANTITY		UNIT COST	TOTAL COST	TOTAL DIVISION
			#	UOM			
<i>Interior electrical</i>			1	LS	\$ 35,000	\$ 35,000	
<i>Electrical at kitchen</i>			1	LS	\$ 15,000	\$ 15,000	
16500 LIGHTING FIXTURES							
<i>Light fixtures and switching</i>			1	LS	\$ 15,000	\$ 15,000	
<i>Fees associated with Title 24 compliance and verification</i>				NIC			
16700 FIRE ALARM			1	LS	\$ 2,000	\$ 2,000	
SUBTOTAL					\$ 733.75 /GSF		733,750
CONTINGENCY				NIC			
PROJECT MANAGEMENT/OVERHEAD			1	LS			32,358
LIABILITY INSURANCE			1	LS			7,338
BUILDERS RISK INSURANCE				NIC			-
G/C BOND				NIC			-
GC FEE			1	LS			41,090
TOTAL CONTRACT					\$ 814.54 /GSF		814,536

EXHIBIT D

RESTAURANT RULES AND REGULATIONS

[Attachment on following page]

Port of San Francisco

**RESTAURANT
RULES AND REGULATIONS**
Updated March 14, 2019

The following are the rules and regulations within which Tenant and all Subtenants of the Restaurant Space or any other Subtenant or operator operating a Restaurant within the Premises (collectively, “**Restaurant Operator**”) shall comply with during the Term.

1. Noise. Sound levels emanating from indoor and/or outdoor activities on the Premises between 10:00 P.M. and 6:00 A.M. daily may not exceed the acceptable noise levels established by the San Francisco Noise Ordinance Police Code, Article 29, except as may be specifically authorized under any special event permit issued by the San Francisco Police Department. Restaurant Operator shall post signs inside the Restaurant Space at appropriate places requesting that patrons leaving the Premises after 10:00 P.M. depart in a quiet, peaceful and orderly fashion and not litter in the neighborhood. Restaurant Operator shall alert the San Francisco Police Department if exiting patrons cause any disturbance. Tenant shall not install an outdoor speaker system for music, announcements or any other purpose without the prior written consent of the Port, which shall be granted or withheld in its absolute discretion.
2. Waste Management. Tenant shall comply with the Mandatory Recycling and Composting Ordinance (Chapter 19 of the San Francisco Environment Code). All waste shall be separated into the following:
 - Compost
 - Recycling
 - Trash/Landfill

Tenant shall ensure that all employees are properly trained to separate compostables, recyclables, and trash. Restaurant Operator must provide source separated collection of compost, recycle, and trash to their employees, contractors and customers. Restaurant Operator must supply appropriate containers, placed in appropriate locations, to make source separation of recyclables, compostables, and trash convenient for the employees, contractors, and customers. Tenant shall provide adequate collection and hauling service of these materials.

The containers must:

- (1) Be of appropriate number and size in light of the recyclable, compostable, and trash quantities reasonably anticipated to be generated at the location;
- (2) Bear appropriate signage and be color coded to identify the type of refuse to be deposited—blue for recyclables, green for compostables, and black for trash and meet any additional design criteria established by regulation; and,

Port of San Francisco

(3) Be placed as close together as possible to provide equally convenient access to users.

(4) Tenant shall not use the Port's containers, including Bigbelly containers, for the disposal of compost, recycle, or trash from the restaurant.

All compost, recycle, and trash containers shall be enclosed within an appropriate closet so that such containers are not visible from outside of the buildings, unless directed otherwise by the Port. Such containers shall not be moved outside the building in advance of actual collection by a refuse or recycling company. Pickups for compost, recycling and landfill waste shall be arranged such that containers are removed directly from the enclosure, emptied, and replaced at the same time. No compost, recycling, or landfill pickups may occur after 8:00 A.M. or before 10:00 P.M.

Tenant shall ensure that all waste materials from their operations are properly managed, contained, and disposed to prevent pest activity. All trash bags shall be placed in waste containers, dumpsters, bins, or comparable. At no time shall Tenant place non-containerized trash bags on sidewalks, streets, in trash enclosures, or in other Common Areas.

Tenant shall adhere to the City's Integrated Pest Management (IPM) Ordinance which governs the way pests are managed on City properties. These requirements include using pesticides / rodenticides as a last resort. Tenant shall not place pesticides / rodenticides on Port property. If Port should so require, Tenant shall use, at Tenant's cost, a pest extermination contractor as directed by Port and at such intervals as Port may require.

Tenant shall pressure wash / steam clean the trash enclosure pavement and any area with debris and / or grease buildup from Tenant waste at Tenant's cost. Pressure washing / steam cleaning shall be performed by Tenant on an as-needed basis. Port may require additional cleaning, at Tenant's cost, to Port's satisfaction. Tenant shall collect all trash / debris prior to cleaning to prevent these materials from entering drain inlets. Only wash water is allowed in the drain. Under no circumstance shall Tenant allow wash water to flow into the Bay.

Tenant shall close and lock all waste containers when not in active use. Tenant shall close and lock fenced trash enclosures when not in active use.

For public health and safety, Tenant shall store all waste materials to prevent removal / scavenging by other persons at all times.

Tenant shall keep all waste bins, containers, dumpsters, and trash compactors clean and in good repair at all times.

Tenant shall be responsible for the separating of waste in compliance with all

Port of San Francisco

governmental ordinances including mandated recycling and composting. Tenant shall compost all organic waste materials from their operation.

Tenant shall not overload waste bins prior to transfer.

Tenant shall immediately pick up and properly dispose of any waste that is spilled during transfer.

Tenant shall not burn any trash or garbage in, on, or about the Premises or Common Areas.

3. Wastewater System / Fats, Oil, and Grease (FOG).

Tenant/Restaurant Operator shall not put any fats, oils or grease in trash collection containers or in the sewer system. It is the Tenant's sole responsibility to maintain plumbing system. Tenant shall comply with §140 of the San Francisco Public Works Code.

Restaurant Operator shall be prohibited from:

- installing or using a garbage disposal or garbage grinder.
- disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drain in the kitchen areas.


Tenant shall be required to:



- comply with all directives from the SF PUC regarding the FOG program including:
- Use an Automatic Grease Removal Device (AGRD) on all sinks, as required.
- Ensure that all grease removal devices are cleaned at least every 90 days by a grease hauler certified by the California Department of Food and Agriculture.
- Maintain documentation of service and maintenance records.
- Develop and implement a written maintenance program for the sewer lines.

4. Litter. Tenant shall be responsible for undertaking the following measures within the exterior portions of the Premises: (i) keep all hardscape areas and sidewalks around the Premises, between the Premises and The Embarcadero and between the Premises and all adjacent properties reasonably clean of debris and litter; (ii) once each day between thirty minutes after closing and 8:00 A.M. the following morning, collect and dispose of any discarded trash and litter; (iii) remove trash and litter from any landscaped areas within the Premises; and (iv) with the permission of adjacent Port tenants enter upon adjacent properties to remove litter thereon originating on the Premises.

Port of San Francisco

5. Landscaped and Hardscape Areas. Take reasonable precautions to minimize any damage to landscaping and hardscape, if any, from restaurant vendors, service people and patrons.
6. Traffic. Coordinate all vehicular deliveries, pickups or passenger loading to occur at times and in a manner that will not unreasonably impede the flow of traffic on any City street servicing the Premises, The Embarcadero or interfere with the safe operation of SFMTA vehicles.
7. Advertising/Signage. Restaurant Operator shall place no temporary or promotional advertising, banners or signs on the interior of the windows on the Premises intended to be seen from the adjacent streets or properties except as may be previously approved in writing by the Port. All exterior signage shall comply with the Port's sign guidelines and is subject to prior written approval of the Port. Tenant shall not install "A frame" or stand-alone signs outside the premises without the prior written approval of the Port.
8. Compliance with Rules. Restaurant Operator shall take commercially reasonable efforts to cause all vendors, service persons and patrons to comply with the applicable Restaurant Rules and Regulations.
9. Changes. The Port reserves the right at any time and from time to time to change or rescind any one or more of these rules and regulations or to make such other and further rules and regulations as the Port shall determine is in the best interest of the Common Area, the Tenants, their business, and Agents and Invitees. In the event of any conflict between these or any modified rules and regulations and the Lease, the terms and provisions of the Lease shall prevail.


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

Tenant: ^{DS} ^{DS}
Tenant: _____

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EXHIBIT E
SUMMARY OF SECRETARY OF THE INTERIOR'S STANDARDS
FOR THE TREATMENT OF HISTORIC PROPERTIES

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Initial : 
Port: _____

Tenant:  

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EXHIBIT F

PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES

Approved by San Francisco Port Commission, October 26, 2004, with proposed amendments to respond to comments from California State Office of Historic Preservation.

Background

As part of the preparation of the Port of San Francisco Embarcadero Historic District nomination, the Port has developed Historic Preservation Review Guidelines (Guidelines) to define how the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) should be interpreted and applied to the historic resources within the District, to ensure its responsible management and stewardship. The set of Guidelines below focuses on Pier and Bulkhead Wharf Substructures, providing an important tool to be used by the Port's historic preservation experts to define parameters for the repair, maintenance or alterations to the pile foundations, substructures and decks of piers and bulkhead wharves upon which pier sheds, bulkhead buildings and other waterfront structures sit.

These Guidelines were developed by the Port's historic preservation expert staff in concert with San Francisco Architectural Heritage and preservation experts familiar with the specific historic resources in the District. The Guidelines were approved by the San Francisco Port Commission in October 2004, and further amended to respond to comments from the California State Office of Historic Preservation. The Guidelines will be used in the review of pier and bulkhead wharf substructure projects that are subject only to approval by the Port. Projects affecting District resources which are subject to review and approval by any of the following entities are not subject to these Guidelines, in recognition of the separate review criteria and practices employed by those agencies to administer the Secretary's Standards:

- 1) Federal Undertakings - Requiring Section 106 consultation
 - Projects receiving federal funding
 - Transfer of federal property
 - Approval of a federal permit, license or similar entitlement (i.e. Army Corps. of Engineers)
- 2) Federal Historic Preservation Tax Credit Projects – Requiring State Office of Historic Preservation and National Park Service approvals
- 3) San Francisco Historic Preservation Commission – Subject to Planning Code Article 10 Provisions for City Landmarks and City Historic Districts

Port of San Francisco Review Process – Overview

For projects affecting historic resources within the Embarcadero Historic District that are subject only to the Port's review and approval, the Port conducts its review in conjunction with use of Historic Preservation Guidelines, where applicable, to direct actions that comply with the Secretary's Standards.

