



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

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**LEASE NO. L- 17224**

**BY AND BETWEEN**

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

**AND**

**JPPF WATERFRONT PLAZA, L.P.**

**WATERFRONT PLAZA**

**XXXXXX XX, 2024**

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**KIMBERLY BRANDON, PRESIDENT  
GAIL GILMAN, VICE PRESIDENT  
WILLIE ADAMS, COMMISSIONER  
STEPHEN ENGBLOM, COMMISSIONER  
STEVEN LEE, COMMISSIONER**

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<b>EXHIBIT A-1</b>	<b>PREMISES LEGAL DESCRIPTION AND SITE MAP</b>
<b>EXHIBIT A-2</b>	<b>SANTA FE PARCEL LEGAL DESCRIPTION AND SITE MAP</b>
<b>EXHIBIT B</b>	<b>RENT; PARTICIPATION</b>
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<b>SCHEDULE 3</b>	<b>ASBESTOS NOTIFICATION AND INFORMATION</b>
<b>SCHEDULE 4</b>	<b>HAZARDOUS MATERIALS DISCLOSURE</b>
<b>SCHEDULE 5.6</b>	<b>APPROVED SIGNS</b>
<b>SCHEDULE 17.2</b>	<b>EXISTING SUBLEASES</b>

**LEASE AGREEMENT  
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	[_____, 2024]
<i>Lease No.:</i>	L-17224
<i>“Landlord” or “Port”:</i>	<b>CITY AND COUNTY OF SAN FRANCISCO</b> , a municipal corporation, operating by and through the <b>SAN FRANCISCO PORT COMMISSION</b>
<i>“Tenant”:</i>	<b>JPPF WATERFRONT PLAZA, L.P.</b> , a Delaware limited partnership
<i>Landlord’s Notice Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400
<i>Tenant’s Notice Address:</i>	JPPF Waterfront Plaza, L.P. 675 Ponce De Leon Avenue NE 7th floor Atlanta, GA 30308 Attention: XXXXXXXX Telephone: ( ) XXX-XXXX
<i>Premises:</i>	<p>The “<b>Premises</b>” is comprised of Seawall Lot (“SWL”) 315, SWL 316, and SWL 317 as described and depicted on the attached <b><u>Exhibit A-1</u></b>, together with the Existing Improvements now located on the Premises including two, four-story office buildings built in 1976 and having a street address of 1700 Montgomery Street and 50 Francisco Street respectively and a single-story, stand-alone retail building currently used in its entirety as a restaurant having a street address of 1800 Montgomery Street, and all the rights and privileges appurtenant to the Premises and owned by Port and not reserved to the Port under this Lease, and any other Subsequent Construction to be constructed on the Premises.</p> <p>SWL 315 contains approximately 54,627 square feet of land, SWL 316 contains approximately 13,184 square feet of land, and SWL 317 contains approximately 87,091 square feet of land for a total of 154,902 square feet or 3.56 acres of land.</p>
<i>“Santa Fe Parcel”:</i>	At the time the original office building was constructed on SWL 315, the then-tenant owned, or was expected to purchase, an adjacent parcel commonly known as the “ <b>Santa Fe Parcel</b> .” The Santa Fe Parcel was identified in the Prior Lease only as “a parcel adjacent to the leased premises.” The Second Amendment to the Prior Lease further defined the “Santa Fe Parcel” to include both APN Block 037 Lot 3 and Lot 4. The Prior Lease acknowledged that a portion of the office building on SWL 315 would be erected on a portion of the Santa Fe Parcel, and in furtherance thereof, the Parties acknowledge that approximately 19,285 rentable square feet of the office building on SWL 315 (“ <b>Encroaching</b>

	<p><b>Improvements</b>”) encroaches onto approximately 4,768 square feet of land lying within Santa Fe Parcel Lot 3 as depicted on <i><b>Exhibit A-2</b></i> (the “<b>Lot 3 Encroachment Area</b>”).</p> <p>The remainder of the Santa Fe Parcel, comprised of APN Block 037 Lot 4 (also known as 60 Francisco and 80 Francisco), contains a 5-level, 517 stall private parking garage (the “<b>Parking Garage</b>”) that serves the Premises and the public as well as an office space containing approximately 15,387 rentable square feet.</p> <p>The Santa Fe Parcel is described and depicted on <i><b>Exhibit A-2</b></i>, which sets forth a legal description and depiction of APN Block 037 Lot 3 (“<b>Santa Fe Parcel Lot 3</b>”) and APN 037 Lot 4, which Lots 3 and 4 collectively comprise the “<b>Santa Fe Parcel</b>”.</p>
<p><i><b>Port Option to Purchase Santa Fe Parcel:</b></i></p>	<p>At the expiration or earlier termination of this Lease, Port has the option to either (1) purchase the Santa Fe Parcel at its then fair market value (i.e. the land value plus the fair market value of all the improvements) (the “<b>Santa Fe Purchase Option</b>”), or (2) lease the same at the then fair market rental rate for a term of 66-years (the “<b>Santa Fe Lease Option</b>”). Port will not be required to exercise or abandon either such option until such fair market value and fair rental rate will have been determined, and such options will therefore be exercisable as follows:</p> <p>(i) If this Lease terminates for any reason prior to the expiration of the Term, Port and Tenant (or Tenant’s successor in interest to the Santa Fe Parcel) will, prior to or as soon after such termination as possible, agree upon such fair market value or fair rental rate. If they are unable to agree thereon within thirty (30) days after termination of this Lease, the parties, will, within thirty (30) days after such termination date, select a single appraiser able to render their opinion within forty-five (45) days after their selection or, if Port prefers, each party will, within thirty (30) days after such termination date, select an appraiser able to meet the time limits set forth below and those two appraisers will, within fifteen (15) days after their selection in turn select a third appraiser able to meet such time limits. A majority vote of said three appraisers will then establish the current fair market value or fair rental rate not later than forty-five (45) days after the selection of the third appraiser. If two appraisers cannot agree on such value or rate, all three appraisals will be averaged and such average figure will be binding upon the parties.</p> <p>(ii) If this Lease has not been earlier terminated, Port and Tenant (or Tenant’s successor in interest to the Santa Fe Parcel) will, prior to the commencement of the last Lease Year, agree upon such fair market value or fair rental rate. If they are unable to agree thereon prior to the commencement of such last Lease Year, the Parties will within fifteen (15) days after such commencement date, select an appraiser or two appraisers in the manner specified in subparagraph (i) above and shall follow the same appraisal procedure set forth above.</p> <p>(iii) Port may exercise either the Santa Fe Purchase Option or the Santa Fe Lease Option only by notifying Tenant (or Tenant's successor in interest to the Santa Fe Parcel) in writing, within ninety (90) days after the parties’ agreement upon a fair market value and/or fair rental rate, or within a like period after completion of the appraisal prepared under</p>

	<p>subparagraphs (i) or (ii) if that will later occur, that Port elects to exercise one of such options at the price or rental so determined.</p> <p>(iv) Costs of appraisal in determining the purchase price or rental rate are to be shared equally by the Parties. Each Party will have the right of specific performance to enforce its rights under this Section.</p> <p>(v) In the event Port should decline to exercise either the Santa Fe Purchase Option or the Santa Fe Lease Option, and the Encroaching Improvements upon termination of this Lease, are still standing upon termination of this Lease and not required to be demolished by Tenant pursuant to the terms of this Lease, then the Port agrees that it shall purchase so much of the Santa Fe Parcel as is required by law to permit a single ownership by Port of the entire land and building adjacent to the remainder of the Santa Fe Parcel (the “<b>Encroachment Area Purchase</b>”). In such event, Tenant shall license Port’s free use of such portion of the Santa Fe Parcel until closing of such purchase. The price for the Encroachment Area Purchase shall be determined from the agreement or appraisal made under subparagraph (i) or (ii) as to the fair market value of the entire Santa Fe Parcel (which agreement or appraisal shall separately designate the fair market value of such portion). Port may credit any rentals or other sums due hereunder toward payment of such purchase price. If any balance shall remain due at the termination of the ninety (90) day period set forth in subparagraph (iii), Port agrees (A) to pay all rentals produced by the Encroaching Improvements to Tenant (or Tenant’s successor-in-interest to the Santa Fe Parcel) until such balance due has been paid, and (B) to secure such payment obligation with written assignment of such rentals and a deed of trust lien against the Encroaching Improvements and the Lot 3 Encroachment Area.</p>
<i>Commencement Date:</i>	[_____, 2024]
<i>Expiration Date:</i>	_____, 2081
<i>Length of Term:</i>	[Fifty-Seven (57)] years.
<i>Renewal Term:</i>	None.
<i>Permitted Use:</i>	General commercial office use, retail commercial and other related uses established in compliance with the Conditional Use Authorization No. CU73.56 adopted by Planning Commission Resolution No. 7115 (the “ <i>CUA</i> ”), as may be amended and in effect from time to time.
<i>Security Deposit:</i>	One Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars (\$166,667), as increased in accordance with <b>Section 16</b> but in no event to exceed the lesser of two months’ Base Rent in effect from time-to-time [and \$500,000].

<i>Base Rent:</i>	<b>Period</b>	<b>Monthly Base Rent</b>	<b>Annual Base Rent</b>
	Years 1-5 (Months 1-60)	\$83,333.34	\$1,000,000
	Years 6-10 (Months 61-120)	\$104,166.67*	1,250,000*
	From and after the 10th Anniversary Date until the expiration of the Term, Base Rent will be adjusted in accordance with the “ <b>Cost of Living Index Adjustments</b> ” and “ <b>Periodic 10-Year Adjustments to Base Rent</b> ” sections of <i>Exhibit B</i> .		
	Tenant’s obligation with respect to payment of Rent is further described in <i>Exhibit B</i> .		
<i>Percentage Rent:</i>	From and after the sixth (6th) Lease Year, Tenant will pay Port “ <b>Percentage Rent</b> ” equaling six and one-half percent (6.5%) of annual Gross Rental Revenues, payable annually in accordance with <i>Section 4.2</i> (Percentage Rent) of <i>Exhibit B</i> attached hereto (Rent; Participation).		
<i>Port Participation in Refinancings and Transfers.</i>	Port’s participation in (i) each Refinancing equals One Half of One Percent (.5%) of Refinancing Proceeds as further described in <i>Section 4.4</i> (Port Participation in Refinancing Proceeds) of <i>Exhibit B</i> attached hereto (Rent; Participation) and (ii) Transfers equals One Half of One Percent (.5%) of Transfer Proceeds as further described in <i>Section 4.3</i> (Port Participation in Transfer Proceeds) of <i>Exhibit B</i> attached hereto (Rent; Participation).		
<i>Required Investment:</i>	The terms and conditions pursuant to which Tenant will invest or cause to be invested the Minimum Investment for Repositioning and Maintenance Costs over the first ten years of Term shall be governed by the terms and conditions set forth in <i>Exhibit C</i> attached hereto.		
<i>Assignment/Transfer Rights:</i>	As provided in <i>Section 17</i> (Transfer and Subletting)		
<i>Indemnity:</i>	Tenant will indemnify, defend and hold harmless Port and City parties from Losses during the Term in accordance with <i>Section 18</i> .		
<i>Maintenance and Repair:</i>	Sole obligation of Tenant.		
<i>Utilities:</i>	Sole obligation of Tenant.		
<i>Resilience Project:</i>	<p>Tenant understands and acknowledges that 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 leading the Waterfront Resilience Program (the “<b>Resilience Project</b>”), a citywide effort to create a more sustainable and resilient waterfront. The “<b>Resilience Project</b>” includes the construction or relocation of district/public infrastructure projects.</p> <p>San Francisco faces coastal flood risks today. These risks will increase in the future due to sea level rise and extreme storms, threatening buildings, small businesses, jobs, and critical services such as BART</p>		