All projects undergo case-specific review to determine the appropriate application of the Guidelines and other related Port design reviews. The Port maintains qualified historic preservation expertise on staff and may work with other qualified historic preservation professionals to review projects for consistency with the Secretary's Standards and any applicable Guidelines.

In the case of repairing and managing pier and bulkhead wharf substructures, the Guidelines below are to be used in the Port review process. The process follows the principles of the Secretary's Standards for Rehabilitation and the Port's longstanding practice of repairing existing materials wherever feasible. Replacement of historic materials, if deterioration makes such repair infeasible, is limited to replacement in-kind (use of the same materials) whenever possible. Where replacement in-kind is infeasible, the Port directs use of new substitute materials that are compatible with the character defining features of the subject historic resource to preserve the historic integrity of contributing resources or, in the case of reviewing non-contributing resources, the integrity of the Historic District.

Pier and Bulkhead Wharf Substructures

The historic piers and resources in the Embarcadero Historic District are made up of pile-supported platforms upon which pier shed and bulkhead building structures were built to conduct maritime commerce. The substructure of the piers and bulkhead wharf, described in detail in Section 7 of the Embarcadero Historic District nomination, consists of vertically driven piles, topped by stringer and pile cap beams, which create the horizontal structural framework upon which pier decks rest. Beneath these structures, the tides of the San Francisco Bay ebb and flow. Pier substructures are defined to include pier aprons, which are constructed at the perimeter of piers, generally used to provide a pile-supported platform for ship berthing, an outdoor work area, and in more recent times a public access and recreation area. In most instances, pier aprons are constructed of wood and have a shorter life span, historically requiring more maintenance and repair than steel and concrete substructures.

Within this complex, the bulkhead wharf is an important feature. It is comprised of 23 individual sections that extend end to end throughout the historic district, adjacent and connected to the Seawall, which establishes the constructed edge of the waterfront between piers. In addition, the bulkhead wharf plays an important role in defining the Embarcadero's urban form, which supports maritime, public access and commercial recreation/retail functions.





Initial : 
Port: 
Tenant:  

EXHIBIT G

TENANT ESTOPPEL CERTIFICATE

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

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

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

SCHEDULE 1

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

[Attachment on following page(s)]

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**NOTICE TO EMPLOYEES,
OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS**

ASBESTOS IN BUILDINGS

FOR PERIOD THROUGH: March 2014

It is the responsibility of the master tenant to provide this notice to any subtenant within their leasehold.

In January of 1989, Assembly Bill 3713 was signed into law and added to the California Health and Safety Code. This bill provides for written notice to employees concerning specific matters related to working in a building with asbestos containing construction materials. It applies to building built before 1979 where the owner knows that the building contains asbestos-containing materials; it does not require that a building be surveyed to determine the presence of asbestos.

WHAT IS ASBESTOS?

Asbestos is a naturally occurring group of fibrous minerals which have been used extensively in public buildings, apartment buildings and homes. Asbestos was incorporated into pipe insulation, acoustic plaster, acoustic tile, duct and furnace insulation, floor tiles, textiles and hundreds of other building materials. In most City buildings, asbestos is located in insulation on piping systems, acoustic plaster on ceilings, acoustic ceiling tiles, vinyl asbestos floor tiles, and structural fireproofing. Asbestos may be found in soils as well, especially if soil is non-native or commingled with municipal waste (land fill).

WHY IS ASBESTOS HAZARDOUS?

Asbestos is a concern because of the potential health risks associated with breathing asbestos fibers. It is important for you to know that most people with asbestos-related diseases were asbestos workers before 1972. These workers were repeatedly exposed to high levels of asbestos each working day with little or no protection. Asbestos workers today are required to follow specific work practices and wear appropriate protection to minimize exposure.

Significant exposure to asbestos fibers can lead to asbestosis and certain forms of cancer. Asbestosis is one of the many dust-related lung diseases. It is associated with chronic exposure to relatively high levels of asbestos and is characterized by the permanent deposition of asbestos fibers in the respiratory tract. The earliest and most prominent clinical finding, breathlessness upon exertion, rarely becomes apparent until at least a decade of exposure.

In addition to asbestosis, the association of asbestos and lung cancer has been well established over the past two decades. Scientists have studied insulation and shipyard workers who were exposed to HIGH AIRBORNE LEVELS of asbestos. These studies indicated that asbestos workers were about five times as likely to get lung cancer as non-asbestos workers who did not smoke. Asbestos workers who also smoke were found to be at much greater risk (about 50 times) of dying of lung cancer than non-smoking non-asbestos workers. Mesothelioma, a rare form of cancer of the chest or abdominal cavity, occurs among occupational groups exposed to certain types of asbestos.

ASBESTOS SAMPLING RESULTS

A variety of exposure standards and health action levels have been established for various purposes:

The Occupational Safety and Health Administration (OSHA) asbestos standards (Title 29 of the Code of Federal Regulations), which apply to employees who actually work with asbestos, mandate a permissible exposure limit (PEL) of 0.1 fibers per cubic centimeter of air (f/cc) determined as an 8 hour time weighted average (TWA) and an excursion limit of 1 f/cc as a 30 minute TWA. When employees are exposed at these levels, OSHA and Cal/OSHA (Title 8 of the California Code of Regulations) require medical monitoring and other control methods.

The Environmental Protection Agency (EPA) has recommended a "clearance level" for asbestos of 0.01 f/cc, as measured by phase contrast microscopy (PCM). If measured by the transmission electron microscopy (TEM) method described in 40 CFR Part 763, the Asbestos Hazard Emergency Response Act (AHERA), the clearance level is either 0.02 structure/cc or 70 structures per square millimeter of filter (s/mm²). This means that once an operation involving asbestos (such as removal) is complete, the area is "safe" for re-occupancy as long as the asbestos air concentrations are less than or equal to the "clearance level". These same levels have also been adopted in the California Education Code (Section 494200.7) as the school abatement clearance level.

The state of California has an additional requirement relating to disclosure of the presence of asbestos. Proposition 65, which as voted into law by the state citizens, basically requires posting of area where anyone is exposed to a carcinogen at a level where there is a significant risk of cancer. The California Health and Welfare Agency has established this level at 100 fibers of asbestos per day.

GENERAL PROCEDURES AND HANDLING RESTRICTIONS

As you can see, the concern is with asbestos fibers in the air. When asbestos materials are in good condition, it is unlikely that fibers will be released into the air, unless the asbestos materials are damaged or disturbed. Asbestos-containing materials must not be disturbed so that fibers do not get into the air. Do not cut into, drill into, nail, or pin anything onto, sand, move bump, rub against or otherwise disturb any asbestos containing materials. If you should discover any damaged asbestos-containing material, do not touch it; do not attempt to clean it up. Contact your supervisor or property manager immediately and report the situation.

City employees required to enter areas and perform work activities that might involve the disturbance of asbestos materials have been trained in the proper procedures to minimize exposure. Work that requires major disturbances of asbestos materials (such as removal) is performed under specifications which include work practice procedures, removal techniques, clean up and clearance air sampling.

If any construction, maintenance, or remodeling is conducted in an area of the building where there is the potential for employees to come in contact with, or release or disturb asbestos containing building materials, it is required that the area be posted with a clear and conspicuous warning sign. The warning sign must read:

**"CAUTION. ASBESTOS
CANCER AND LUNG DISEASE HAZARD
DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT"**

Much of this information may be new to you. If you have questions about asbestos, you may call the Department of Public Health Bureau of Environmental Health Management at 252-3800.

This written announcement fulfills the asbestos notification requirement of Division 20, Chapter 10.4, Section 25915 of the California Health and Safety Code (Assembly Bill 3713).

SITE SPECIFIC INFORMATION



At this time, the Port has not sampled for asbestos in your building. The following materials, if present in your building, are assumed to contain asbestos and should be treated as such:

Insulation on pipes and ducts; Fireproofing; Drywall and associated taping compound; Plaster; Texturing or acoustic materials on walls or ceilings; Stucco; ceiling tiles; floor tiles or sheet flooring; roofing; fire door core insulation; carpet, baseboard, flooring, and ceiling tile mastics; window glazing compound; ceramic tile grout and mastic. Asbestos may also be found in soil due to natural or man-made conditions.

These materials must not be drilled into, sanded, demolished or otherwise disturbed by unauthorized personnel. Prior to any renovation activities or other activities which may disturb asbestos, please contact your property manager.

The asbestos coordinator for this building is Tim Felton, who can be reached at 274-0582.

Initial : 
Port: _____

Tenant:  

SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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RAPID STRUCTURAL ASSESSMENT REPORT

Structure Type:	SUPERSTRUCTURE	Work Order:	8316
Facility Name:	SWL 301 Andre Boudin Pavilion	FIN:	3010ABP
Asset Number:	3010-BLDG2	Facility Code:	3010
Asset Activity:	STRUCTURE TWO YR INSPECTION	Port Engineer:	Duncan, Mr. Sherban A.
Inspection Number:	3010-BLDG2-1-2014	Inspected By:	Port of San Francisco
Inspection Start Date:	2014/04/30 13:05:11	Inspection End Date:	2014/04/30 13:05:11
Purpose Of Inspection:	Periodic Inspection	Lease Number:	L-9164
Address:			
Year Built:			

Rating Criteria:

Green - Unrestricted use. May require some minor repair, or minimal barricading.

Yellow With Green Hatching - Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

Red - Unsafe notice. Shall be barricaded to prevent public access and use.