	<p>and Muni. To defend San Francisco from current and future flood risk, there is a need to adapt shoreline elevations to address 3 to 7 feet of sea level rise expected by 2100. Any effort aimed at long-term sea level rise resilience will also need to strengthen the waterfront against urgent earthquake risk today.</p> <p>The Resilience Project is focused on addressing current and future flood and seismic risks over time for the Embarcadero Seawall which stretches from Fisherman’s Wharf to Mission Creek (“<b>Seawall</b>”). 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: <a href="https://www.sfportresilience.com">https://www.sfportresilience.com</a>. In addition, as part of the Resilience Project, the U.S. Army Corps of Engineers (USACE), in collaboration with the City and the Port, are conducting a Flood Study to analyze the coastal flood risk and effects of sea level rise for the 7.5 miles of waterfront within the Port of San Francisco’s jurisdiction, from Aquatic Park to Heron’s Head Park. The study is intended to identify vulnerabilities and recommend strategies to reduce current and future flood risks for consideration for federal investment and implementation along the Port’s entire 7.5-mile jurisdiction.</p> <p>Final details of the Resilience Project are unknown at this time but will depend on, among other things, the outcomes of the Flood Study, available funding and future solutions approved by decision-makers at the local, state and federal level. Such solutions may, at Port’s election, include the construction of district/public infrastructure projects and flood and resilience projects on Port-owned property, including areas that may be located near or around Tenant’s Premises (the “<b>Resilience Project Site</b>”).</p> <p>Tenant is entering into this Lease with the understanding that there may be significant impacts/effects from such future Resilience Projects on its tenancy and the Premises. Tenant further acknowledges and agrees that Port may, from time to time, at its sole election, construct (including, without limitation, additional buildings, structures, substructures, utility mains, transformers, conduits, shafts, columns, footings and pipes), reconstruct (including without limitation the replacement of certain improvements with other improvements), improve (including tenant improvements), modify, expand, or otherwise alter the Resilience Project (collectively, “<b>Resilience Work</b>”), or portions thereof; provided, however, in no event will Port have any obligation to initiate or perform any of the Resilience Work.</p> <p>Tenant acknowledges that any such Resilience Work will necessarily involve, among other things, the presence of workers within, near or around the Resilience Project Site, the generation of noise, dust, and vibrations, barricading portions of the Resilience Project Site, placement of scaffolding within the Resilience Project Site, demolition, structural alterations or construction, storage of materials and equipment within, near or around the Resilience Project Site, all of which may, among</p>
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	<p>other things, require the temporary loss of access to the Premises, including, without limitation, parking areas, roadways, lighting facilities, and the re-direction of vehicular and pedestrian traffic. Tenant shall reasonably cooperate with Port's efforts. Tenant shall waive any and all Losses against Port arising from Construction Impacts related to the Resilience Work in accordance with <b>Section 2.9</b> (Resilience Project; Nearby Projects and Event).</p> <p>In furtherance of the Resilience Project, Port right-of-entry provided under <b>Section 33.1</b> (Entry by Port) shall include the right to enter the Premises, upon reasonable advance written notice, as may be reasonably required for inspection, surveying, inventory, or evaluating property conditions that may be affected by, or needed to implement, the Resilience Work; provided, however, Port will use its good faith efforts to minimize any unreasonable interference with Tenant's use, occupancy, or enjoyment of the Premises as contemplated by this Lease. Tenant waives any and all claims, defenses, rights of offset, or deductions based upon any inconvenience suffered by Tenant or any interruption of or interference with Tenant's business including, without limitation, any loss of business, damage to property, loss of revenue, lost profits, and loss of goodwill.</p>
<i>Single Point of Entry for State Mineral Rights</i>	Located in Zone 3, California grid System, at a point Reservation Entry where X equals ____ and Y equals ____. <sup>1</sup>
<i>Prior Lease:</i>	The Parties agree that concurrently with the execution of this Lease, the Parties entered into a Lease Termination Agreement effectively terminating Lease No. L-8618 dated as of June 28, 1974 between Port and Francisco Bay Office Park, a limited partnership, as amended by that certain unrecorded First Amendment to Lease dated as of December 8, 1976, and as further amended by that certain Second Amendment to Lease dated as of June 21, 1995 between Port and HHC Investments, LTD.
<i>Lease Prepared By:</i>	Ricky Tijani, Real Estate and Development

<sup>1</sup> Port to insert from Port surveyor, consistent with Burton Act/Exchange Agreement requirements.

## 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 **JPPF WATERFRONT PLAZA, L.P.**, a Delaware limited partnership (“**Tenant**”). The basic lease information (the “**Basic Lease Information**” or “**BLI**”), the exhibits, schedule and this Lease Agreement are and shall be construed as a single instrument and are referred to 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. RECITALS

This Lease is made with reference to the following facts and circumstances:

**A.** Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. Seawall Lot (“**SWL**”) 315, SWL 316, and SWL 317 are such property under Port’s jurisdiction. The SWLs are also located in the Northeast Waterfront Historic District and are within a C-2 (Community Business) zoning district, Waterfront Special Use District No. 3, and a 40-X Height and Bulk district. The SWLs are also identified by the San Francisco Assessor respectively as Lot 001 of Block 0037, Lot 001 of Block 0036, and Lot 001 of Block 0057. Combined, the three SWLs are approximately 153,357 square feet or 3.52 acres.

**B.** On June 26, 1974, the Port Commission adopted Resolution No. 74-6, a copy of which was recorded in the Official Records in Book B904, pp. 549-556 (“**Resolution No. 74-6**”) in which the Port Commission:

(i) made findings pursuant to the requirements of the Burton Act that the areas known as Seawall Lots 315, 316 and 317 are not required for purposes consistent with the trusts upon which the lands are held by the State and is not required for commerce and navigation, and that it may be used for general commercial office space and related uses, which purposes the Port Commission found to be in the public interest;

(ii) approved the terms and conditions of a lease based on findings that the form of lease complies with the terms and conditions of Chapter 1333 of the Statutes of 1968 as amended and that the subject property may be used for the purpose of office space during the term of such lease; and

(iii) determined that the moneys derived from such lease shall be used by the Port Commission in furtherance of commerce and navigation and for the purposes specified by Chapter 1333 of the Statutes of 1968 as amended.

**C.** In furtherance of Port Commission Resolution No. 74-6, Port and Francisco Bay Office Park, a limited partnership, entered into Lease No. L-8618 dated as of June 28, 1974, for the real property known as SWL 315, SWL 316 and SWL 317 (the “**Initial Lease**”), a memorandum of which was recorded in Liber B904, page 557, in the Official Records. The Initial Lease was amended by that certain unrecorded First Amendment to Lease dated as of December 8, 1976, and was further amended by that certain Second Amendment to Lease dated as of June 21, 1995 between Port and HHC Investments, LTD., a Memorandum of which was recorded on July 16, 1996 as Instrument No. 96-G002309 in Book G675 of the Official Records, at P. 314 (collectively with the Initial Lease, the “**Prior Lease**”). On May 26, 2004, Tenant and Port entered into a Memorandum of Option to Purchase and Lease which memorandum was recorded on May 27, 2004 in as Document 2004-H729654-00, REEL 1647, IMAGE 0458, in the



Official Records (the “**Memo of Option**”). The Memo of Option provided notice to all third parties of the Port’s option to purchase or lease the Santa Fe Parcel, or if it declines to do so, to purchase a portion of the Santa Fe Parcel, all as further described in the Prior Lease and the Memo of Option.

**D.** The property includes two commercial/office buildings and a stand-alone restaurant building. The first amendment increased the portion of SWL 316 land area from 3,510 square feet to 7,211 square feet and provided the site coverage required for the standalone restaurant building on SWL 316. The second amendment and the Memo of Option documented revisions to the premises map to further identify and describe the SWLs and the Santa Fe Parcel.

**E.** Tenant completed construction of two (2) office buildings in 1976 which contain approximately 130,005 rentable square feet on SWL 315 (50 Francisco Street) and 141,097 square feet on SWL 317 (1700 Montgomery Street). A single-story restaurant building containing approximately 7,370 square feet was completed in 1998 on SWL 316 (1800 Montgomery Street). The two office buildings, the restaurant building, the Parking Garage and the office space known as 60 and 80 Francisco are collectively referred to as the Waterfront Plaza Office Complex or the “**Waterfront Plaza**.”

**F.** Tenant is the successor-in-interest to the original tenant under the Prior Lease, acquiring the leasehold interest in the Premises on or around August 6, 2014, along with the Santa Fe Parcel, as evidenced by that certain Assignment to JPPF Waterfront Plaza, L.P., a Delaware limited partnership, by Assignment recorded August 06, 2014, as Instrument No. 2014-J923949-00 of Official Records, San Francisco County. As of the Commencement Date, Tenant is current in rent payments to Port and is a tenant-in-good-standing with the Port.

**G.** To incentivize new investment and reposition the Premises to attract new tenants in response to the San Francisco office market downturn arising from the COVID-19 pandemic, Port and Tenant find that it is their mutual interest to terminate the Prior Lease and enter into a new 57-year Lease on terms that will allow Tenant to recapitalize its Leasehold Estate and invest in needed improvements, including common areas upgrades and amenities, building and sustainability systems and tenant improvements.

**H.** On [\_\_\_\_], 2024 by Resolution No. 24-XX, the Port Commission, among other things, (i) adopted Public Trust findings and environmental findings pursuant to the California Environmental Quality Act; (ii) approved the terms and conditions of this Lease; and (iii) directed the Port Executive Director to forward this Lease to the Board of Supervisors for approval and upon such approval from the Board of Supervisors, authorized the Port Executive Director to execute this Lease.

**I.** On [\_\_\_\_], 2024, by Resolution No. XX-24, the Board of Supervisors approved the terms of this Lease and authorized the Port Executive Director or her designee to execute this Lease.

**J.** All conditions to Tenant delivery of the Premises have been satisfied or waived and the Parties now wish to enter into this Lease upon all of the terms and conditions set forth herein.

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

## **2. PREMISES**

**2.1. Demise.** In consideration of the Rent payable by Tenant to Port and subject to all other terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises described in the Basic Lease Information for the Permitted Uses.

## **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 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 advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in **Article 7** (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 Disabled Access Laws. In addition to any other requirements of this Lease, Tenant shall notify Port if it is making any Improvements to the Premises that might impact accessibility standards required under Disabled Access Laws.

**2.4. Reservation of Rights.** Without limiting Tenant’s responsibilities under this Lease, Port reserves, and Tenant leases and accepts the Premises subject to Port’s right of access to the Premises to the extent required to access the Flagpoles, if any, located thereon for the placement, replacement, and adjustment of flags, in accordance with **Section 8.6** (Flags), or at the Port’s sole expense, to install, maintain, repair, and replace any Port or City Satellite Dish, in accordance with **Section 12.3** (Port Satellite Dish). Port will use commercially reasonable effort to ensure that any interruptions or disturbance to Tenant or its Subtenants for such access purposes will be temporary only and will not unreasonably interfere with or disturb Tenant’s or any of its Subtenant’s use of the Premises, but Tenant’s use of the Premises may be subject to temporary interruption in cases of emergency. Port’s access to the Premises under this subsection will be subject to the reasonable security procedures adopted by Tenant.

**2.5. Permitted Title Exceptions.** The interests granted by Port to Tenant pursuant to **Section 2.1**, are subject to (i) the matters reflected in **Exhibit D<sup>2</sup>** (the “Permitted Title Exceptions”), (ii) the rights of Port and the public reserved under the terms of this Lease, and (iii) other matters as Tenant (or any of its Affiliates) will cause or suffer to arise subject to the terms and conditions of this Lease.

**2.6. Subsurface Mineral Rights.** Tenant and Port hereby acknowledge that the State, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended (the “**Burton Act**”) has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas

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<sup>2</sup> Title company to prepare a proforma title policy that will serve as the basis for this exhibit.

deposits so long as such right will not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements. Consistent with the requirements of Section 2 of the Burton Act, the State's exercise of its mineral rights with respect to the Premises must not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements. In furtherance thereof, the Basic Lease Information identifies the single point of entry outside of the Premises from which the State may exercise its mineral right with respect to the Premises. Without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by **Article 13** (Damage and Destruction). In no event shall Port be liable to Tenant for any Losses arising from the State's exercise of its rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability), 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.

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

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

**2.9. Resilience Project; Nearby Projects and Events.** Tenant acknowledges that during the Term, projects involving development, removal, or renovation by public and/or private parties, or 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) including, but not limited to the Resilience Project described in the Basic Lease Information are scheduled to be or may be or occur on or in the vicinity of the Premises. Tenant is aware that the Resilience Project and other construction projects of Port tenants, licensees, or occupants within or in the vicinity of the Premises and the activities associated with such construction and events held in the vicinity of the Premises and the activities associated with those events, may generate adverse impacts on access to the Premises, construction of Improvements, use and/or operation of the Premises, or may result in inconvenience to or disturbance of Tenant its Agents and Invitees. Impacts may include, but not be 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 (collectively, "**Construction Impacts**"). Tenant waives any and all Losses against the Indemnified Parties arising out of any adverse impacts, inconvenience or disturbance to Tenant, its Agents, or Invitees arising out of such Construction Impacts.

**2.10. 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 that may be erected on lands near or adjacent to the Premises or by any vessels berthed near the Premises shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Rent or affect this Lease in any way or Tenant's obligations under this Lease. **Unique Nature of Premises.** Tenant acknowledges that: (a) the Premises is located near the waterfront, which waterfront includes structures that are supported by partially-submerged substructures in a marine environment, which were originally built approximately 100 years ago and 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; (b) 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; and (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise.

## **2.12. As-Is Condition.**

(a) Tenant acknowledges and agrees that Tenant has been in possession of the Premises under the Prior Lease for many years prior to the Commencement Date, and represents and warrants that Tenant is familiar with the Premises, the Premises is being leased and accepted in its "as-is with all faults" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing its condition, use, occupancy, and possession and that it has been afforded a full opportunity to inspect Port's records relating to conditions of the Premises, including the disclosures regarding the Seawall in this Lease including The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016 and information on the Port's website; the Federal Emergency Management Act ("FEMA") disclosure notice attached as *Schedule 1* and a copy of the report(s), if any, relating to the Premises, as further described in *Schedule 2* attached hereto (collectively, the "Existing Site Reports"). Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Tenant is not relying on any such information. All information contained in such records is subject to the disclaimer set forth in *Section 2.12(b)* (Disclaimer of Representations and Warranties). Tenant represents and warrants to Port that Tenant has had the opportunity and ability to perform thorough inspections and investigations of the Premises, either independently or through its own experts including (i) the quality, nature, adequacy, and physical condition of the Premises including the structure, foundation, and all other physical and functional aspects of the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Premises, including the soil and any groundwater (including Hazardous Materials Conditions (including the presence of asbestos or lead) with regard to the structures, soils and any groundwater); (iii) the suitability of the Premises for the Improvements and Tenant's planned use of the Premises; (iv) the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction on the Premises; and (v) all other matters of material significance affecting the Premises and its development and operation under this Lease.

(b) Disclaimer of Representations and Warranties. Tenant specifically acknowledges and agrees that neither the City, including its Port, nor any of the other Indemnified Parties, has made, and disclaims any representation or warranty, express or implied, of any kind, with respect to the condition in, on, under, or pertaining to the Premises, the suitability or fitness of the Premises or appurtenances or for the development, use or operation of the Improvements, any compliance with Laws or applicable land use or zoning regulations, any matter affecting the use, value, occupancy or enjoyment of the Premises, or any other matter whatsoever pertaining to the Premises.

**2.13. Release.** As a material condition to Port's agreement to enter into this Lease, as part of Tenant's agreement to accept the Premises in its "as is with all faults" condition, and without limiting the provisions of *Section 18.4* (Waiver) hereof, Tenant, waives on behalf of itself and its successors and assigns any right to recover from, and forever release, acquit, and discharge, Port, the City, and their respective Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical, or environmental condition in, on, under, above, or about the Premises including 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 including soil and groundwater conditions and any Hazardous Materials in, on, under, above, or about the Premises, (ii) the

suitability of the Premises for development of the Improvements and Permitted Uses, (iii) any Laws applicable to the Premises, development of the Improvements, and the Permitted Uses, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, and (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging to the extent arising from the physical, geotechnical, or environmental condition in, on, under, above, or about the Premises, except, in each case, for intentionally harmful or negligent acts committed solely by the Indemnified Parties while in, upon or adjacent to, the Premises.

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 release in this Lease will remain effective. Tenant agrees that the release contemplated by this **Section 2.13** (Release) includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims pertaining to the subject matter of this release regarding the Premises, applicable Laws, and consequential, incidental, or punitive damages. Accordingly, Tenant waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the California Civil Code, which provides 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.

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*Tenant's Initials*

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.

#### **2.14. No Right to Encroach.**

(a) If Tenant (including, its Agents, Invitees, successors, and assigns) uses or occupies space outside the Premises that is owned by the Port 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 (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 **Article 18** (Indemnity and Exculpation), at Law or in equity), at Law or in equity.

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00), as increased below, upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey (if Port determines in its sole discretion that a survey is required) of the Encroachment Area. If 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), as increased below, for each additional Notice to Vacate 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 Encroachment Area, delivery of each Notice to Vacate, and the 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. Each of the charges in this Section shall increase by One Hundred dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter.

(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 **Article 18** (Indemnity and Exculpation) shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and Losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual Attorneys' Fees and Costs.

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

### **3. TERM OF LEASE**

**3.1. Term.** The term of this Lease ("Term") shall be for the period specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date.

**3.2. 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 later in effect, except as specifically provided in this Lease.

### **4. RENT.**

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in the Basic Lease Information and **Exhibit B** (Rent; Participation) attached hereto and incorporated herein by this reference.

## 5. USES

**5.1. Permitted Uses.** Tenant may use the Premises for the Permitted Uses specified in the Basic Lease Information and for no other use. Tenant will use and operate the Premises in accordance with this Lease and Laws. Tenant will not allow any changes or additions to the Permitted Uses, or changes in its use or operation of the Premises that would be inconsistent with this Lease or applicable Law.

**5.2. Prohibited Uses.** Tenant will not conduct or permit on the Premises any of the following activities (“**Prohibited Uses**”):

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

(b) Any activity or operational object which will materially overload or cause material damage to the Premises (other than which would be considered reasonable wear and tear or which is otherwise repaired by Tenant in accordance with the terms of this Lease);

(c) Unless previously approved by Port, use of the Premises for (i) raves, D.J. parties, or other public dances/events that use live or amplified music outside of normal business hours (i.e., on business days between 8 am and 5 pm); (ii) activities that are managed by an outside promoter; or (iii) charging a cover charge or requiring a donation to gain entry to the Premises; provided, however, if Port has not timely responded to a request for approval for an individual event or series of events within ten (10) business days following Tenant’s request, and without limiting any other requirements under this Lease applicable to the conduct of such events (including compliance with applicable Laws and issuance of necessary permits from the Port or the City, each in their regulatory capacity), the use of the Premises for the applicable event or series of events shall be deemed approved;

(d) Any activity, or the maintaining of any object, that would restrict use of the public access areas, sidewalks, or open space areas adjacent to the Premises, or would unreasonably interfere or impede the use of such areas by the public, Port, or other Port tenants, licensees, or other users;

(e) Any activity that constitutes waste or legal nuisance (which may include the preparation, manufacture, or mixing of anything that emits any materially objectionable odors, noises, or lights onto adjacent properties);

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

(g) Any auction that is related to a distress, fire, bankruptcy, or going out of business sale on the Premises;

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

(i) Any vehicle maintenance, including fueling, changing oil, transmission, or other automotive fluids; provided, however, the foregoing prohibition does not apply to charging stations for electric vehicles and equipment that have been constructed and are used in compliance with applicable Laws;

(j) The storage of any excavated materials, including dirt, concrete, sand, asphalt, and pipes (unless such use is reasonably required on a temporary basis to allow for Subsequent Construction, or the repair or maintenance of the Improvements); and

(k) The storage of any aggregate material, or bulk storage, such as wood or of other loose materials (unless such use is reasonably required on a temporary basis to allow for Subsequent Construction, or the repair or maintenance of the Improvements).

**5.3. Notice of Prohibited Use Charge.** If Port determines after inspection of the Premises that Prohibited Uses are occurring on the Premises, then Tenant will immediately cease the Prohibited Use and will 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**”). If Port determines in subsequent inspection(s) of the Premises that Tenant has not ceased the Prohibited Use, then Tenant will 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. By signing this Lease, each Party agrees 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 will 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. Each of the charges in this Section will increase by One Hundred Dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter.

**5.4. No Encumbrance of Port’s Reversionary Interest.** Tenant may not enter into agreements granting licenses, easements, or access rights over the Premises if the same would be binding on Port’s reversionary interest in the Premises, or under which any party thereto would seek or obtain changes in applicable land use Laws or conditional use authorizations or other permits for any uses not provided for in this Lease, in each instance without Port’s prior written consent, which consent may be withheld in Port’s sole discretion. The Parties recognize that for Tenant to carry out the Permitted Uses, it may be necessary or desirable to obtain additional use, zoning, regulatory, or land use approvals or conditional use authorization. Port agrees, from time to time, to reasonably cooperate with Tenant, at no out of pocket cost to Port, in pursuing such regulatory approvals or authorizations, including, but not limited to, executing documents, applications, or petitions relating thereto, subject to the limitations of **Section 7.2**.

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

**5.6. Signs.** Tenant will have the right, and will have the right to grant Subtenants the right, to place, construct, or maintain any Sign on the exterior of the Premises without Port’s consent in its proprietary capacity; provided, however, that all Signs must comply with all Laws (including compliance with the Port’s Building Code), Port’s then-current Sign guidelines (for Signs on the exterior of the Premises) and all applicable building permit requirements. From time to time, Port may change the Sign guidelines, provided, however, any changes to the Sign



guidelines will not apply to any Signs pre-existing the Commencement Date hereof or any Signs installed by Tenant or a Subtenant pursuant to this **Section 5.6** (or to any replacement Signs that are located generally in the same location and are of the same general size (or smaller) and placement). The design, fabrication, installation, maintenance, repair, replacement, and removal of all Signs installed on and off the Premises, will be at Tenant's sole cost and expense. Tenant will promptly remove Signs that are not in compliance with this **Section 5.6** and at the expiration or earlier termination of this Lease. The Port hereby acknowledges and approves (in its proprietary capacity) the Signs set forth on **Schedule 5.6** attached hereto which are currently installed on the Premises, or any replacement Signs that are located generally in the same location and are of the same general size (or smaller) and placement.

## **6. TAXES AND ASSESSMENTS**

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

(a) Payment of Taxes. During the Term, Tenant agrees to pay, when due, to the proper authority any and all Impositions, including, but not limited to, 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 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 (excluding the personal property of any Subtenant whose interest is separately assessed), whether in effect at the time this Lease is entered into or that are later effective, 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 Estate may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control, and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant will not permit any Impositions to become a defaulted lien on the Premises or the Improvements; provided, however, that if any Imposition 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 Imposition as provided in **Section 6.3** (Contests) so long as such assessment or charge does not become a defaulted lien. Without limiting **Article 18** (Indemnity and Exculpation), Tenant will Indemnify Port, City, and their Agents from and against all Losses resulting from any dispute regarding, or any failure to pay, any Imposition.

(b) Possessory Interest Tax. Without limiting the foregoing subsection (a), 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 the possessory 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 may result in a revaluation of any possessory interest created under this Lease.

San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor code or statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

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

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

**6.2. Port's Right to Pay.** Unless Tenant is exercising its right to contest in accordance with the provisions of this **Article 6**, if Tenant fails to pay and discharge any Imposition (including fines, penalties and interest) before delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same; provided that before paying any delinquent Imposition, Port will give Tenant written notice specifying a date that Port intends to pay such Imposition, which must be at least ten (10) days after the date the notice is given. If Tenant fails, on or before the Port's intended payment date specified in the notice, either to pay the delinquent Imposition or to notify Port that it is contesting the Imposition as provided in **Section 6.3** (Contests). If Tenant fails to either pay the delinquent Imposition or notify the Port that Tenant is contesting the Imposition by the Port's intended payment date, then Port may pay such Imposition, and the amount paid by Port (including any interest and penalties paid by Port), together with interest at the Default Rate computed from the date Port makes the payment, will be payable by Tenant as Additional Rent.

**6.3. Contests.** Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Imposition, mechanics' lien, or encumbrance (including any arising from work performed or materials provided to Tenant or any Subtenant to improve all or a portion of the Premises) by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, before commencement of such contest, Tenant notifies Port of such contest. Tenant must notify Port of the final determination of such contest within fifteen (15) days after such determination. Nothing in this Lease requires Tenant to pay any Imposition, mechanics' lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Imposition, mechanics' lien, or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition, mechanics' lien, or encumbrance to be forfeited to the entity levying such Imposition, mechanics' lien, or encumbrance as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant must comply with such condition as a condition to its right to contest. Tenant is responsible for the payment of any interest, penalties, or other charges that may accrue as a result of any contest, and Tenant must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant is not required to pay any Imposition, mechanics' lien, or encumbrance being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Except as provided in the preceding sentence, Port will not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. Without limiting **Article 18** (Indemnity and Exculpation), Tenant will Indemnify the Indemnified Parties for all Losses resulting from Tenant's contest of any Imposition, mechanics' lien, or encumbrance.

**6.4. Infrastructure Financing Districts.** Tenant acknowledges that, from time to time, Port may seek inclusion of the Premises within an existing or new Infrastructure Financing Districts. Upon request by Port, Tenant shall reasonably cooperate with Port to the extent legally

required for the Premises to be included within the applicable Infrastructure Financing District, including executing and delivering customary covenants and acknowledgements associated therewith so long as such covenants and acknowledgements would not impose additional costs on Tenant or materially and adversely affect Tenant's property rights hereunder, including its rights to contest Imposition under **Section 6.3** hereof.

## **7. COMPLIANCE WITH LAWS**

### **7.1. *Compliance with Laws and Other Requirements.***

(a) **Tenant's Obligation to Comply.** During the Term, Tenant will comply with, at no cost to Port, (i) all Laws, (ii) all requirements of all policies of insurance that may be applicable to the Premises, the Improvements, or Tenant's personal property; and (iii) any conditions or requirements resulting from review under the California Environmental Quality Act. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such Permitted Uses, nor do such Permitted Uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Tenant's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws relating to or affecting the Premises including Disabled Access Laws.

(b) **Unforeseen Requirements.** The Parties acknowledge and agree that Tenant's obligation to comply with all Laws and the other requirements set forth in **Section 7.1(a)** is a material part of the bargained-for consideration under this Lease. Performance of such Tenant obligation may necessitate the undertaking of substantial improvements (including any barrier removal work or other work required to all or any portion of the Premises under Disabled Access Laws as a result of Tenant's specific use of the Premises, the Improvements, or any Subsequent Construction performed by or on behalf of Tenant), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law or the other requirements set forth in **Section 7.1(a)** involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any Law or the other requirements set forth in **Section 7.1(a)**, however extraordinary, relieves Tenant of its obligations under this Lease, nor gives Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port. Tenant waives any rights now or later conferred upon it by any Law to terminate this Lease, to receive any abatement, diminution, reduction, or suspension of payment of Rent, or to compel Port to make any repairs to comply with any Laws, on account of any such occurrence or situation.

### **7.2. *Regulatory Approvals.***

(a) **Port Acting as Owner of Property.** Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises (subject to the Public Trust) and not as a Regulatory Agency with certain police powers. Tenant agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of any contemplated Improvements can be obtained. Tenant agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the

Regulatory Approvals required for the approval or development of the any Improvements will be issued by the appropriate Regulatory Agency, and Tenant understands and agrees that neither entry by Port into this Lease nor any approvals given by Port under this Lease will be deemed to imply that Tenant will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Premises, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits Tenant's obligation, at Tenant's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over any Improvements. By entering into this Lease, Port is in no way modifying or limiting Tenant's obligations to cause the Premises to be developed, Restored, used, and occupied in accordance with all Laws. Without limiting the foregoing, Tenant understands and agrees that Port staff have no obligation to advocate, promote, or lobby any Regulatory Agency and/or any local, regional, state, or federal official for any Regulatory Approval, for approval of any Improvements or other matters related to this Lease, and any such advocacy, promotion or lobbying will be done by Tenant at Tenant's sole cost and expense. Tenant hereby waives any claims against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City, or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of any Improvements.