Overall Rating: **Green**

Immediate Actions: N/A

Required Repairs: N/A

Load Limits: N/A

Barricades: N/A

Long Term Actions: N/A

Detailed Structural/Geotechnical Evaluation Required: N/A

Condition Assessment Summary

Condition	Yes	No	More Review Needed
1) Full or Partial Collapse		X	
2) Major building element damaged		X	
3) Severe Cracking of walls		X	
4) Parapet or falling hazard		X	
5) Severe ground movement present		X	
6) Other Hazard present		X	

Comments:

Attachments:

Appendix A - Facility Data

Appendix B - Photographs and Structural Rating Map



RAPID STRUCTURAL ASSESSMENT REPORT

Appendix A - Facility Data

Name of Facility: SWL 301 Andre Boudin Pavilion

Facility Code: 3010

Address:

Lease Number(s): L-9164

Building Data

Building Structure FIN: 3010ABP

No. of stories: 2

Support over water:

Support over land:

Construction Type (Wood, Concrete, Steel, Masonry or Combination):

Occupancy Type (Commercial, Office, Industrial, Assembly, Residential, Emergency Service, etc.):

Detailed Building Description (If available):

Substructure/Foundation Data:

Substructure FIN:

Piling Type:

Substructure Deck Type:

Apron Type:

Detailed Substructure Description (If available):



RAPID STRUCTURAL ASSESSMENT REPORT

Appendix B - Photographs and Structural Rating Map

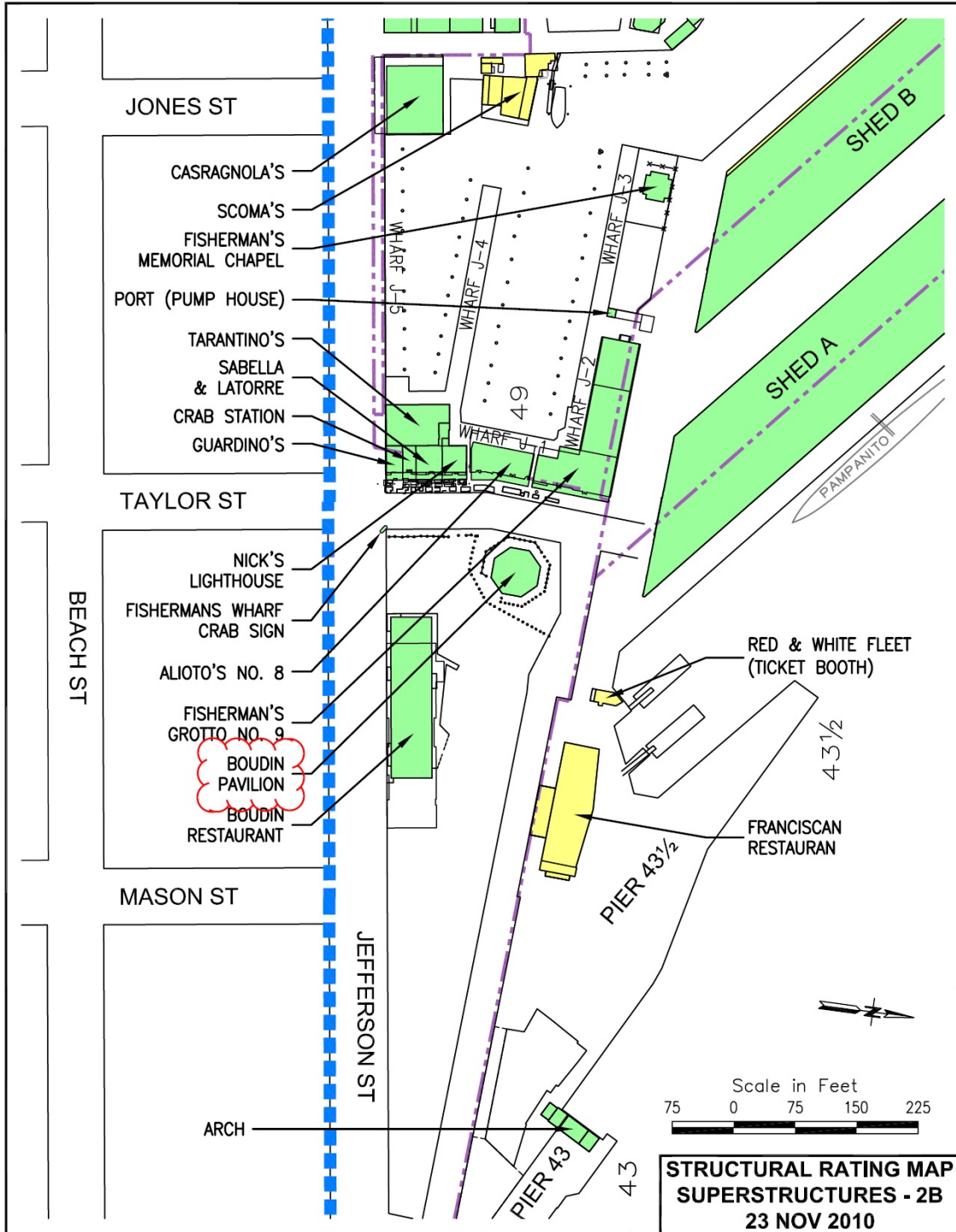


Photo 1. Structural Rating Map



RAPID STRUCTURAL ASSESSMENT REPORT

Appendix B - Photographs and Structural Rating Map



Photo 2. Exterior View



RAPID STRUCTURAL ASSESSMENT REPORT

Appendix B - Photographs and Structural Rating Map



Photo 3. Exterior View



RAPID STRUCTURAL ASSESSMENT REPORT

Appendix B - Photographs and Structural Rating Map



Photo 4. Exterior View



RAPID STRUCTURAL ASSESSMENT REPORT

Appendix B - Photographs and Structural Rating Map



Photo 5. Preparation Area

Initial : DS
JE
Port: DS
DG DS
MD
Tenant:

SCHEDULE 3

FEMA-National Flood Insurance Program Disclosure Notice

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA is preparing a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures in areas subject to coastal flooding in San Francisco.

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 identified 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 and Pacific Ocean shorelines. These studies include both regional hydrodynamic and wave modeling and detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses form the basis for the Base Flood Elevations (BFEs) and SFHAs shown on the FIRM.

FEMA used these studies to prepare a preliminary FIRM for San Francisco, which it issued in November 2015. The preliminary FIRM identified SFHAs along the City's shoreline in and along the San Francisco Bay consisting of "A zones" (coastal areas subject to inundation by tidal surge and waves less than three feet in height) and "V zones" (areas subject to the additional hazards that accompany waves more than three feet in height). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek. Additionally, the preliminary FIRM shows most of San Francisco International Airport to be within an SFHA.




In response to comments and an appeal submitted by the City, FEMA issued a revised preliminary FIRM in May 2019. The revised preliminary FIRM included changes to the flood hazard data for waterfront piers within the Port's jurisdiction and in the area of the Mission Bay development. FEMA is currently preparing to initiate a 90-day appeal period during which the City and/or property owners may appeal the revised information based on technical data. FEMA expects the appeal period to be initiated in December 2019 or January 2020. Following resolution of any appeals or comments, FEMA will issue a Letter of Final Determination (LFD) stating that the flood hazard data shown on the FIRM is final, and stating that the map will be published in final form six months from the date of the LFD (referred to as the "effective date" of the FIRM). During that six-month period, the City must amend the floodplain management ordinance to adopt the new FIRM. FEMA expects the FIRM to become effective in early 2021. After the effective date, the FIRM will be used for all flood insurance and floodplain management purposes.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links:

<http://sfgsa.org/san-francisco-floodplain-management-program>

<https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>

<https://www.fema.gov/national-flood-insurance-program>

initial : 
Port: _____
Tenant:  

SCHEDULE 4

HAZARDOUS MATERIAL DISCLOSURE

[Attachment on following page(s)]

Environmental Reports and Documents Regarding Hazardous Materials

Andre Boudin Bakeries Inc.

February 25, 2020

Seawall Lot 301

Article 22A Compliance Soil Sampling and Site Dust Mitigation - Proposed Franceschi's Restaurant 498 Jefferson St, Korbmacher Engineering, Inc., July 13, 2005.

Asbestos Survey And Evaluation - Boudin Bakery - 160 Jefferson, ProTech Consulting and Engineering, August 18, 2003.

Data Gap Report, Pier 39 to Pier 45 Investigation Area, San Francisco., Haley & Aldrich, 7/6/2018.

Environmental Site Characterization - Boudin Bakery At The Wharf - 160 Jefferson Street, Treadwell & Rollo, April 15, 2003.

Green Environmental, Soil & Groundwater Characterization Survey SWL301 1/2 , Muni F-Line Fisherman's Wharf Loop Project. (adjacent to SWL 301), UNKNOWN, September 3, 1997.

Lead Survey And Evaluation - Boudin Bakery - 160 Jefferson St, ProTech Consulting and Engineering, October 15, 2003.

Letter From SF DPH to Boudin Bakery: Closure Report, San Francisco Department of Public Health, November 29, 2005.

Quarterly Progress Report, Fourth Quarter 2002, Former Mobil Bulk Terminal 04-394, 440 Jefferson, TRC Alton Geoscience, 1/8/02.

Remedial Investigation Report, Pier 39 to Pier 45 Sediment Investigation, San Francisco, Haley & Aldrich, 12/21/2018.

Site Closure - Boudin Bakery At The Wharf - 160 Jefferson St, Treadwell & Rollo, November 18, 2005.

Site Health & Safety Plan, Muni Fisherman's Wharf Loop Project, Green Environment, Inc., September 3, 1997.

Site Mitigation Plan - Boudin Bakery At The Wharf - 160 Jefferson Street, Treadwell & Rollo, January 22, 2004.

Soil & Groundwater Characterization Survey, Muni F-Line, Fisherman's Wharf Loop, Green Environment, Inc., 9/3/97.

Upland Soil Investigation Report for Pier 39 to Pier 45 Shoreline Area, San Francisco, Haley & Aldrich, 12/22/2017.