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

Port will cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approvals. However, Tenant will not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval if: (1) Port is required to be a co-permittee under such permit and such conditions and/or restrictions could create any obligations on the part of Port off-Premises or which could otherwise encumber, restrict, or change the use of Port property, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions; or (2) Port is required to be a co-permittee under such permit and the conditions or restrictions could create any obligations on the part of Port on-Premises, or could otherwise encumber, restrict, or change the use of the Premises, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions. Port will provide Tenant with its approval or disapproval thereof in writing to Tenant within thirty (30) business days after receipt of Tenant's written request, or if Port's Executive Director determines that Port Commission or Board action is necessary, at the first Port Commission and subsequent Board hearings after receipt of Tenant's written request subject to notice requirements and reasonable staff preparation time, accounting for any recess or cancellation of Board or Port Commission meetings. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above.

Tenant will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any

development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-Premises or require off-Premises improvements, removal, or other measures. Tenant has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Tenant will pay or discharge any fines, penalties, or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Tenant's obligation to pay all the costs of complying with any conditions or restrictions.

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

## **8. TENANT'S MANAGEMENT AND OPERATING COVENANTS**

**8.1. *Operating Standards/Covenants.*** Tenant will maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco and in accordance with this Lease. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will provide (or require others to provide), services as necessary and appropriate for the use of the Improvements, including (a) repair and maintenance of the Improvements, as more fully described in **Article 9** (Repair and Maintenance; Facilities Condition Report; Capital Reserves) ; (b) utility and telecommunications (including internet/Wi-Fi) services; (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal; (d) landscaping and grounds keeping in outdoor areas within the Premises; (e) security services for the Premises; and (f) maintenance of any public access areas within the Premises.

**8.2. *Continuous Operations.*** Tenant will use commercially reasonable efforts to ensure that all of the Premises are used continuously throughout the Term, provided, however, that it shall not be a violation of this **Section 8.2** if Tenant fails to continuously use of all or any portion of the Premises on a temporary basis to the extent determined necessary by Tenant to (i) maintain, repair and operate the Premises in accordance with the requirements of this Lease; or (ii) undertake or install Subsequent Construction; nor shall it be a violation of this **Section 8.2** to the extent that continuous operations cease due to (i) Casualty or other Force Majeure event; or (ii) subject to Tenant's obligations set forth in **Section 8.3** (Leasing of Premises) hereof, periodic vacancies or cessation of operations due to unfavorable commercial rental market conditions from time to time.

**8.3. *Leasing of Premises.*** Tenant will use reasonable efforts to keep as much of the space in the Improvements leased, taking into account marketplace conditions and applying in the exercise of such efforts, the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

**8.4. *Reporting of Leasing Activity.*** Tenant will deliver to Port within sixty (60) days following the end of each calendar year, a leasing activity report on the status of leasing the Premises for the immediately prior calendar year (the "**Leasing Activity Report**") and maintain accurate records as to space leased, optioned, and available to lease. Each Leasing Activity Report will be certified by an officer of Tenant that it is a true and correct copy.

**8.5. Restaurant/Retail Businesses Open to the General Public.** Any restaurant and/or retail operation (other than trade-only showrooms) on the Premises must be open to the general public and operated in a manner consistent with *Article 5* and *Section 8.1* ; provided, however, the foregoing does not prohibit amenities available only to employees of Tenant or any Subtenant (e.g., an employee cafeteria) or facilities for the exclusive use of membership organizations that are open to the general public (e.g., a membership-based gym).

**8.6. Flags.** Throughout the Term, a Port flag will fly on each flagpole within the Premises, if any (“**Flagpoles**”). Port will provide the Port flags to Tenant and will replace worn Port flags. Tenant will promptly, at no charge, install, raise, lower, and remove Port flags at Port’s request. The dimensions of Port flags will be similar to the dimensions of Port flags flown on the roofs of Port buildings. Tenant also may use the Flagpoles to fly other flags on each Flagpole, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag and Port must first reasonably approve the dimensions, color, text, design, and materials for each flag. If Port determines that Tenant’s response to Port’s request to raise or lower Port flags is inadequate, then at Port’s election, Port may exercise its rights to access the Flagpoles as further described in *Section 2.4*.

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

## **9. REPAIR AND MAINTENANCE; IMPROVEMENTS; FACILITIES CONDITION REPORT; CAPITAL RESERVES**

**9.1. Covenants to Repair and Maintain the Premises.** Throughout the Term, Tenant will maintain and repair, at no cost to Port, the Premises and all Improvements in accordance with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco (less reasonable wear and tear), and in compliance with all applicable Laws and the requirements of this Lease. Tenant will with reasonable promptness make (or cause others to make) all necessary or appropriate repairs, renewals, and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. For purposes of this Lease, the term “**reasonable wear and tear**” will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant’s failure to comply with the terms and conditions of this Lease.

**9.2. Removal of Non-Permitted Improvements.** To the extent any Subsequent Construction constructed by Tenant do not comply with applicable Law or are otherwise installed in violation of the requirements of this Lease, then, in addition to any other remedy

available to Port, Port, upon prior written notice to Tenant, may require Tenant to remove, at Tenant's expense, any or all such Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned by the removal. Tenant will 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 this **Section 9.2** will survive the expiration or earlier termination of this Lease.

### **9.3. Facilities Condition Report; Capital Reserves.**

#### **(a) Facilities Condition Report.**

**(i) Preparation.** No less than ninety (90) days before the tenth (10th) Anniversary Date hereof and each ten-year Anniversary date thereafter during the Term, Tenant will deliver to Port for Port's approval a facilities condition report (the "**Facilities Condition Report**") prepared by a qualified team of construction professionals chosen by Tenant including a structural and mechanical engineer each with at least ten (10) years of experience in constructing, renovating and/or evaluating major commercial buildings in California. The Facilities Condition Report will describe at a minimum the condition and integrity of the Premises, the foundation and structural integrity of each of the Buildings, and all Material Systems serving each of the Buildings and other Improvements within the Premises, a list of repair needs and estimated timeframe and an estimated cost to address them. To the extent the Facilities Condition Report identifies any deficiencies in Tenant's obligations pursuant to **Section 9.1** (Covenants to Repair and Maintain the Premises), Tenant will perform the repairs recommended in the Facilities Condition Report when and as needed to resolve such deficiencies. Additionally, if a Facilities Condition Report is prepared by Tenant or another party in connection with any Transfer or Refinancing, then Tenant will provide or cause the other party to provide, a copy of such Facilities Condition Report to Port.

**(ii) Failure to Revise or Submit Report.** If Port reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the Premises as required or the timing and estimated cost for the required repairs, then Port will notify Tenant of such deficiency within forty-five (45) days following receipt of the deficient Facilities Condition Report and Tenant will cause the Facilities Condition Report to be revised to address Port's concerns within sixty (60) days following receipt of Port's deficiency notice. If Tenant fails to provide a Facilities Condition Report or a revised Facilities Condition Report to Port within such period of time, in addition to all other remedies provided by this Lease or by Law, Port will have the right, but not the obligation, to cause the preparation of a Facilities Condition Report by a team of construction professionals of Port's choice including a structural and mechanical engineer each with at least ten (10) years of experience in constructing, renovating and/or evaluating major commercial buildings in California, at Tenant's sole cost. To the extent the Port-prepared Facilities Condition Report identifies any deficiencies in Tenant's obligations pursuant to **Section 9.1** (Covenants to Repair and Maintain the Premises), Tenant will perform the repairs recommended in the Port-prepared Facilities Condition Report as and when needed to resolve such deficiencies.

#### **(b) Capital Reserve Account.**

**(i) Mortgagee Reserve Requirements.** Tenant will establish and maintain a Capital Reserve Account and make Capital Reserve Deposits to the extent and on the terms and conditions required by Tenant's Mortgagee to pay for replacements, repairs, and improvements of Capital Items within the Premises. Notwithstanding the foregoing, if Tenant's Mortgagee does not require the establishment of such capital reserves, then Tenant will establish

and maintain a Capital Reserve Account and make Capital Reserve Deposits pursuant to **Section 9.3(b)(i)**.

(ii) **No Mortgagee Reserve Requirements.** If Tenant's Mortgagee does not require Capital Reserve Deposits into a Capital Reserve Account for Capital Items, Tenant will establish and maintain commercially reasonable Capital Reserve Deposits as may be required for the repair of Capital Items from time to time consistent with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

**9.4. No Obligation of Port; Waiver of Rights.** Tenant is solely responsible for the condition, operation, repair, maintenance, and management of the Premises, including all Improvements. Port will not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any Law that would permit Tenant to make repairs or replacements at Port's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at Port's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

**9.5. Port's Right to Repair.**

(a) **Repair Right.** If Tenant fails to maintain and repair the foundation, the structural integrity of the Improvements, the roofs, and building systems necessary for the operation of the Improvements (including water, sewer, heating, ventilation and air conditioning; security; data and telecommunications; and mechanical, electrical and other utility systems) (collectively, "**Material Systems**") within the Premises in accordance with this Lease and such failure is likely to cause imminent physical harm to any Person or constitutes a violation of applicable Law, in either case as determined by either (a) a qualified team of construction professionals, including a structural and mechanical engineer, each with at least ten (10) years of experience in constructing, renovating and/or evaluating major commercial buildings in California or (b) any Regulatory Agency with applicable expertise, then Port may repair the same at Tenant's cost and expense and Tenant will reimburse Port as provided in this section. Except in the event of an emergency, Port will first provide no less than forty-five (45) days' prior notice to Tenant before commencing any maintenance or repair under this **Section 9.5 ("Repair Notice")**. If Tenant does not commence maintenance or repair of the Material Systems or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the Material Systems within such forty-five (45) day period or such longer period of time as is necessary to address such maintenance or repair provided Tenant is diligently prosecuting a cure of the same, then Port may proceed to take the required action. If Port elects to proceed with such repair or maintenance, (x) if Port has sufficient funds to complete the repair or maintenance, then promptly following completion of any work taken by Port pursuant to this **Section 9.5**, Port will deliver a reasonably detailed invoice of the work completed, the materials used and the costs relating thereto, or (y) if Port does not have sufficient funds to complete the repair or maintenance, then Port will provide Tenant with an estimate of the cost of the repair or maintenance and Tenant will pay Port the estimated cost within fifteen (15) days of Port's delivery of such estimate. Tenant also will pay to Port an administrative fee equal to ten percent (10%) of the total "hard costs" of the work. "**Hard costs**" include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. If Port proceeds pursuant to clause (x) above, Tenant will pay to Port the amount set forth in the invoice as Additional Rent within thirty (30) days after delivery of Port's invoice. If Port proceeds pursuant to clause (y) above, after completion of the repair or maintenance work, Port will provide a reasonably detailed invoice of the work completed, the materials used and the costs



relating thereto and either (i) Tenant will pay to Port any invoiced amount above the estimated amount paid by Tenant pursuant to clause (y) within thirty (30) days after delivery of Port's invoice or (ii) Port will refund to Tenant any estimated amount paid by Tenant pursuant to clause (y) in excess of the invoiced amount within thirty (30) days after delivery of Port's invoice.

**(b) Failure to Maintain.** If Port notifies Tenant of a failure to maintain and repair the Premises ("**Maintenance Notice**"), then Tenant will pay to Port, as Additional Rent, Three Hundred Fifty Dollars (\$350) upon delivery of the Maintenance Notice. If Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this **Article 9**, then Tenant will pay to Port, as Additional Rent, Four Hundred Fifty Dollars (\$450) for each additional Maintenance Notice 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 that Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with a Maintenance Notice and Port's right to impose the foregoing charges is in addition to and not in lieu of any other rights and remedies of Port under this Lease, at Law, or in equity. The amounts set forth in this **Section 9.5(b)** are due within five (5) days following delivery of the applicable Maintenance Notice. Each of the charges in this Section will increase by One Hundred dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter.

## **10. SUBSEQUENT CONSTRUCTION**

**10.1. Title to Improvements.** During the Term, Tenant will own all of the Improvements and all appurtenant fixtures, machinery, and equipment installed in this Premises (except for trade fixtures, and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures, Tenant's Personal Property and personal property of Subtenants), will vest in Port without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants have the right at any time during the Term to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant will promptly cause the repair of such damage at no cost to Port.

**10.2. Approval of Subsequent Construction.** Tenant has the right during the Term to construct and install Subsequent Construction, subject to the following conditions.