Initial :
Port:

^{DS}
JE

Tenant:

^{DS} DG ^{DS} MD



MEMORANDUM

September 18, 2020

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of Lease No. L- 16697 for a lease with Andre Boudin Bakeries, Inc. for the Chowder Hut located at Seawall Lot 301 at The Embarcadero and Taylor Street for a term of 10 years with a 5-year option.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 20-44

Executive Summary

Andre-Boudin Bakeries, Inc. ("Boudin"), an affiliate of Boudin Properties, which operates the Boudin flagship location on Jefferson Street, is currently the tenant under Port Lease No. L-14814 which expired December 31, 2019. Boudin and the Port wish to renew the lease for an additional ten-year term, subject to the conditions of the Port's Retail Leasing Policy. On February 11, 2020 Port staff made an informational presentation regarding the financial analysis and proposed lease renewal terms. Boudin proposes to enclose the outdoor dining area (estimated minimum cost of approximately \$800,000), which would allow for year-round use of the outdoor area and thus add seating capacity and increase sales, all as further described below. Based on consultant and staff analysis, Port staff believes that the proposed lease satisfies the requirements of the direct negotiation exception to the Port's Retail Leasing Policy.

Since the informational report was presented, (1) Port staff have finalized a draft lease with Boudin and, significantly, (2) the Port and its tenants are enduring the most significant health and economic crisis in recent history. Regarding (2), Port staff's February informational report noted that lease terms regarding the parties' respective

THIS PRINT COVERS CALENDAR ITEM NO. 11A

obligations regarding the public restrooms within the premises remained to be negotiated. Those have now been finalized, including rent credits for Boudin and a Port indemnity, and are described below. No changes were made to the base or percentage rent formulations, capital improvements or tenant performance obligations.

Regarding (2), the impact of COVID 19 is deeply affecting workers, business owners, visitors and the Port to an extent that is still being determined. To ensure the past financial projections and analysis still remains relevant and valid, the Port engaged Seifel Associates to re-evaluate the comparison, projections, and assumptions of the February 11th informational report. Overall Seifel Associates confirmed that, while there will likely be a delay in the projected revenue increases associated with the planned capital improvements, the investment in protection against inclement weather for patrons is likely to increase the tenant's capture of revenue during the non-peak season. Boudin will have up to 2 years to make these outdoor improvements.

During this severe downturn, similar to many Port restaurants, Boudin deferred rent beginning in March. Similar to its existing lease, Boudin will be eligible for any rent relief available to tenants under the Port's COVID-19 Rent Relief programs adopted in Port Commission Resolutions 20- 18, 20-27, 20-30 and 20-4. The Chowder Hut opened its existing outdoor dining within its premises on reduced seating basis to account for proper distancing in Mid-May. Monthly sales are currently approximately 40% of last year's sales however is generating and reporting percentage to the Port.

Strategic Objective

The proposed new lease is expected to contribute in a substantial way to meeting the Stability Objective of the Port's Strategic Plan by managing the real estate portfolio to maximize value and income to the Port and to foster a tenant that would be better able to perform through economic cycles. Strategic contributions to meeting this objective are of particular importance during the current pandemic crisis.

Background

Boudin currently operates a casual take-out restaurant called the Chowder Hut ("Chowder Hut") also known as the Octagon Building in the heart of Fisherman's Wharf, located at 2890 Taylor Street under Lease No. L-14814. The current lease expired on December 31, 2019 and has been on a month to month holdover basis since that time. The lease covers approximately 5,400 square feet of existing building and exterior patio space and operates as an indoor/outdoor casual dining restaurant. Boudin is one of San Francisco's oldest continuously operating companies with roots back to the Gold Rush days of 1849. Boudin has been in business for over 170 years and is known world-wide for its famous sourdough French bread. Its cafés and bakeries serve its signature sourdough bread baked daily with a stated mission to offer fresh, quality food at fair, affordable prices. Boudin also has a long history of investing in Fisherman's Wharf highlighted by the 2005 opening of its flagship location: a 26,000 square foot Baker's Hall demonstration bakery, marketplace, café and restaurant, and Bakery Museum on Jefferson Street.

Boudin has also operated the Chowder Hut at the Taylor Street location for approximately 20 years in close proximity to the flagship location. Together these

operations contribute greatly towards attracting the estimated 19.1 million visitors to Fisherman’s Wharf annually. Boudin has consistently been a tenant in good standing.

Pursuant to the current lease, as amended, Boudin was required to complete two capital improvement projects to enable outdoor seating: (1) investment of at least \$335,000 -completed in 2011; and (2) investment of another \$365,000 - completed in 2013. In both cases the work was completed in an efficient and timely manner.

Current Lease Summary

The current lease provides for the Port to receive the greater of guaranteed monthly base rent or percentage rent. Current monthly Base Rent is \$7,714.92, which equates to \$92,579 per year. Percentage rent is set at 9% of Gross Sales for food, beverage and retail sales. For the 12-month period ending in December 2019, Boudin reported total Annual Gross Sales of \$4,004,333, which resulted in \$267,811 of Percentage Rent plus Base Rent of \$92,579 being paid to the Port. Moreover, until the current COVID-19 crisis, Percentage Rent has always exceeded Base Rent since the commencement of the lease in 2011. The Port is also entitled to a 10% participation in the proceeds of a transfer of the current lease.

Proposed Lease Terms

The schedule below outlines the terms and conditions of the new lease.

<i>Tenant:</i>	Andre-Boudin Bakeries, Inc., a California Corporation
<i>Premises:</i>	Parcel A: approx. 1,226 sq. ft. of interior restaurant space. Parcel B: approx. 660 sq. ft. of mezzanine space. Parcel C: approx. 2,749 sq. ft. of outdoor dining area. Parcel D: approx. 765 sq. ft. of restrooms. Premises as described above on the attached Exhibit A
<i>Term:</i>	Ten (10) years. As further described below, Tenant shall have one (1) Option to Extend the Lease for an additional five (5) years at fair market value.
<i>Commencement Date:</i>	Upon the full execution of the Lease subject to Port Commission and Board of Supervisors approval.
<i>Total Rent:</i>	Total Rent shall be equal to the higher of Base or Percentage Rent calculated on a monthly basis.
<i>Base Rent:</i>	Subject to rent credits as described below, on the Commencement Date, Monthly Base Rent shall be 70% of the average annual aggregate total Rent due for Fiscal Years 2017-2018, 2018-2019 and 2019-2020 under the current lease divided by twelve (12) which equates to \$19,087.00 per month.

	On the 5 th Anniversary Date, Base Rent shall be adjusted to equal the greater of (a) 70% of the average annual aggregate total rent for preceding 3 years, or (b) the Base Rent prior to the Rent Adjustment Date multiplied by the CPI increase in the over the prior 5-year period. If the adjusted rent is less than the current Base Rent, it shall remain unchanged.
<i>Percentage Rent:</i>	Percentage Rent for Food & Beverage and Off-Premises sales shall remain at 9% of gross revenue for all sales, payments and revenues transacted, arranged or performed, in whole or in part, on the Premises.
<i>Covid-19 Rent Relief:</i>	Under the new lease, rent relief will continue on the same bases as under the current lease per Port rent relief programs adopted in Port Commission Resolutions 20-18, 20-27, 20-30 and 20-41 including rent forgiveness for up to 14 months under an anticipated amendment to the new lease.
<i>Transfer Participation:</i>	The Port's transfer participation in Net Proceeds from defined capital transactions will be increased from 10% in the current lease to 12%.
<i>Security Deposit:</i>	Two times the monthly Base Rent on the Commencement Date increased as Base Rent is adjusted over the Term.
<i>Permitted Use:</i>	The Premises shall be used solely for indoor and outdoor casual dining, including the on-site sale only of alcoholic beverages. Tenant shall be permitted to hold special events within the Premises.
<i>Required Improvements:</i>	<p>No later than twenty-four (24) months after the Commencement Date, Boudin must construct a patio enclosure around the outdoor seating area including a pony wall with wood facade and retractable glass windows and ceiling that can be opened and closed. (“Initial Tenant Improvements”). Completion of the Initial Tenant Improvements is material consideration for this Lease and Port would not have entered into this Lease absent such terms. The Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with the Work Letter. Tenant agrees that it will invest a minimum of \$800,000 in the Initial Tenant Improvements. Proposed Project renderings attached as Exhibit C.</p> <p>Except for the Extension Option, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements including without limitation the Initial Tenant Improvements and agrees</p>

	<p>that it will not seek additional term for the purpose of amortizing any improvements.</p> <p>The obligation to construct the Initial Tenant Improvements is separate and in addition to any required repair and maintenance obligations and Damage and Destruction obligations.</p>
<p><i>Conditions to 5-Year Extension Term:</i></p>	<p>Boudin must exercise the option between 18 and 24 months prior to expiration of the lease. In addition to completion of the Initial Tenant Improvements in the first 24 months of the lease, Port can reject the option if sales per square foot over the 12 months prior to Tenant's exercise of the option are less than 70% of same metric in the preceding 12 months.</p>
<p><i>Rent During Option Period:</i></p>	<p>Base Rent will be adjusted based on the same formula as on the 5th Anniversary Date. Percentage Rent shall be reset to fair market value, using an appraisal process if disputed, however in no event shall Percentage Rent be below 8% or above 10%.</p>
<p><i>Obligations Regarding Public Restrooms:</i></p>	<p>The Restrooms shall be open to the public during restaurant opening hours to supplement other public restroom facilities in the vicinity. Port and Tenant will share responsibilities for the Restrooms as follows:</p> <p>Boudin shall at its sole cost and expense:</p> <ol style="list-style-type: none"> 1. Clean and maintain the public restrooms; 2. Provide janitorial services seven (7) days per week per a mutually agreed schedule and scope; 3. Reimburse the Port's cost of up to \$25,000 as a contribution towards costs of installation of public restroom fixtures, repairs or replacements; subject to Port providing Tenant with at least sixty (60) days' prior written notice detailing the type of fixture being repaired or replaced and the estimated date and costs of repair. 4. If necessary, hire a City approved plumbing vendor, at its initial cost and expense, to make any emergency repairs for any repairs needed as of Monday-Friday after 4 pm / Weekends / Holidays if the Port is unable to do so. The cost estimate and scope of repairs must be pre-approved in writing by the Port's property manager or maintenance supervisor. Boudin shall be eligible to a full rent credit for the cost of the repairs against Base Rent. <p>Port shall at its sole cost and expense:</p> <ol style="list-style-type: none"> 1. Provide water, sewer and electric utilities;