**(a)** Tenant must obtain all Regulatory Approvals and all permits required by applicable Law, including, without limitation, any approvals from the City's Planning Department or Planning Commission to the extent required under the City's Planning Code, including approvals or amendments required under the CUA as necessary to authorize such Subsequent Construction. Without limiting the foregoing, if installation or construction of any Subsequent Construction or a proposed change of use would require an amendment to the existing CUA to be approved by the Planning Department or Planning Commission in accordance with its terms, Tenant shall first submit the proposed CUA amendment application in the form required by the Planning Department to the Port for review and approval (in its proprietary capacity) prior to submitting its application to the Planning Department. Port's approval shall not be unreasonably withheld, conditioned or delayed, and furthermore, Port shall not withhold its consent for an CUA amendment application if it reasonably determines that (i) the amendment is consistent with the Burton Act, the Port's Waterfront Land Use Plan, including the Waterfront Design & Access element, (ii) the amendments described in the proposed application are reasonably designed to maximize economic use of the property, attract subtenants and/or improve the public access, landscaping and open space components of the Premises; (iii) the proposed amendment(s) would not result in construction of additional

buildings or structures or increase or decrease the bulk or height of the exterior envelope of any of the buildings beyond the bulk or height existing as of the Commencement Date if such changes would require an amendment to the CUA so long as such changes would not adversely affect (other than temporarily during the period of such work), the public's access to, or the use or appearance of the public access areas or materially reduce the existing footprint of the public access areas as of the Commencement Date or adversely impact the benefits to the public trust provided by this Lease, (iv) any Subsequent Construction to the public access areas would not adversely affect (other than temporarily during the period of such work) the public's access to, or the use or appearance of the public access areas, and (v) the proposed amendment(s) would not apply to any other Port-owned property other than the Premises nor create any obligations on the part of Port. Port shall respond to a request for approval hereunder within ten (10) business days after submittal, with any disapproval accompanied by a reasonably detailed explanation of the reasons for disapproval.

(b) All Subsequent Construction shall be constructed in compliance with the Port Building Code, and Tenant acknowledges and agrees that Tenant may be required pursuant to the Port Building Code to obtain a building permit from Port, in its regulatory capacity. Tenant acknowledges that design review of the proposed Subsequent Construction by WDAC or another Port advisory body may be required by applicable Law.

(c) Without limiting the foregoing, Tenant acknowledges that the Premises are located within Waterfront Special Use District No. 3 (Planning Code Section 240.3) that would (a) subject any new development on the Premises (excluding alterations to existing development) to review of the urban design of the proposed use by the waterfront design review process, as provided under Section 240(c) of the Planning Code, which may include review by the WDAC; and (b) require Planning Commission consideration of certain criteria with respect to development on property under the jurisdiction of the Port Commission on which a specific use or uses require a conditional use, including a finding that "such use or feature as proposed is consistent with the Waterfront Plan and the design of the use is consistent with Waterfront Plan urban design, historic preservation, and public access goals, policies, and objectives, adopted by the Port Commission..." (Planning Code Section 240.3(e)). For the avoidance of doubt, Tenant agrees that any Subsequent Construction that include the construction of additional buildings or other additional structures on the Premises falls within the meaning of new development for purposes of Waterfront Special Use District No. 3. Tenant also acknowledges that other material changes to building bulk, height, use, landscaping and open space, architectural appearance and scale, may require subsequent review and approval by the Planning Department or Planning Commission which approval may be subject to Planning Code Section 240.3.

(d) Without limiting anything else in this *Article 10* (Subsequent Construction) except as otherwise provided in *Section 10.2(a)* above, Port's approval, in its proprietary capacity, will not be required for the installation or alteration of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing does not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from Port, in its regulatory capacity and to obtain any signed asbestos notification acknowledgement form from Tenant's employees, contractors, or Subtenants.

### **10.3. Construction.**

(a) Commencement of Construction. Tenant will not commence any Subsequent Construction until Tenant has (i) complied with all applicable requirements of *Section 10.2* hereof; and (ii) obtained and paid for all Regulatory Approvals necessary to commence Construction in accordance with *Article 7*.

(b) Construction Standards. All Subsequent Construction will be performed by duly licensed and bonded contractors or mechanics and will be accomplished diligently to completion and in accordance with good construction and engineering practices and applicable Laws. Tenant must make adequate provision for the safety of all persons affected by the Construction, and Tenant will undertake commercially reasonable measures in accordance with good construction practices to: (i) minimize damage, disruption, or inconvenience caused by the Construction (including to areas adjoining portions of Improvements and the surrounding property), (ii) minimize the risk of injury or damage to the Premises and the surrounding property, or the risk of injury or death to members of the public and (iii) make adequate provision for the safety of all Persons affected by any Subsequent Construction. Dust, noise and other effects of such work will be controlled in accordance with any applicable dust control ordinance and other effects of the Construction must be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas.

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

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

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

(f) Construction Fencing and Barriers. Tenant will provide appropriate construction fencing and barriers on-site during the period of Construction, to the extent required by applicable Laws, including building and/or health and safety codes. Tenant will obtain a building permit from Port before the placement of any construction fencing and/or barrier.

(g) Construction Signs. Subject to Port's approval under **Section 5.6**, Tenant will provide appropriate construction Signs and post the Signs on-site during the period of Construction.

#### **10.4. *Record Drawings.***

(a) Record Drawings. With respect to any Subsequent Construction requiring a building permit, Tenant will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to such Subsequent Construction within ninety (90) days following completion of the applicable Subsequent Construction. Record Drawings must in the form of full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated final construction documents in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "**Record Drawings**" means drawings, plans and surveys showing the Subsequent Construction as built on the Premises and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Tenant fails to provide such Record Drawings to Port within the time period specified above, and such failure continues for an additional ninety (90) days following written request from Port, Port may cause an

architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the cost of preparing such Record Drawings must be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section will limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity.

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

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

(d) Changes in Technology. Port reserves the right to revise the format of the required submittals set forth in this **Section 10.4** as technology changes and new engineering/architectural software is developed.

(e) Building Permit Sets. To the extent that Tenant submits Record Drawings for Subsequent Construction to the Port's Building Department in furtherance of its performance under a Port-issued building permit and those Record Drawings materially comply with the requirements of this **Section 10.4**, Tenant shall be deemed to have satisfied the requirements of this **Section 10.4**.

## **11. UTILITIES**

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

Tenant will pay or cause to be paid when due, all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance, repair, replacement, and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or

omission of City in its capacity as a provider of public utility services, will abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent to preserve its rights under this Lease that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing will not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

**11.2. Photovoltaic Panels.** Tenant will have the right but not the obligation to install or cause to be installed on the roof(s) of Buildings a photovoltaic energy generation facility for the generation and delivery of electrical energy to the Premises and if excess energy is available, potentially to other sites (the "PV System"). Before commencing installation of a PV System, Tenant must obtain Port's consent and all required permits and Regulatory Approvals for the PV System, which may include, among other things, requirements to strengthen the roof of the applicable Building(s). The design, construction and installation of any PV System will be done in accordance with *Article 10*.

**11.3. 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.

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

## **12. ROOFTOP EQUIPMENT**

**12.1. Telecommunications Equipment and Satellite Dish.** Subject to compliance with applicable Laws (including compliance with the Port Building Code) and obtaining a Port building permit for such Satellite Dish, Tenant will have the right to install Satellite Dish(es) on the Premises without the prior written approval of Port in its proprietary capacity. The Parties will cooperate in connection with the location of any Satellite Dish installed pursuant to this *Section 12.1* and the location of any Satellite Dish installed by Port or City pursuant to *Section 12.3* so as to minimize interference with the systems serviced by such Satellite Dish.

**12.2. Other Rooftop Equipment.** Except as set forth in *Section 12.1* and *Section 11.2*, from and after the Commencement Date, prior to installing any equipment on the roof of any of the Buildings within the Premises, Tenant must first obtain a Port building permit and all required Regulatory Approvals. In connection with its application for a Port building permit, Tenant will provide to Port the size, location, dimensions, design, color, text (if any), screening, materials, reflectivity, and method of installation of the rooftop equipment to enable Port to evaluate the proposed rooftop equipment.

**12.3. Port Satellite Dish.** Tenant agrees, at the request of Port, to permit Port or City to install, at Port's or City's sole cost, Satellite Dish(es) reasonably required for Port's or City's

operations, including facilities for City's emergency or 700-MHz and 800-MHz City-wide radio system communications facilities (or its successor), on the roof of any of buildings, provided that Port (i) complies with all Laws, (ii) obtains all required Regulatory Approvals, and (iii) obtains Tenant's prior approval with respect to the size, location, dimensions, color, text (if any), screening, reflectivity, and method of installation of the Satellite Dish. If the Port's installation of any Satellite Dish requires the relocation of any photo-voltaic panels or any other Satellite Dish previously installed on the roof of the Premises, the relocation will be at Port's sole cost and expense, and Port will promptly repair, at its sole cost, any damage to the Premises or the photo-voltaic panels. The Port shall not unduly interfere with any such photo-voltaic panels or other Satellite Dish previously installed on the roof, nor shall Port's activities be performed in such manner that would cause Tenant's photo-voltaic panels to no longer comply with applicable Laws. All aspects and phases of Port's installation, other equipment, wiring, conduit, roof mount and base, will at all times be subject to supervision and approval by Tenant, not to be unreasonably withheld, conditioned or delayed, and shall at all times comply with applicable Laws (including any Laws relating to existing photo-voltaic panels). All approval and supervision rights of Tenant are intended solely to protect Tenant's interests. Port will be responsible for procuring, before any installation, and maintaining in force at all times thereafter, any and all Regulatory Approvals as may be required for the lawful installation, use and operation of Port's or City's system. In accordance with **Section 2.4** (Reservation of Rights), Port will be permitted access to the areas on the roof where any such installation is made, as necessary for the installation, repair, maintenance, and replacement thereof. Port's or City's, as applicable, access to the roofs will not unreasonably interfere with or disturb Tenant's or Subtenants' use and enjoyment of the Premises, will be subject to the reasonable building security procedures adopted by Tenant, and will require prior written consent for access occurring during regular business hours (except in cases of emergency). Port or City, as applicable, will promptly repair and restore any damage to persons or property caused as a result of Port's or City's, as applicable, access to and activities on the roof. Port or City, as applicable, will be solely responsible for all maintenance, utilities and other costs of operation of any such facility installed pursuant to the terms of this **Section 12.3**.

### **13. DAMAGE OR DESTRUCTION**

#### **13.1. General; Notice; Waiver.**

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "Casualty"), the rights and obligations of the Parties is as set forth in this **Article 13**.

(b) Notice. If there is any Casualty (i) that would materially impair use or operation of any material portion of the Improvements for their intended purpose for a period of thirty (30) days or longer, or (ii) the repair of which would exceed in an individual instance Five Hundred Thousand Dollars (\$500,000) or One Million Dollars (\$1,000,000) in the aggregate (which amount includes both hard and soft costs of a Restoration as Indexed annually), Tenant will promptly, but not more than ten (10) days after the occurrence of any such Casualty, give written notice thereof to Port describing with reasonable specificity, the nature and extent of the damage from such Casualty ("**Casualty Notice**").

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

**13.2. No Release of Tenant's Obligations.** Except as set forth in **Section 13.4**, no damage to or destruction of the Premises or any part thereof from any Casualty will permit

Tenant to surrender this Lease or relieve Tenant from any obligations, including the obligation to pay Rent. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant will pay to Port all Rent at the times and in the manner described in this Lease. If this Lease does not terminate pursuant to this **Article 13**, proceeds of rental interruption or business interruption insurance will be applied first to unpaid Rent due or coming due before completion of the Restoration and then to costs of Restoring the Premises with any remaining balance to be retained by Tenant. If this Lease terminates pursuant to this **Article 13**, proceeds of rental interruption or business interruption insurance will be applied first to unpaid Rent coming due before termination of this Lease and then such proceeds will be distributed pursuant to **Section 13.4(b)**.

**13.3. Tenant's Obligation to Restore.** Except in the event of an Uninsured Casualty or a Major Casualty for which Tenant elects to terminate this Lease under **Section 13.4**, if all or any portion of the Improvements are damaged or destroyed by Casualty, Tenant will promptly (allowing for securing necessary Regulatory Approvals), commence and diligently Restore the Improvements, subject to Force Majeure. Tenant's Restoration obligations hereunder shall require Tenant to Restore the Improvements to substantially the condition they were in immediately before such Casualty or at Tenant's election. All Restoration must be performed in accordance with the procedures set forth in **Article 10** relating to Subsequent Construction and must be at Tenant's sole expense. In connection with any Restoration, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified subject to Permitted Uses and Regulatory Approvals, provided that the Improvements as so redesigned are at least equivalent in quality, public safety, and durability to and in all other material respects consistent with the Improvements existing before the Casualty, and so long as similar public benefits (such as areas of publicly-accessible open space and circulation) continue to be provided and the rentable square footage or the anticipated Gross Rental Revenues to be generated by the new Improvements will not be materially reduced from the Improvements existing immediately prior to such Casualty. If insurance proceeds are available for such Restoration and Tenant is obligated to Restore or elects to Restore, then subject to the rights of Mortgagee, Tenant will have the right to negotiate an insurance settlement for claims in connection with such Restoration, provided however, that Tenant will use commercially reasonable efforts to ensure that such settlement does not materially interfere with or delay Tenant's obligation and ability to pay Rent to Port or otherwise meet its obligations under this Lease.