	<p>2. Provide a monthly rent credit of \$4,000 against Base Rent for Boudin's costs of cleaning, supplies and light maintenance directly associated with the public restrooms (Rent Credits due but not applied during any period of Base Rent deferral or forgiveness under COVID - 19 tenant relief policies will be credited against future Base Rent payments);</p> <p>3. Maintain and repair all public restroom improvements and fixtures.</p> <p>Indemnity. As under the current lease and subject to the limitations set forth in the Lease, Port shall Indemnify Tenant from and against any claim directly resulting from any accident, bodily injury to or death of any person, with the exception of any employee, agent or invitee of Tenant, which occurs in the Restrooms at a time when the Restrooms are open to the general public as described above. Port's obligation under this paragraph shall only arise if Tenant has maintained the insurance required by this Lease and (i) such insurance coverage has been completely exhausted for the applicable policy period in which the Claim occurred or (ii) the Claim is uninsured. Notwithstanding any other provision herein, in no event shall Port's indemnification obligation exceed \$100,000 per Claim or \$300,000 per year. Port's indemnity of Boudins in these limited circumstances has been approved by the City's Risk Manager as required by SF Admin. Code §1.24.</p>
<i>Utilities:</i>	Except as provided for the restrooms, Boudin shall be responsible for all utilities of the Premises.
<i>Port Development Projects:</i>	If a Port program or project and/or the Development Project(s) results in a direct documented loss of customers in any month such that Tenant's Percentage Rent due is less than that Tenant's Base Rent due for such month, then, upon satisfactory documentation, Port will provide rent abatement to Tenant in the form of a prorata reduction in Base Rent on a per square footage lost basis for up to a maximum of six (6) months. If this continues for more than six (6) consecutive months, Tenant shall have the right to terminate the Lease upon thirty (30) days' prior written notice to the Port.
<i>Form Lease; City Requirements:</i>	The new lease shall be on the Port's form lease for retail uses and include all standard Hazardous Materials, Insurance, Indemnity and Release, Damage and Destruction, Sea Level Rise and Seawall provisions and all current City ordinances and requirements as necessary.

Financial Analysis of Improvements and Lease Terms

Proposed Improvements

Boudin proposes to design and construct a patio enclosure around the restaurant's exterior seating area, which will significantly improve the visual experience of the Chowder Hut for tourists and locals who visit Fisherman's Wharf. The enclosure will include a new pony wall with wood façade with retractable glass windows and ceiling that may be opened or closed as weather permits. This new structure will provide a more comfortable environment for guests, especially during periods of inclement weather. The enclosure will also provide a more secure environment compared with the current open-air seating configuration which is susceptible to vandalism as well as wear and tear due to the harsh weather conditions at the Premises.

The construction will be designed and constructed by a licensed architect and contractor and will also include a refresh of the tables and chairs concurrently with the grand opening of the new enclosure. The cost of these improvements will be approximately \$800,000.

Update to Financial Analysis Since February 2020

Since the informational report was presented on February 11, the COVID-19 pandemic has deeply affected public health and businesses across the globe. The impact on restaurants has been swift as indoor dining closed due to health concerns. With this dire economic condition as a backdrop, Port staff are pleased to bring this new lease to the Port Commission. The lease demonstrates Boudin's commitment to persevere through the downturn and to maintain both of its Fisherman's Wharf locations over the long-term.

To ensure the financial projections and analysis of the new lease remain relevant and valid, the Port engaged Seifel Associates to re-evaluate the comparison, projections, and assumptions of the February 11th informational report, in light of the current economic downturn. For ease of reference, new comments and analysis since the Informational Report are shown in italics below.

Key benefits of the proposed improvements are:

- The proposed patio enclosure will upgrade the building's appearance and provide an aesthetically pleasing enhancement to the Chowder Hut in the heart of Fisherman's Wharf.
- The enclosure of the outdoor seating area will allow the Chowder Hut to serve customers during inclement weather conditions, provide a better customer experience for its guests.
- The enclosure will increase sales performance and revenue generation to the Port, as further discussed below.
- The patio enclosure will provide for a more secure environment compared with the open-air barrier that currently surrounds the Chowder Hut dining area.

Financial Analysis

As mentioned above, Port staff commissioned Seifel to perform a third-party financial analysis of the proposed terms and the likely benefits to the Port. Relevant portions of that analysis are included in this section of the report.

As shown on the Comparative Annual Sales Performance **Table 1.** below, the Chowder Hut performs very well when compared to comparable restaurants along the Waterfront.

**Table 1.
Comparative Annual Sales Performance**

Restaurant	Estimated Square Footage			Estimated Seats	Annual Sales in 2018			
	Outdoor	Indoor ^a	Total		Total	Per Total SF	Per Indoor SF	Per Seat
Hi Dive	500	1,937	2,437	99	\$1,997,751	\$820	\$1,031	\$20,200
Pompei's Grotto	310	4,140	4,450	N/A	\$2,794,849	\$628	\$675	N/A
Pier 23 Café	1,835	3,000	4,835	175	\$5,034,643	\$1,041	\$1,678	\$28,800
Chowder Hut	2,749	1,886	4,635	149	\$4,151,309	\$896	\$2,201	\$27,900

a. Includes mezzanine space for Chowder Hut.

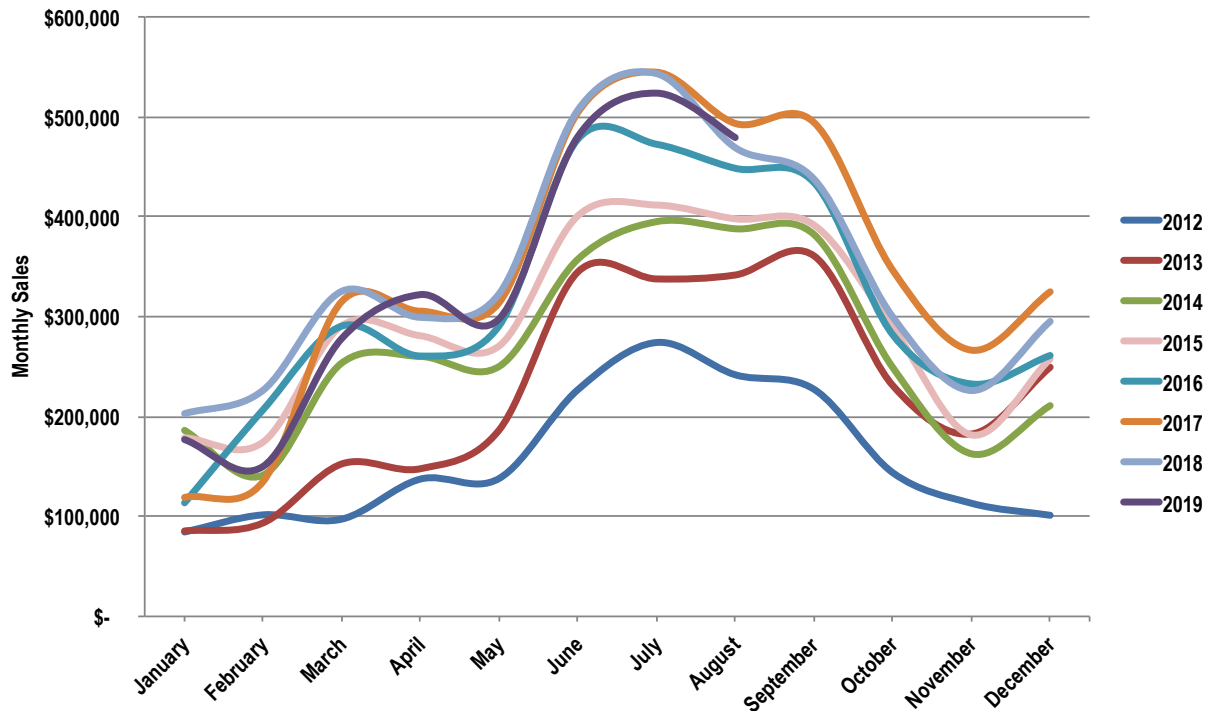
Annual sales from Chowder Hut are significantly higher than nearby Pompei's Grotto in Fisherman's Wharf based on annual sales per square foot for interior and exterior space. Chowder Hut's sales are also higher than Hi-Dive based on all sales metrics. Hi-Dive is primarily a bar that benefits from higher margin alcohol sales, and the Hi Dive is much smaller in size and is located between Piers 28 and 30 on the waterfront in South Beach.

While Pier 23 Café has higher sales than Chowder Hut based on sales per square foot of interior space and on a per seat basis, it also benefits from a greater proportion of bar sales and its more central location along the waterfront. Pier 23 Café is in the high visitor corridor along the Embarcadero between the Ferry Building and Fisherman's Wharf, while also being adjacent to the Financial District and Jackson Square area making it easier to attract business patrons during the week.

Notably, under its current lease, Boudin pays a higher percentage rent (9%) than all these other operators and many other Port tenants, and as such these sales performance numbers are even more impactful in terms of rent paid.

Port staff and Seifel agree with Boudin that the proposed patio improvements are likely to have positive impacts on Chowder Hut's sales performance. The following graph depicts the seasonality of Chowder Hut's sales and shows a clear opportunity to improve performance in the winter and early spring months.

**Figure 1
Chowder Hut Monthly Sales**



The Seifel team has undertaken various financial analyses, including cash flow projections of future sales and Port lease revenues in order to determine the potential value to the Port with the proposed new lease (Scenario 1– New Lease) compared to a second lease scenario that assumes the current lease would be terminated and the Port issues a request for bids for a new lessee (Scenario 2–Lease Expiration and Bid). The following sections describe the financial analysis that has been undertaken of these two scenarios beginning with the evaluation of the first scenario. *The financial analysis was prepared prior to the COVID pandemic and utilizes historical Port data through Summer 2019. Given recent events, securing a new lessee could be more difficult for the Port to achieve than modeled under Scenario 2, as further described below.*

Analysis of Potential Revenue with Lease Amendment (Scenario 1– New Lease)

The first step in the financial analysis was to analyze the proposed new lease based on information provided by Boudin and historical sales for Chowder Hut and other Port properties. As described above, the historical sales revenue analysis of Chowder Hut shows that its lowest revenue months are during the first and fourth quarter indicating that Chowder Hut does not currently provide enough shelter during the cold, rainy season, particularly when compared to other Port properties that experience less fluctuations in monthly sales.

In addition to the historical monthly sales analysis of other comparable businesses, Seifel also reviewed the monthly sales performance of the largely enclosed Bakers Hall in Boudin’s neighboring flagship building. As shown in **Table 2**, Bakers Hall achieves a higher percentage of its annual sales during the colder months as compared to Chowder Hut.

Table 2
Seasonality of 2018 Monthly Sales Based on Percentage of Annual Sales
Chowder Hut Compared to Boudin Bakers Hall

Date	Chowder Hut Sales	Chowder Hut Seasonality	Baker's Hall Seasonality
January	\$202,307	4.9%	5.8%
February	\$225,975	5.4%	5.9%
March	\$325,107	7.8%	8.6%
April	\$299,105	7.2%	7.3%
May	\$322,640	7.8%	7.7%
June	\$506,539	12.2%	11.1%
July	\$542,892	13.1%	11.4%
August	\$468,885	11.3%	10.6%
September	\$437,464	10.5%	9.8%
October	\$299,466	7.2%	7.4%
November	\$225,923	5.4%	6.2%
December	\$295,006	7.1%	8.4%

Source: Port of San Francisco.

Boudin Management believes Chowder Hut should be able to increase its share of sales during the colder months to more closely correspond to Bakers Hall once the proposed improvements are undertaken. Seifel tested that hypothesis by evaluating potential monthly revenues on a per seat basis given recent performance at Chowder Hut and Bakers Hall. (Seifel chose 2018 because this is the most recent year where the Port was able to provide complete monthly sales and rent data.)

Table 1 shows that monthly sales in 2018 could have potentially increased to between about \$1,600 –\$2,400 per seat if more protected seating is provided, which is reasonable compared to the per seat revenues during the rest of the year. In addition, the recalculated sales in **Table 3** indicate that annual sales could be expected to increase by about 4%, which also seems reasonable given how sales have grown historically at Chowder Hut and at other comparable businesses that have invested in similar improvements.

In addition, Chowder Hut could generate additional event and group sales because of the ability to hold events within the covered patio area. This could include breakfast and evening meetings from groups staying at nearby hotels, as well as events during conferences held in the City. Boudin Management is projecting an additional \$200,000 in annual revenue from such events, or a 5% increase in sales, which should be achievable. (This is equal to approximately 40-50 events per year at an average

revenue of \$40-\$50 per attendee, and average attendance of 100 people assuming that about two-thirds of the seating capacity is typically used per event.)

Overall, the proposed improvements could result in an increase of 9% in annual sales, which seems reasonable based on the analysis of historical and potential revenues. *Although this projected increase in sales may not occur immediately due to the economic slowdown that has occurred as the result of the COVID pandemic, the proposed improvements will enable Chowder Hut to better serve customers during the colder months and enhance outdoor dining opportunities consistent with the City's health and safety guidelines.*

**Table 3
Chowder Hut 2018 Sales Recalculated with Proposed Improvements Using Adjusted Seasonality and Showing Impact Per Seat**

Winter Months Difference	Chowder Hut Sales	Chowder Hut Seasonality	Average Sales Per Seat	Seasonality Recalculated	Sales After Seasonality Adjustment	Off Peak Difference in Sales	Off Peak Sales Per Seat
January	\$202,307	4.9%	\$1,358	5.8%	\$239,057	\$36,750	\$1,604
February	\$225,975	5.4%	\$1,517	5.9%	\$244,631	\$18,656	\$1,642
March	\$325,107	7.8%	\$2,182	8.6%	\$355,596	\$30,489	\$2,387
April	\$299,105	7.2%	\$2,007	7.3%	\$302,028		
May	\$322,640	7.8%	\$2,165	7.7%	\$318,039		
June	\$506,539	12.2%	\$3,400	11.1%	\$462,575		
July	\$542,892	13.1%	\$3,644	11.4%	\$471,499		
August	\$468,885	11.3%	\$3,147	10.6%	\$437,977		
September	\$437,464	10.5%	\$2,936	9.8%	\$406,227		
October	\$299,466	7.2%	\$2,010	7.4%	\$307,143	\$7,677	\$2,061
November	\$225,923	5.4%	\$1,516	6.2%	\$257,575	\$31,652	\$1,729
December	\$295,006	7.1%	\$1,980	8.4%	\$348,962	\$53,956	\$2,342
Total	\$4,151,309				\$4,151,309	\$179,180	
<i>Potential Increase in Annual Sales With Proposed Improvements: 4.3%</i>							

Source: Port of San Francisco, Andre-Boudin Bakeries, Inc.

Analysis of Potential Sales with Potential Expiration of Lease and Request for Bids

(Scenario 2– Lease Expiration and Bid)

Seifel also analyzed the projected sales and lease revenues to the Port assuming the current lease would be terminated, and the Port issues a request for bids for a new lessee (Scenario 2– Lease Expiration and Bid). Under this second scenario, Seifel assumed that the new lessee would begin to generate revenues in 2022, reflecting a 24-month bid to rent commencement process, including the issuance of the bid request, tenant selection and 9 months of improvement work to be completed and paid for by the incoming tenant. Improvement costs under Scenario 2 are assumed to be \$1 million

(about \$200 per square foot), 25% of which the new tenant would get back by way of a rent credit spread over 5 years. Revenues are assumed to increase at a similar rate to that projected for Scenario 1 but delayed as the result of the bid process.

Based on the analysis of Chowder Hut and historical Port rent terms for comparable businesses along the waterfront, the percentage rent has been assumed at 8% in Scenario 2 versus 9% under Scenario 1 for the following reasons:

- The 9% percentage rent that Boudin currently pays is significantly higher than other Port leases for food and drinking establishments, which typically range between 6% to 7.5%. The four other comparable businesses analyzed for this memorandum have a percentage rent of 7%.
- The current lessee is able to efficiently operate Chowder Hut because Boudin combines operation and management responsibilities for Chowder Hut with its adjacent flagship facility, which has a large number of staff and support facilities.
- The responsibility for maintaining the public restrooms is an unusual lease requirement, and the cost of providing these services exceeds what is allowed to be reimbursed in the current lease (\$2,000 current monthly reimbursement). *Port staff determined the credit of \$4,000 would have been the minimum cost for the Port to contract out such services.*
- While Chowder Hut is located in one of the highest visitor attraction areas of the Port, it is also located immediately adjacent to the Port's major Fisherman's Wharf surface parking lot and thus experiences automobile traffic as cars enter and exit the parking lot next to the property.

Given the significant economic impact that the COVID pandemic has had on restaurant and retail businesses, the lease expiration and bid process could take longer than 24 months, and the proposed lease terms may be less advantageous to the Port than modeled under Scenario 2:

- *The tenant improvement costs for a new tenant could be higher than \$200 per square foot, and a new tenant may potentially require a higher percentage rent credit than 25% of these improvement costs.*
- *The percentage rent for a new tenant could be lower than 8% and within the more typical range of 6% to 7% for other Port restaurant tenants.*

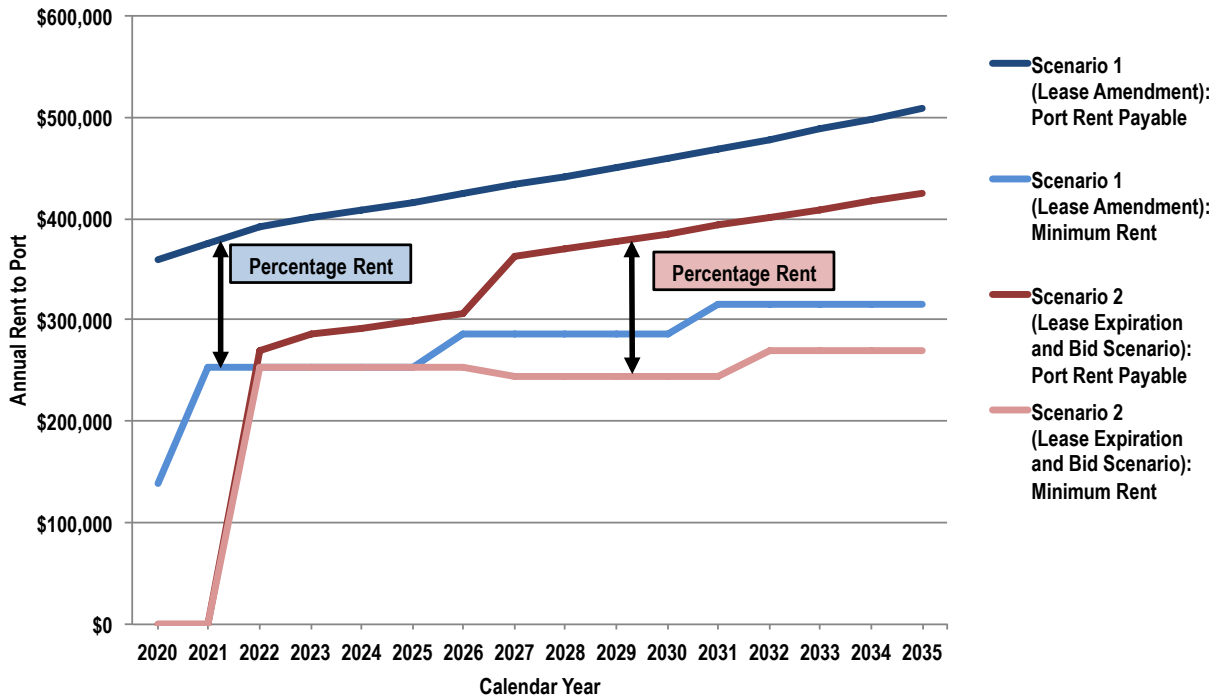
Given this, the financial results modeled under Scenario 2 could overstate what may be achievable over the next two to three years.

Comparison of Potential Value to the Port Under the Two Lease Scenarios

Figure 2 below compares the projected revenue to the Port under the following two lease scenarios as previously described above:

- Scenario 1: New Lease (blue lines) – assumes proposed new lease and extension with current lessee, Boudin
- Scenario 2: Lease Expiration and Bid (red lines) – assumes that the current lease would be terminated, and the Port issues a request for bids for a new lessee.