**13.4. Termination due to Major Casualty or Uninsured Casualty.**

(a) Tenant's Election to Terminate. If an event of Major Casualty occurs during the last ten (10) years of the Term or if an event of Uninsured Casualty occurs at any time during the Term (other than as set forth in **Section 13.4(c)**), then within ninety (90) days following Tenant's delivery to Port of the Casualty Notice, Tenant must notify Port of Tenant's election to: (1) commence and Complete Restoration of the Improvements, or (2) terminate this Lease (subject to **Section 13.4(b)**). All Restoration must be in accordance with the procedures set forth in **Article 10** relating to Subsequent Construction and will be at Tenant's sole expense, except as set forth in **Section 13.4(c)**.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate this Lease in accordance with **Section 13.4(a)**, Tenant will do all of the following:

(i) Unless otherwise requested by Port in its sole discretion, Tenant will, at its sole cost and expense, Demolish and Remove the Improvements prior to the effective termination date;

(ii) Unless the Improvements are to be Demolished and Removed as set forth in **Section 13.4(b)(i)**, Tenant will provide Port the estimated cost of Restoration, and, with respect to the Uninsured Casualty only, the amount by which the estimated cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in **Section 20.1(a)(ii)** exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required under this Lease);;

(iii) Cure all monetary Events of Defaults and any Events of Default or Unmatured Events of Default relating to the provisions of **Article 19** (Hazardous Materials);

(iv) Pay in full all utility charges and Impositions incurred up to and including the effective date of termination;

(v) Pay or cause to be paid the following amounts from all insurance proceeds arising from each Casualty promptly following receipt of such proceeds, in the order required by any senior Mortgage, and if none, in the following order of priority:

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

(2) Second, to Port, for all accrued and unpaid amounts owed to Port, if any, by Tenant (including, without duplication, any payment owed to Port by Tenant pursuant to **Sections 13.4(b)(v)**);

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

(4) Fourth, to Port and Tenant as follows: the balance of the insurance proceeds will be divided proportionately between Port and Tenant for the value of Port's reversionary interest in the Premises and Improvements (in their condition immediately prior to the Casualty event) as of the date the Term would have expired but for the Casualty event, and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term (in their condition immediately prior to the event of damage or destruction).

(vi) Pay to Port any Rent due and payable as of the proposed termination date (to the extent any Rent due and payable remains unpaid after application of insurance proceeds pursuant to **Section 13.4(b)(v)(2)**); and

(vii) Upon termination in accordance with this **Article 13** and without limiting the rights and obligations with respect to the disposition of the Santa Fe Parcel upon Lease termination as set forth in the Basic Lease Information, Tenant will deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements.

(c) Port's Election Upon Notice of Termination. Notwithstanding **Section 13.4(a)**, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty, then within sixty (60) days after Port's receipt of the Casualty Notice, Port may elect by giving



written notice to Tenant, to continue this Lease and pay the amount to Tenant by which the cost of Restoration will exceed the net proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under **Article 20** (or which would have been payable but for Tenant's failure to maintain such insurance) by more than One Million Dollars (\$1,000,000), as Indexed. If Port elects to continue this Lease as set forth in this **Section 13.4(c)**, then notwithstanding Tenant's election to terminate this Lease, this Lease will not be terminated and Tenant will be obligated to Restore the Premises in accordance with **Section 13.3**.

**13.5. Date and Effect of Termination.** If Tenant elects to terminate this Lease under **Section 13.4(a)** and Port elects not to continue this Lease under **Section 13.4(c)**, then on the date that Tenant fully complies with all provisions of **Section 13.4(b)** to the reasonable satisfaction of Port, this Lease will terminate and Tenant will deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements. Upon such termination, the Parties will be released without further obligations to the other Party as of the effective date of such termination; provided, however, that the Indemnification provisions and any other provisions that explicitly state they will survive expiration or earlier termination of this Lease will survive any termination. The rights of any Mortgagee to a New Lease and any rights of Tenant or Port to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease.

**13.6. Distribution Upon Lease Termination.** If Tenant is obligated to and fails to Restore the Improvements and commits a Tenant Event of Default in failing to Restore the Improvements and Port terminates this Lease due to such Tenant Event of Default, all insurance proceeds held by Port, Tenant and, subject to **Article 34**, any Mortgagee, or not yet collected, will be paid to and retained by Port, subject to the rights of Mortgagee, if any, under **Article 34**.

**13.7. Use of Insurance Proceeds.**

(a) Restoration. Except in the event of termination of this Lease in accordance with **Section 13.4** and subject to the rights of Mortgagee as set forth in **Section 34.18**, all special form (f/k/a all-risk) coverage insurance proceeds, earthquake and flood insurance proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be first used by Tenant for Restoration of the Premises.

**14. CONDEMNATION**

**14.1. General; Notice; Waiver.**

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises or property located outside the Premises the loss of which would substantially and materially eliminate access to the Premises, the rights and obligations of the Parties will be determined pursuant to this **Article 14**.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises or property located outside the Premises the loss of which would substantially and materially eliminate access to the Premises during the Term, the Party learning of such proceedings will promptly give written notice of such proceedings or negotiations to the other Party. Such notice will describe with reasonable specificity, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation that might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this **Article 14**, the Parties intend that the provisions of this Lease will govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease in accordance with this **Article 14**, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

**14.2. Total Condemnation.** If there is a Condemnation of the entire Premises or Tenant's Leasehold Estate (a "**Total Condemnation**"), this Lease will terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties will be released without further obligations to the other Party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent, up to the Condemnation Date and the provisions that explicitly survive the expiration or earlier termination of this Lease.

**14.3. Substantial Condemnation; Partial Condemnation; Rent Abatement.** If there is a Condemnation of any portion but less than all of the Premises or the Leasehold Estate, the rights and obligations of the Parties will be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation, this Lease will terminate at Tenant's option (which must be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) in accordance with this **Section 14.3(a)**. Notwithstanding the foregoing, Tenant has no right to terminate this Lease under this **Section 14.3(a)** if the Substantial Condemnation as the case may be: (x) can be cured by the performance of Restoration (unless such Substantial Condemnation occurs during the last ten (10) years of the Term or if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with Port that at the time of completion of the Restoration, less than ten (10) years would remain in the Term), and (y) the cost of such Restoration does not exceed by at least One Million Dollars (\$1,000,000.00), as Indexed, the portion of the Award fairly allocable to severance damages suffered by Tenant. In such case, this Lease will not terminate, and, upon a determination that the Lease will continue based upon the availability and amount of Award, Tenant will commence and complete such Restoration as promptly as reasonably practicable by using commercially reasonable diligence and pursuant to the provisions of **Article 9** and **Section 14.4**, subject to events of Force Majeure.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or the Leasehold Estate which does not result in a termination of this Lease under **Sections 14.2 or 14.3(a)** (a "**Partial Condemnation**"), this Lease will terminate only as to the portion of the Premises (or the Leasehold Estate) taken in such Partial Condemnation effective as of the Condemnation Date and this Lease will remain in full force and effect as to the portion of the Premises remaining immediately after such Condemnation. Tenant will promptly commence and Complete any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration will be performed in accordance with the provisions of **Article 10**.

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

**14.4. Awards.** Except as provided in **Sections 14.5** and **14.6**, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees, and expenses

of either Port or Tenant (including reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") will be subject to the rights of Mortgagee pursuant to **Section 34.19**, and otherwise allocated between Port and Tenant as follows:

(a) In the event of a Partial Condemnation, first, to pay costs of Restoration, in which case, the portion of the Net Awards and Payments allocable to Restoration will be payable to Tenant, Mortgagees, or trustee in accordance with the requirements governing payment of insurance proceeds set forth in **Section 13.7(a)**;

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

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

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

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

(f) Sixth, the balance of the Net Awards and Payment will be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.

(g) Notwithstanding anything to the contrary set forth in this **Section 14.4**, any portion of the Net Awards and Payments that has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the Condemned Land Value, the value of Port's reversionary interest in the Improvements, Tenant's Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, will be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

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

**14.6. Relocation Benefits, Personal Property.** Notwithstanding **Section 14.4**, Port will not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants.

## 15. LIENS

**15.1. *Liens.*** Tenant will not create or permit the attachment of, and will promptly discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or Tenant's Leasehold Estate, other than (i) this Lease, permitted Subleases, and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants or are being contested in accordance with **Article 6**), and (iii) Mortgages.

**15.2. *Mechanics' Liens.*** Tenant will keep the Premises and Tenant's Leasehold Estate free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by Tenant or any of its Agents. Tenant shall cause any mechanics' liens recorded against any portion of the Premises or the Leasehold Estate to be released of record or sufficiently bonded over or to take such other action reasonably acceptable to Port, within forty-five (45) days following Tenant's receipt of notice of the imposition of the applicable lien, in which case, Port will have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Port (including interest at the Default Rate computed from the date of payment) for such purpose and all expenses incurred by Port in connection therewith must be reimbursed to Port by Tenant as Additional Rent within ten (10) days following demand by Port. Port will include with its demand, supporting documentation.

## 16. SECURITY DEPOSIT

**16.1. *Security Deposit.*** Tenant will 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. Each time Base Rent is increased, the amount of the Security Deposit will increase to equal the lesser of two (2) times the monthly Base Rent or Five Hundred Thousand Dollars (\$500,000). Any increase in the Security Deposit will be delivered to Port on the same date that such increase in Base Rent is first due. Tenant agrees that Port may (but will not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein, in each case, only to the extent that Port is entitled under the terms of this Lease to be paid such sums or take such actions after the expiration of applicable notice and cure periods provided hereunder. Tenant will immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port in the full sum required by this **Section 16**. Port will not be required to keep the Security Deposit separate from its general funds, and Tenant will not be entitled to any interest on the Security Deposit. Nothing contained in this Section will 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.

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

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

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

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

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

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

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

**16.3. *Return of Security Deposit.*** If Tenant shall fully and faithfully comply with all of the provisions of this Lease, the cash balance of the Security Deposit shall be returned to Tenant no later than thirty (30) days after the expiration of the Term or upon any later date on which Tenant has vacated the Premises.

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

## **17. TRANSFER AND SUBLETTING**

### **17.1. *Transfer.***

(a) Consent of Port. Except as permitted in *Sections 17.1(b), 17.1(c), and 17.2* (Subleasing), (i) there may be no Significant Change in Tenant either voluntarily or by operation of Law, or (ii) any Assignment of any interest in this Lease or the Leasehold Estate either voluntarily or by operation of Law (each (i) and/or (ii), a "Transfer") without the prior

written consent of Port, which consent will not be unreasonably withheld, conditioned or delayed.

(b) Mortgaging of Leasehold. Notwithstanding anything in this *Article 17* to the contrary, Tenant may assign, encumber, hypothecate, pledge, or sell its interest in this Lease to a Mortgagee or other purchaser at a foreclosure sale under the provisions for a Permitted Mortgage in accordance with *Article 34* and any such assignment, encumbrance, hypothecation, pledge, or sale will not be deemed to be a Transfer so long as such assignment, encumbrance, hypothecation, pledge, or sale is effected in accordance with and otherwise complies with the terms and conditions set forth in *Article 34*.

(c) Permitted Transfers Without Prior Port Consent. Notwithstanding *Section 17.1(a)*, Tenant may consummate a Transfer without the prior consent of Port to a Tenant Affiliate so long as each of the conditions set forth in *Section 17.1(d)(i)—17.1(d)(iii) and 17.1(d)(viii)* are met (in each instance, a “**Permitted Transfer**”).

(d) Consent Transfers; Conditions to Transfer. Except for a Permitted Transfer, any other Transfer shall require the prior written consent of Port, not to be unreasonably withheld, conditioned or delayed, provided that such consent shall not be withheld if the proposed Transfer satisfies all of the following conditions precedent, each of which the Parties agree are reasonable:

(i) Port has been delivered the form of the Assignment and Assumption Agreement in substantially the form attached hereto as *Exhibit F* (an “**Assignment and Assumption Agreement**”) with respect to the transferred interests;

(ii) To the extent applicable and required by any applicable Regulatory Approvals, all of the obligations of Tenant and any principal, guarantor, Tenant Affiliate, or other party under each agreement or obligation associated with any Regulatory Approval must be assumed by the proposed transferee or other party acceptable to the relevant Regulatory Agency;

(iii) There is no Tenant Event of Default or an Unmatured Tenant Event of Default unless Tenant or the proposed transferee has made provisions to cure the default prior the effective date of the Transfer, which provisions are reasonably satisfactory to Port;

(iv) In the case of a Significant Change only, Tenant delivers to Port, within thirty (30) days after such Significant Change, a certificate setting forth the purchaser or purchasers of the ownership interest resulting in the Significant Change, purchase price of such interest, any Port Transfer Proceeds owed to Port, and a reaffirmation from Tenant that it will continue to be obligated under all the terms and conditions of this Lease, all certified by Tenant’s chief financial officer as true, accurate, and complete, the form of which is attached hereto as *Exhibit E* (“**Significant Change Certificate**”);

(v) Subject to *Section 17.1(d)(vi)*, in the case of a Significant Change, Tenant is a Qualified Transferee immediately following the consummation of such Significant Change and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee;

(vi) If Tenant (in the case of a Significant Change) or proposed transferee (in the case of an Assignment) does not satisfy the Net Worth Requirement, the proposed transferee will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement. Under the Net Worth Guaranty, the Net Worth Guarantor, among other things, will:

(1) guaranty performance of all of Tenant's monetary obligations under this Lease in an amount not to exceed the Net Worth Requirement;

(2) covenant that it will throughout the term of the Net Worth Guaranty, maintain the Net Worth Requirement; and

(3) provide Port as of the first day of each calendar year, a statement certified by its chief financial officer, or if the Net Worth Guarantor is an individual, a certified public accountant, that the Net Worth Guarantor continues to meet the Net Worth Requirement and that to his/her actual knowledge, he/she is not aware of any facts that would cause the Net Worth Guarantor to not meet the Net Worth Requirement.

(vii) The Net Worth Guaranty will terminate when the Tenant benefiting from the Net Worth Guaranty meets the Net Worth Requirement. Tenant and the Net Worth Guarantor will provide Port with its financial statements and other information necessary to substantiate its position that it meets the Net Worth Requirement and that the Net Worth Guaranty should terminate.