Figure 2
Annual Rent Payable to Port
Chowder Hut Lease Analysis



The value to the Port is calculated based on the net present value of the future base rent and percentage rent that the Port is projected to receive as the result of projected increases in sales and resulting lease revenues under the two lease scenarios described above. **Table 4** summarizes the results of the financial analysis, which compares the revenues to the Port under the proposed new lease (Scenario 1: New Lease) with the Port’s potential revenues if the existing lease were to expire and the Port issued a request for bids for a new lease (Scenario 2: Lease Expiration and Bid).

Table 4
Summary of Value Analysis
Comparing Projected Performance under Future Lease Scenarios
Showing Nominal Value and Net Present Value (NPV) at Six Percent (2020 \$)

Port Value Analysis (Based on Projected Lease Revenues)	Scenario 1 - Lease Extension	Scenario 2 - Lease Expiration and Bid	Value Benefit from Lease Amendment	Percent Increase
Total Value (Nominal \$)	\$7,004,923	\$4,994,285	\$2,010,638	40%
Total Net Present Value (2020 \$)	\$4,568,431	\$3,022,844	\$1,545,586	51%

As shown in **Table 4**, the Port is projected to receive additional value from the proposed new lease when compared to the lease expiration and bid scenario. Over the entire term, including the 5-year option, the value to the Port is projected to be between 40% higher on a nominal basis and 51% higher on a Net Present Value basis.

While the financial analysis has been performed based on historical data and projections that do not account for the COVID pandemic, the relative financial benefit of Scenario 1 is still superior to Scenario 2 because Boudin is a long-standing Port tenant with a proven track record of financial performance and continual investment in their operations and retail space, and their percentage rent is higher than comparable Port restaurant leases. Furthermore, the lease terms for a new tenant would not likely be as advantageous to the Port as what is modeled under Scenario 2, which reflect normalized economic conditions.

Capital Amortization Analysis under Proposed New Lease

Boudin originally proposed to invest \$500,000 for new tenant improvements under the new lease. The amount of capital expense for the proposed tenant improvements has been increased by Boudin to approximately \$800,000. Therefore, the new lease now requires a minimum capital expenditure of \$800,000 by Boudin as a condition of the lease extension.

Table 9 shows the anticipated amortization of the capital expense assuming the existing lease is extended for an additional 10 years, with a 5-year option to renew for a total of 15 years, versus the capital amortization that would occur if the lease were only to be extended for 5 years.

**Table 5
Capital Amortization Analysis
Calculated at a Six Percent Annual Rate**

	Capital Expense	Years to Amortize	Monthly Amortization	% of Sales		% of Rent	
				2024	2034	2024	2034
New	\$300,000	5	(\$5,800)	1.5%	1.3%	17.0%	14.0%
<u>Original</u>	<u>\$500,000</u>	5	<u>(\$9,666)</u>	<u>2.6%</u>	<u>2.1%</u>	<u>28.4%</u>	<u>23.3%</u>
Total	\$800,000	5	(\$15,466)	4.1%	3.4%	45.4%	37.3%
New	\$300,000	15	(\$2,532)	0.7%	0.5%	7.4%	6.1%
<u>Original</u>	<u>\$500,000</u>	15	<u>(\$4,219)</u>	<u>1.1%</u>	<u>0.9%</u>	<u>12.4%</u>	<u>10.2%</u>
Total	\$800,000	15	(\$6,751)	1.8%	1.5%	19.8%	16.3%

As can be seen in **Table 5**, amortization of the capital expenses over a 5-year term for either the original proposed capital expense of \$500,000 or the total estimated investment of \$800,000 would place an infeasible monthly burden on the Tenant. If the lease is extended for an additional 15 years, including the option, then the burden drops to 1.8% of sales and 19.8% of rent by 2024, when stabilized revenues occur, which is manageable.

Retail Leasing Policy

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

a lease extension may include the term required to amortize the planned improvements.

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

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

Accordingly, Boudin meets all three requirements as outlined in the Port Commission's Retail Leasing Policy to justify the bidding exemption as requested.

California Environmental Quality Act (CEQA). The permitted uses under the proposed lease are a continuation of existing and related uses and are not a project under CEQA.

Port Staff Policy / Financial Analysis

Port staff has determined that the proposed lease with Boudin, the proposed capital improvements and associated lease term noted above meet the criteria of the Retail Leasing Policy. As described above, with the assistance of Seifel, Port staff has evaluated the projected sales and revenues projections as viable and has determined the proposed capital improvements will likely generate additional revenue that the Port would not otherwise receive. In summary, Port staff agrees with Seifel's conclusions that:

1. The proposed patio improvements would likely improve the Tenant's ability to generate sales in more challenging weather months, provide a better customer experience for its patrons, increase event and group sales opportunities, and enable Boudin to better respond to the City's health and safety guidelines for outdoor dining.
2. The proposed business plan would likely outperform a base case of terminating the lease and seeking a new operator, due in part to the time period required to establish a new operation and in part to the above-market percentage rent metric under the Lease that a competitive process in the current market would be unlikely to match.
3. The proposed new lease term (10 years, with a 5-year Tenant option so long as performance requirements are met) is reasonable in relation to the size of the operation and the need to amortize the investment over a manageable period.

Recommendation

Port Staff recommends that the Port Commission adopt the attached resolution approving Lease No. L- 16697 with Andre Boudin Bakeries, a California corporation, for the Premises located at Taylor and the Little Embarcadero. If the Port Commission approves the new lease, it will be subject to approval by the Board of Supervisors.

Prepared by: Jay Edwards
Senior Property Manager

Vicky Lee, Property Manager

Prepared for: Rebecca Benassini
Acting Deputy Director, Real
Estate and Development

Attachments –

Exhibit A: Premises Plan

Exhibit B: Retail Leasing Policy

Exhibit C: Proposed Project Renderings

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

RESOLUTION NO. 20-44

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, Andre-Boudin Bakeries. Inc., a California corporation (“Boudin”), has operated the Chowder Hut restaurant in Fishermen’s Wharf on Seawall Lot 301 for about 20 years; the current lease, Port Lease No. L-14814, expired December 31, 2019 and is on month to month holdover status; and
- WHEREAS, Boudin wishes to renew its lease for the Chowder Hut; and
- WHEREAS, on March 8, 2011, the Port Commission adopted Resolution No.11-15, which establishes its Retail Leasing Policy which includes conditions for consideration for lease renewals without competitive bidding, and obligations to be included in renewed leases (“Retail Leasing Policy”); and
- WHEREAS, on February 11, 2020, the Port Commission heard an informational presentation for proposed Lease No. L- 16697 (“Lease”) with Boudin for a lease renewal and directed staff to return to the Port Commission for approval of a negotiated Lease; and
- WHEREAS, Staff has completed negotiations and the terms of the proposed Lease are summarized in the Memorandum dated September 11, 2020 accompanying this Resolution (the “Memorandum”); and
- WHEREAS, as described in the Memorandum, the proposed Lease meets the criteria in the Retail Leasing Policy; and
- WHEREAS, the initial term of the Lease will be ten (10) years, and Boudin will have a five (5) year option to extend; provided that Boudin completes the required capital improvements within twenty-four (24) months from lease commencement at a minimum cost of \$800,000; and, in Port’s discretion, sales per square foot over the 12 months prior to Tenant’s exercise of the option are at least 70% of sales per square foot over the preceding 12 months; and
- WHEREAS, the term and rent for the Lease, including adjustments to base and percentage rent during the initial term and extension term (if any), were established based on an analysis of comparable restaurant operations performed by Seifel and Associates, a third-party financial expert, and

was recently updated to analyze any changes caused by the impacts of COVID-19; and

WHEREAS, the proposed Lease sets forth the parties' respective obligations with respect to the public restrooms that are part of the leased premises including, as under the current lease, an indemnity by Port which has been approved by the City's Risk Manager under SF Administrative Code Section 1.24; and

WHEREAS, the Lease will require Boudin to pay the Port 12% of the net sale proceeds from a sale or financing of the Lease; and

WHEREAS, the permitted uses under the proposed Lease are a continuation of existing and related uses and are not a project under the California Environmental Quality Act; and therefore, be it

RESOLVED, that the Port Commission finds that the proposed Lease qualifies for approval under the terms of the Retail Leasing Policy and so is not subject to competitive bidding; and be it further

RESOLVED, that, subject to Board of Supervisor's approval, the Port Commission approves Lease No. L- 16697 and authorizes the Executive Director or her designee to execute such Lease in substantially the same form on file with the Port Commission Secretary; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease, including without limitation, the appropriate form of amendment (as revised or incorporated into the proposed Lease in a manner convenient to the parties) to implement the Port's Rent Forgiveness Program approved by Port Commission Resolution 20-41, that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 22, 2020.

Carl Neita

Secretary



October 26, 2020

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

Dear Ms. Calvillo:

Attached please find an electronic copy a proposed Resolution for Board of Supervisors consideration, to approve the lease agreement between the San Francisco Port Commission and Andre-Boudin Bakeries for the Chowder Hut, located at 2890 Taylor Street.

The following is a list of accompanying documents

- Resolution approving the lease
- Draft lease agreement between the Port and Andre Boudin Bakeries
- Port Commission staff report and resolution approving the lease with Andre Boudin Bakeries

The following person may be contacted regarding this matter:

Boris Delepine, Legislative Affairs Manager
415-571-6626
Boris.Delepine@sfport.com

From: [Delepine, Boris \(PRT\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Benassini, Rebecca \(PRT\)](#); [SANDLER, RONA \(CAT\)](#); [Edwards, Jay \(PRT\)](#)
Subject: Resolution: Chowder Hut Lease
Date: Monday, October 26, 2020 9:38:13 AM
Attachments: [Boudin Chowder Hut BOS resolution.docx](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[Andre Boudin Bakeries L-16697 Tenant Ex Ver.pdf](#)
[Resolution 20-44 Boudin Chowder Hut Lease Renewal.pdf](#)
[Chowder Hut - COVER LETTER.doc](#)
[Boudin Form SFEC-126 Notice of Contract approval.docx](#)

Good morning,

Attached please find an electronic copy a proposed Resolution for Board of Supervisors consideration, to approve the lease agreement between the San Francisco Port Commission and Andre-Boudin Bakeries for the Chowder Hut, located at 2890 Taylor Street.

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- Form SFEC-126

The following person may be contacted regarding this matter:

Boris Delepine, Legislative Affairs Manager
415-571-6626
Boris.Delepine@sfport.com

Thank you,
Boris



Boris Delepine

Legislative Affairs Manager, Port of San Francisco
415.274.0443 | boris.delepine@sfport.com
Pier 1, The Embarcadero, San Francisco, CA 94111



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San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 201210

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Jay Edwards	415-725-1112
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PRT Port of San Francisco	jay.edwards@sfpport.com

5. CONTRACTOR	
NAME OF CONTRACTOR Boudin Bakery, 160 Jefferson St, SF CA 94133	TELEPHONE NUMBER 415-925-8888
STREET ADDRESS (including City, State and Zip Code) Boudin Bakery, 160 Jefferson St, SF CA 94133	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 201210
DESCRIPTION OF AMOUNT OF CONTRACT Initial monthly Base Rent of \$19,087 per month.		
NATURE OF THE CONTRACT (Please describe) Port Lease No. L-16697 between Andre Boudin Bakeries, Inc. and the Port of San Francisco.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Giraud - Chairman	Dan	Board of Directors
2	Matt Dowling	Matt	CEO
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.		

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

Approval of Andre-Boudin Bakeries Chowder Hut Lease No. L-16697

San Francisco Board of Supervisors

Budget and Finance Committee

December 2, 2020




Presented By: Jay Edwards / Port Senior Property Manager

Boris Delephine / Port Legislative Analyst

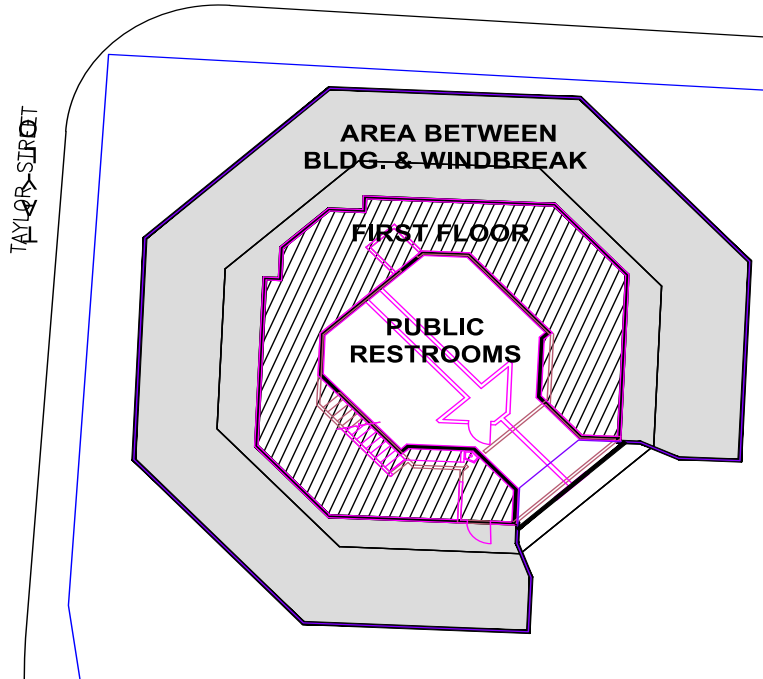
Libby Seifel / Seifel Consulting



Chowder Hut Premises

- PARCEL B  MEZZANINE AREA = 660 SQ. FT.
- PARCEL C  AREA BETWEEN BLDG. & GLASS WINDBREAK = 2,749 SQ. FT.
- PARCEL D  PUBLIC RESTROOMS = 765 SQ. FT.

T R O P I C A N S T A I N



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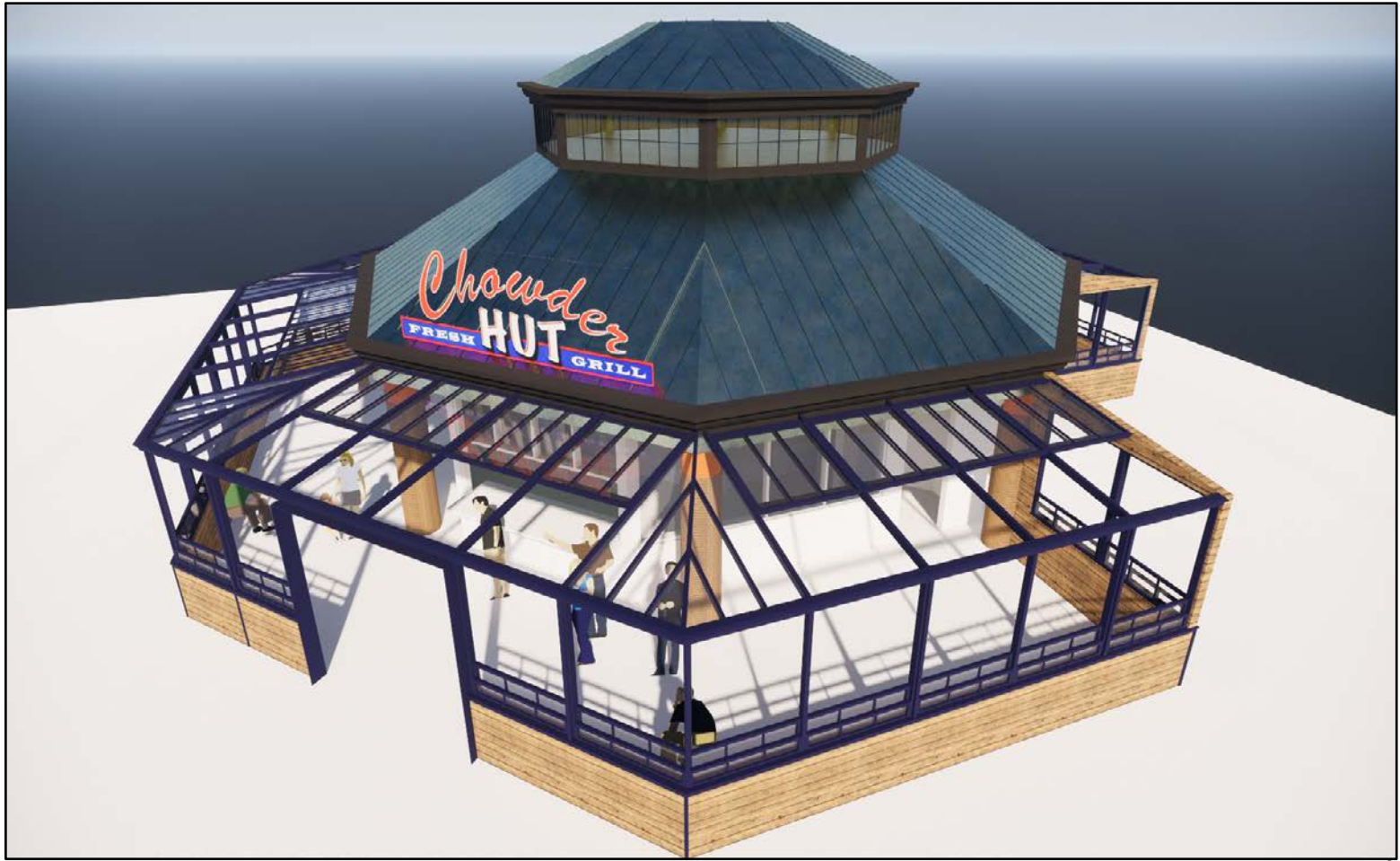
SAN FRANCISCO PORT COMMISSION
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

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New Atrium Rendering



Key Business Terms

- 10-year lease extension of the premises with a 5-year option to extend at fair market value.
- Total Rent shall be equal to the higher of Base or Percentage Rent calculated on a monthly basis.
- Current monthly Base Rent is \$7,950 and increases to \$19,087 less rent credit of \$4,000 per month for maintaining the public restrooms.
- Percentage Rent will remain at 9% of gross monthly sales.
 - Higher rent than comparable Port properties, which range between 6% to 8%
- Proposed investment of \$800,000 for a patio atrium for year-round outdoor dining.
- The new lease shall be on the Port's form lease for retail uses and include all current City ordinances and requirements as necessary.

Summary of Financial Analysis

Lease Amendment Compared to Obtaining New Tenant

Scenario 1A– Lease Amendment assumes all proposed lease extension terms, with economic recovery in 3 years

Scenario 2A– Lease Expiration and Bid assumes re-bid process delays sales/rent for two years, lowers percentage and may require rent credits to offset construction time and portion of new tenant improvements

Port Value Analysis (Based on Projected Lease Revenues)	Scenario 1A- Lease Amendment With Recovery in 3 Years	Scenario 2A- Lease Expiration and Bid With Recovery in 3 Years	Value Benefit from Lease Amendment	Percent Increase
Total Value (Nominal \$)	\$5,679,832	\$4,008,867	\$1,670,965	41.7%
Total Net Present Value (2020 \$)	\$3,599,135	\$2,385,625	\$1,213,510	50.9%

The value analysis compares projected performance to the Port based on projected revenues from 2020 through 2035 (nominal value \$) and the net present value of projected revenues for the same period based on a six percent discount rate (2020 \$).

Summary of Benefits from Lease Amendment

- Andre Boudin Bakeries Chowder Hut has a ten year + track record of performing well above comparable restaurants on a sales per square foot basis.
- The business model of flexible indoor / outdoor seating through the construction of the proposed retractable atrium enclosure will be well suited to changing nature of the public dining experience.
- Financial analysis shows the value to the Port is projected to be significantly higher than allowing the lease to expire and seeking a new tenant.
 - \$1.7 million or 42% higher on a nominal basis
 - \$1.2 million or 51% higher on a Net Present Value basis
- Over the entire term, including the 5-year option, Port would also share in future proceeds from sale/refinancing of the property (calculated based on a higher sales volume resulting from the proposed capital investments).