(viii) Tenant deposits sufficient funds to reimburse Port for its reasonable costs of review of the proposed Transfer; and

(ix) Port receives on or prior to the effective date of Transfer (A) Port's share of Transfer Proceeds, as described in **Section 4.3** (Port Participation in Transfer Proceeds) of **Exhibit B**, and (B) a settlement statement relating to the Transfer or other evidence, reasonably satisfactory to Port, of Port's share of Transfer Proceeds.

(e) Delivery of Executed Agreement. In the case of an Assignment only, within thirty (30) days after such Assignment, Tenant shall deliver the Assignment and Assumption Agreement executed by the transferor and transferee.<sup>3</sup>

(f) No Release of Tenant's Liability or Waiver by Virtue of Consent. From and after an Assignment of all of the transferor's interest in this Lease or Leasehold Estate, the transferor will be released from all obligations and liability under this Lease to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor tenant hereunder before the date of such Assignment. In connection with any such Assignment, upon request from the transferor, Port will promptly execute documentation evidencing the foregoing release of obligations and liabilities; provided, failure to do so will not invalidate or limit the effect of the release set forth in this **Section 17.1(f)**.

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

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<sup>3</sup> NTD: Form to include a requirement for the transferee to acknowledge the Required Investment obligations of Exhibit C if the Transfer occurs during the first 10 years.

## 17.2. *Subletting.*

(a) Qualifying Subleases. Tenant has the right to sublet all or any portion of the Premises to one or more Subtenants by written Subleases from time to time without the prior consent, written or otherwise, of Port for each applicable Sublease upon satisfaction of all of the applicable conditions set forth in this **Section 17.2(a)**.

(i) The Sublease (and any further sub-subleases of the Subleased Space) are all subject to the terms and conditions of this Lease and the terms and conditions of the Sublease and further sub-subleases are consistent with the provisions of this Lease, provided that Subtenants need not be obligated for Restoration, and, provided further that the Subtenant need not be obligated to undertake any obligations with respect to the Subleased Space that is Tenant's obligation under such Sublease;

(ii) The term of the Sublease does not extend beyond the Term;

(iii) The Sublease rental rates reflect an arms-length transaction at fair market rents for subleases as reasonably determined by Tenant, taking into account, among other things, market conditions, vacancy rates, tenant mix, preferred amenities, creditworthiness of the subtenant and other factors that prudent institutional landlords of buildings of comparable age, size, type and use located in San Francisco would use to determine Sublease rental rates;

(iv) If the sublease is for property management services at the Premises, then the size of the Subleased Space is comparable to the size of property management offices for buildings of prudent institutional landlords that are of comparable age, size, type and use located in San Francisco, and the Sublease rental rates reflect an arms-length transaction at fair market rents as reasonably determined by Tenant;

(v) The Sublease contains an Indemnification and waiver of claims provision benefitting Port that is substantially and materially the same as **Article 18** (Indemnity and Exculpation) except that the term "Tenant" in such provision means "Subtenant" and the term "Premises" in such provision means the demised premises that is the subject of the Sublease;

(vi) The Sublease requires that under all liability and other insurance policies "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS**" are additional insureds by written endorsement. In addition, Tenant agrees that the Port may require increased insurance coverage consistent with a subtenant's business activities on the Premises, to the extent available at commercially reasonable rates from recognized insurance carriers;

(vii) Subject to the rights of any Mortgagee, the Sublease requires Subtenant to pay the Sublease rent and other sums due under the Sublease directly to Port upon receiving written notice from Port that a Tenant Event of Default has occurred and has not been cured;

(viii) The Sublease requires the Subtenant to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease or the Sublease;

(ix) The Sublease contains a provision similar to **Section 33.1** (Entry by Port) requiring Subtenant to permit Port to enter its Subleased Space for the purposes specified in **Section 33.1** (Entry by Port);



(x) The Sublease contains a provision similar to **Section 27.1** (Estoppel Certificate by Tenant) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as **EXHIBIT H** (Form of Subtenant Estoppel Certificate) in accordance with the requirements of **Section 27.1** (Estoppel Certificate by Tenant);

(xi) The Sublease requires Subtenant to comply with all applicable City and Port Requirements set forth in **Article 36** (City and Port Requirements);

(xii) The Sublease contains a provision that if for any reason whatsoever this Lease is terminated prior to the expiration of the Term, unless Port has agreed otherwise in a Non-Disturbance Agreement between Port and the Subtenant, such termination will result in the automatic termination of the Sublease and any existing sub-subleases for the Subleased Space;

(xiii) The Sublease contains the required provision described in **Section 2.9** (Resilience Project; Nearby Projects and Events).

(b) Pre-Approved Subleases. Notwithstanding **Section 17.2(a)** (Qualifying Subleases), Tenant certifies to Port that each of the Subtenants under each of the pre-existing Subleases listed in **Schedule 17.2(b)** attached hereto (the “**Existing Subleases**”) have agreed in the terms of their Sublease or separately to subordinate their subleasehold estate to this Lease. In reliance of Tenant’s foregoing certification, Port agrees that all of the Existing Subleases and the Subtenants thereunder are recognized as qualifying Subleases and qualifying Subtenants whose Subleases shall continue in effect in accordance with their terms and are hereby approved by Port.

(c) Sublease with Tenant Affiliate Requires Port Approval. All Subleases (i) with a Tenant Affiliate; (ii) with a Person Controlled by Tenant or a Tenant Affiliate; or (iii) with a Person owned either directly or indirectly by Tenant or a Tenant Affiliate, require the prior written consent of Port, which consent may not be unreasonably withheld if the Sublease is on rental rates that reflect an arms’ length transaction at fair market rents, as reasonably determined by Port.

(d) Required Sublease Information. The Subtenant name and subleased premises location within the Premises must be included in the Leasing Activity Report submitted in accordance with the requirements of **Section 8.4** hereof. Tenant shall cooperate with the Port to the extent reasonably required for Port to comply with Administrative Code Sections 23.38 and 23.39 (or any successor statute).

### **17.3. Non-Disturbance of Subtenants, Attornment**

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, Port will enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, Port will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Port and such Subtenant (“**Non-Disturbance Agreements**”). All Non-Disturbance Agreements will comply with the provisions of this **Section 17.3**. Port will provide a Non-Disturbance Agreement to a Subtenant if all of the following conditions are satisfied:

(i) The applicable Sublease is for a term of at least five (5) years (not including any renewal terms);

(ii) The applicable Subleased Space is comprised of at least 5,000 rentable square feet;

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

(iv) The applicable term of the Sublease, including options, does not extend beyond the scheduled Term;

(v) The applicable Sublease complies with all the conditions of *Section 17.2(a)* (Qualifying Subleases);

(vi) The Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant will attorn to Port (provided Port agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease, except as otherwise set forth in the Non-Disturbance Agreement, if any), and the Sublease will be deemed a direct lease between the Subtenant and Port, except that (x) any subleases entered into by Subtenant for the Subleased Space that do not comply with the provisions of *Sections 17.3(a)(iii), 17.3(a)(iv)* or, with respect to *Section 17.3(a)(v)* do not comply with, or are not amended within sixty (60) days after the effective date of the Subtenant attornment (retroactive to the effective date of the Subtenant attornment) to comply with, the applicable requirements of *Sections 17.2(a)(i), 17.2(a)(ii), or 17.2(a)(v)-17.2(a)(xii)*, will be terminated, unless otherwise approved in writing by Port, in its sole discretion, (y) notwithstanding the foregoing, Port will not be obligated to recognize any subleases entered into by Subtenant (or its subtenants) for the Subleased Space for a term beyond expiration or earlier termination of the Sublease, and (z):Port will not be:

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

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

(3) bound by any requirement or obligation of the sublandlord under the Sublease to pay any (A) unpaid or unreimbursed tenant improvement allowance (provided, however, if the Subtenant incurs costs after termination of this Lease that are reimbursable from any remaining and unpaid tenant allowance ("Reimbursable Subtenant Costs"), then so long as Subtenant is not in default under the Sublease, provides Port with all the information required in the Sublease for the sublandlord to confirm or validate the Reimbursable Subtenant Costs and Port has validated such costs, then Subtenant may receive a rent credit of up to fifty percent (50%) of the monthly base rent then payable until the earlier of the Reimbursable Subtenant Costs being fully reimbursed or termination of such Sublease, as further refined and agreed to between the parties in the Non-Disturbance Agreement), or (B) liquidated damages;

(4) bound by any Subtenant right of first offer to purchase, first negotiation to purchase or first refusal to purchase Tenant's interest in the Subleased Space;

(5) bound by any Sublease term, including options to renew, that extend beyond the Expiration Date;

(6) liable to Subtenant for any indirect, consequential, incidental, punitive or special damages;

(7) bound by any limitation on Subtenant's obligation to indemnify any sublandlord parties based on Subtenant's insurance coverage;

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

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

(10) bound by any material amendment or modification of the Sublease that increase Tenant's obligations under the Sublease or decrease the Subtenant's obligations under the Sublease unless such amendment or modification has previously been approved by Port in writing:

(vii) During the continuance of any Event of Default, Port may, in its sole discretion, withhold or condition its agreement to provide a Non-Disturbance Agreement on the cure of such default as Port may specify either in a notice of default given under **Article 23** (Events of Default) or in a notice withholding or conditioning its agreement to provide a Non-Disturbance Agreement);

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

(1) an electronic copy of the Sublease in the form to be executed in Microsoft Word format (or other comparable format);

(2) a summary of basic terms of the Sublease, in all material respects, certified by an officer of Tenant's as true and correct;

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

(4) statement certifying that the Sublease satisfies all the conditions and requirements set forth in **Section 17.3(a)** (Qualifying Subleases) including that the Sublease rental rates reflect an arms-length transaction at fair market rents as required by **Section 17.2(a)(iii)**, and the proposed Non-Disturbance Agreement complies with all the conditions and requirements set forth in this **Section 17.4(a)**;

(5) an executed Tenant estoppel certificate substantially in the form attached hereto as **Exhibit G**, and Tenant will certify as of the effective date of the Non-Disturbance Agreement that the certifications made by Tenant in the estoppel certificate remains unchanged; and

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

such information at Tenant's office (including travel time) of the Port representative reviewing such Subtenant financial information).

(ix) Tenant deposits sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Non-Disturbance Agreement (which, for avoidance of doubt, includes any additional, reasonable, administrative fees, or outside counsel or contractors reasonably engaged by Port to review such request for a Non-Disturbance Agreement);

(x) Subtenant agrees that notwithstanding any Non-Disturbance Agreement, the Sublease will terminate as of the Lease termination date (1) if the Lease terminates in the event of Casualty or Condemnation, as further described in **Articles 13** (Damage or Destruction) and 14 (Condemnation); or (2) if there is an uncured Subtenant event of default, giving effect to any notice and cure period provided therein;

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

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

(xiii) In connection with any Sublease pursuant to which Tenant, as sublandlord, is obligated to perform tenant improvement work for the benefit of the applicable Subtenant ("**Sublandlord Work**") and for which Tenant requests a Non-Disturbance Agreement from Port, (A) concurrently with such request, Tenant will submit to Port the estimated cost to complete the Sublandlord Work, and (B) Tenant hereby agrees that, from and after the effective date of such Sublease until such time as the Sublandlord Work is complete, Tenant will deliver to Port on a quarterly basis (or, if a notice of default has been delivered by Port to Tenant hereunder, on a monthly basis) a written summary of the progress of such Sublandlord Work including the estimated cost to complete the Sublandlord Work as of such date.

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement will be substantially in the form of **Exhibit I**. With each request for a Non-Disturbance Agreement, Tenant will submit a copy of the form, showing any requested interlineations or deletions.

(c) Response Period.

(i) Port will respond to any request for a Non-Disturbance Agreement within fifteen (15) business days after receipt of all the materials described in **Section 17.4(a)** (Conditions for Non-Disturbance Agreements); however, if Tenant requests three (3) or more Non-Disturbance Agreements whose response time overlaps at any given time, (1) Port will have an additional five (5) business days to respond for each Non-Disturbance Agreement, and (2) Tenant will pay to Port an additional administrative processing fee of One Thousand Dollars

(\$1,000) for every overlapping Non-Disturbance Agreement request above two (2), which amount will be increased by Five Hundred Dollars (\$500) on the tenth (10th) Anniversary Date and every ten (10) years thereafter.

(ii) If Port fails to respond to such request within such fifteen (15) business day period (or twenty (20) business days if so extended), then Tenant will deliver to Port a second notice requesting Port's response ("**Second NDA Notice**"). The Second NDA Notice must display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following: "**APPROVAL REQUEST FOR WATERFRONT PLAZA LEASE/SUBLEASE MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to respond within five (5) business days after Port's receipt of the Second NDA Notice, then such non-response will be deemed to be approval of such Non-Disturbance Agreement and the applicable Subtenant will be entitled to rely on the terms of the applicable Non-Disturbance Agreement, provided, however, if there are any conflicts between the provisions in the Sublease and the deemed approved Non-Disturbance Agreement, on the one hand, and *Sections 17.3* (Subletting) and *17.4(a)* (Conditions for Non-Disturbance Agreements), *Sections 17.3* (Subletting) and *17.4(a)* (Conditions for Non-Disturbance Agreements) on the other hand, will control.

**17.4. No Further Amendment, No Further Consent Implied.** No material terms of a Transfer agreement or Sublease, after approval by Port, may be amended without Port's prior written consent. Consent to one Transfer or Sublease will not be construed as consent to a subsequent Transfer or Sublease.

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

**17.6. Assignment of Sublease Rents.** Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any present or future Subtenant, hereunder prior to actual receipt thereof by Tenant; provided, however, the foregoing assignment will be subject and subordinate to any assignment made to a Mortgagee under *Article 34* (Leasehold Mortgage) until such time as Port has terminated this Lease (subject to the Port's agreement to enter into a New Lease with Mortgagee and all other provisions of this Lease protecting Mortgagee's interests in this Lease and any such rents and other payments), at which time the rights of Port in all rents and other payments assigned pursuant to this *Section 17.6* will become prior and superior in right; provided, further, any rents collected by any Mortgagee from any Subtenants pursuant to any assignment of rents or subleases made in its favor will promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease.

**17.7. Acknowledgement.** Tenant acknowledges and agrees that each of the rights of Port set forth in this *Article 17* is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

**17.8. Survival.** The provisions of this *Article 17* regarding payments to Port will survive the earlier termination or expiration of this Lease. Additionally, any release by Port of Tenant's obligations under this Lease in connection with any Transfer is conditioned on Port's receipt of Port's share of proceeds as provided by this Article.

## 18. INDEMNITY AND EXCULPATION

**18.1. General Indemnity.** Tenant will 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 will defend them, without cost to the Indemnified Parties, against any and all Losses arising directly or indirectly out of:

(a) any accident, injury to, or death of any Person, including any Agents, Subtenants, and/or Invitees of Tenant or their respective Agents and Invitees, or loss or damage to or destruction of any property occurring in, on, or about the Premises or any part of Port property adjacent to or connected with the Premises from any cause whatsoever ;

(b) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises or any part thereof by Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

(c) any latent, design, construction, or structural defect relating to the Improvements or any other matters relating to the condition of Premises caused directly or indirectly by Tenant or any of its Agents, Invitees, or Subtenants or their respective Agents and Invitees;

(d) any failure on the part of Tenant or its Agents, Invitees, or Subtenants, as applicable, to perform or comply with any of the terms, covenants, or conditions of this Lease or with applicable Laws;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents or Subtenants or their respective Agents and Invitees;

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

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy and is caused directly or indirectly by any acts or omissions of Tenant or any of its Agents, Invitees, or Subtenants.

### **18.2. Hazardous Materials Indemnity.**

(a) In addition to its obligations under **Section 18.1**, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Losses and Hazardous Material Claims that arise as a result of:

(i) Any Hazardous Material Condition, and

(ii) Exacerbation of any Hazardous Material Condition by Tenant, its Agents, Subtenants and/or Invitees or their respective Agents and Invitees.

(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; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (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 (vi) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other litigation, administrative, or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Default Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand.

(c) Nothing in this Lease is intended in any way to preclude or limit Tenant from pursuing any remedies Tenant may have with regard to the existence of Hazardous Materials in, on, under, or pertaining to the Premises, against any third party; provided, however, Tenant may pursue remedies against third parties only at Tenant's sole cost and expense and with advance written notice to, and approval from, Port. Port will have the right, in its sole election and at its sole cost, to join in any such suit or claim.

**18.3. Scope of Indemnities.** Except as otherwise provided in this *Section 18.3* or *Section 18.4* (Waiver), the Indemnification obligations of Tenant set forth in this Lease will 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 will 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. All losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port and is due and payable from time to time immediately upon Port's request, as incurred. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease will exclude Losses to the extent caused by the intentionally harmful or grossly negligent acts committed solely by the Indemnified Parties while in, upon or adjacent to, or in any way connected with the Premises.

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 Losses that actually or potentially fall 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 will begin from the first notice that any claim or demand is or may be made and will continue at all times thereafter.

**18.4. Waiver.** To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all claims, including without limitation all claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Losses to the extent caused from the intentionally harmful or grossly negligent acts committed solely by the Indemnified Parties while in, upon or adjacent to, or in any way connected with the Premises and will include in any contract with Tenant's Agents, Subtenants or any of their respective Agents (individually "**Related Third Party**" and collectively "**Related Third Parties**") a waiver, discharge and release of, any and all claims against the Indemnified Parties. Subject to the exclusion of Losses caused by the intentionally harmful or grossly negligent acts committed solely by the Indemnified Parties while in, upon or adjacent to, or in any way connected with the Premises, the Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from Losses occurring in or about the Premises from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of Port property 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 Material Systems, (v) Premises defects, (vi) damages to goods, wares, goodwill, merchandise, equipment, or business opportunities, (vii) claims by persons in, upon or

about the Premises 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 before the Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, (x) alleged facts or circumstances of the Premises or Port's obligations under the Prior Lease or any claims arising under the Prior Lease; 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 will remain effective. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the 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.

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

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

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

Notwithstanding the foregoing, in no event shall Tenant's Indemnification obligations preclude Tenant from making any claim or pursuing any action against any third party that is not an Indemnified Party.

**18.5. *Survival.*** Tenant's Indemnification obligations under this Lease and the provisions of this **Article 18** will survive the expiration or earlier termination of this Lease.

## **19. HAZARDOUS MATERIALS**

**19.1. *Requirements for Handling.*** Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: (i) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (ii) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of any Subsequent Construction, and which are reported to, and approved by Port before any such Handling, (iii) supplies or materials in such limited amounts as are customarily used for general landscaping purposes, (iv) any janitorial, office, or restaurant supplies, or similar materials in such limited amounts as are customarily used for janitorial services or in connection with office or restaurant uses.



**19.2. *Tenant Responsibility.*** Tenant will protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and that during its use and occupancy of the Premises, Tenant, its Agents and Invitees:

- (a) Will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under ***Section 19.1*** (Requirements for Handling);
- (b) Will not cause or permit any Hazardous Material Condition; and
- (c) Will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition and any investigation, construction, operations, use or any other activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;
- (d) Will, as necessary or if required by Regulatory Agencies, Remediate Hazardous Materials;
- (e) Will be the “Generator” of any waste, including hazardous waste, resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises.

**19.3. *Tenant’s Environmental Condition Notification Requirements***

- (a) Tenant must promptly notify Port, 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 19.1*** (Requirements for Handling), Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant’s occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.
- (b) Tenant must promptly notify Port, 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 within twenty-four hours following Tenant’s receipt of:
  - (i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant’s occupancy of the Premises that Tenant or its Agents or Invitees provide to an Environmental Regulatory Agency;
  - (ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receive from any Environmental Regulatory Agency;
  - (iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant’s occupancy of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under or about the Premises during the Term or 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 concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises. Tenant must provide Port with copies of any of the documents within the scope of this **Section 19.3(d)** upon Port's request.

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

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

#### **19.4. Tenant Requirement to Remediate**

(a) After notifying Port in accordance with **Section 19.3**, subject to **Section 19.2**, Tenant must Remediate, at its sole cost and in compliance with all applicable 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; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with **Section 19.3** (Tenant's Environmental Condition Notification Requirements). Tenant must obtain Port's approval of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete in accordance with the Port approved work plan.

(b) In addition to its obligations under **Section 19.4(a)**, before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all

Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy of the Premises or during the Term that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to construction of any Improvements.

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

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

**19.5. Port's Right to Audit.** Port has the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate at reasonable times under **Article 33** (Access to the Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted will not be deemed to be a release of Tenant's obligations under this Lease.

**19.6. Notification of Asbestos and Lead.** Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises, and, in accordance with the United States Occupational Safety and Health Administration ("OSHA") Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and the Division of Occupational Safety and Health of the California Department of Industrial Relations ("Cal-OSHA") General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in the Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in **Schedule 3**). Disturbance or removal of lead is regulated by among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and San Francisco Building Code § 3423.

The notification of asbestos is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in **Schedule 3**. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of this **Section 19.6** and the notice and reports identified on **Schedule 3** and understands, after having consulted its legal counsel, that it must make its Agents aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under the Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of claims set forth in **Article 17** is given with full knowledge of the presence, or possible presence, of lead and/or asbestos in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possible presence, of lead and/or asbestos in or about the Premises may limit Tenant's ability to construct the Improvements without Tenant first performing abatement of such lead and/or asbestos, as applicable. The presence of lead and/or asbestos in the Premises and the removal or non-removal by Port of all or a portion of such lead and/or asbestos will not, however, (i) entitle Tenant to any claim for Losses, (ii) relieve Tenant of any of its obligations under this Lease, including the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Tenant's quiet enjoyment of the Premises.

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

#### **19.7. 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 will 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.

**19.8. Presence of Hazardous Materials.** California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials may be present on or near the Premises, including naturally occurring asbestos, metals, and other contamination commonly found in fill, petroleum, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead, and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in buildings, if any, as described in **Schedule 3**, naturally occurring asbestos and radionuclides, metals, and other contamination commonly found in fill, petroleum, and lead-based paint and the Hazardous Materials identified in the reports listed in **Schedule 4**. By execution of this Lease, Tenant acknowledges that the notice set forth in this **Section 19.8** satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this **Section 19.8** to any Subtenant, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

**19.9. Survival.** Tenant's obligations under this **Article 19** will survive the expiration or earlier termination of this Lease. For purposes of this **Section 19**, the term "Commencement

**Date**” means the commencement date (including any early entry period, if any) of the Prior Lease and the term **“Term”** includes the term under the Prior Lease.

**20. INSURANCE.** [All coverage limits may be updated by Port or City Risk Management to reflect current requirements when this Lease is executed]

**20.1. *Property and Liability Coverage.***

(a) Required Types and Amounts of Insurance. Except as more specifically provided in this **Section 20.1**, Tenant will, at no cost to Port, obtain and maintain, and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this **Section 20.1(a)**), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times during construction of Subsequent Construction costing more than Five Hundred Thousand Dollars (\$500,000), as Indexed, Tenant will maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance (or its equivalent for any Subsequent Construction, which may include coverage under a property insurance program as referenced under **Section 20.1(a)(ii)**) in the amount equal to the 100% replacement cost value of any existing structures being Restored, and 100% of all new construction, including all materials and equipment to be used/incorporated on or about the Premises, and in transit or storage off-site, against all risk or “special form” hazards, and earthquake and flood insurance (subject to **Section 20.1(a)(ii)**) including risks from any and all testing of any equipment, including as named insureds, Port and Tenant, with any deductible not to exceed Two Hundred Fifty Thousand (\$250,000) (except as to earthquake and flood insurance for which the deductible will be in accordance with the requirements of **Section 20.1(a)(ii)**). Such builders risk insurance also will extend to cover soft costs and loss of business income for any delayed completion period as caused by any of the perils or hazards set forth in and required to be insured pursuant to **Section 20.1(a)(i)**, for a delay period of not less than two (2) years with a limit of not less than One Million Dollars (\$1,000,000). If available at commercially reasonable rates, such builders risk insurance also will extend to cover the peril of terrorism.

(ii) Property Insurance; Earthquake and Flood Insurance.

(1) Tenant will maintain property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 (“Causes of Loss Special Form” (or its replacement) f/k/a all-risk), in an amount not less than 100% of the then-current full replacement cost of the Improvements within the Premises including any foundations, pilings, excavations, and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) (except as to earthquake and flood insurance). If available at commercially reasonable rates, such insurance will extend to cover the peril of terrorism. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port will have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance will not be subject to **Section 13.7**.

(2) Earthquake Insurance. Earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate.

**“Probable Maximum Loss”** means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined as of the Commencement Date and thereafter not less frequently than every ten (10) years through a Probable Maximum Loss report (the **“PML Report”**) prepared by a structural engineer chosen and paid for by Tenant who is reasonably satisfactory to Port; and

(3) **Flood Insurance.** For any building, flood insurance will be in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) **Exceptions for Earthquake and Flood Insurance.** No earthquake insurance shall be required hereunder so long as the PML Report prepared by Tenant from time to time, pursuant to **Section 20.1(a)(ii)(2)**, indicates a Probable Maximum Loss of twenty percent (20%) or less. Subject to the foregoing, if Tenant determines that earthquake or flood insurance should not be carried on the Improvements because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance) or, in Tenant’s reasonable business judgment, is imprudent, then Tenant will request in writing Port’s consent to the absence or deletion thereof. Any request for Port’s consent required under this Section will include with such request evidence supporting Tenant’s determination of commercial unreasonableness or imprudence as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco. Port will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Tenant’s request. If Port disapproves such request, Port will state the basis for its disapproval. If Tenant elects not to carry or to discontinue such coverage with Port’s approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Tenant thereof, and Tenant will add such coverage to its policy as soon as reasonably practicable thereafter.

(iii) **Commercial General Liability Insurance.** Tenant will maintain, or require to be maintained **“Commercial General Liability”** insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) that includes coverage extending to the Indemnity in **Article 18**, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Fifteen Million Dollars (\$15,000,000) per occurrence and annual aggregate, and Fifteen Million Dollars (\$15,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant will maintain or require to be maintained liquor liability coverage with limits not less than Three Million Dollars (\$3,000,000) and Tenant will require any Subtenant or operator who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage. All such insurance may be provided under a combination of primary and umbrella excess policies and may be provided under policies with a “claims made” trigger as provided in **Section 20.1(b)(viii)**.

(iv) **Workers’ Compensation Insurance.** During any period in which Tenant has employees, as defined in the California Labor Code, Tenant will maintain or require

to be maintained policies of workers' compensation insurance providing statutory limits, including employer's liability coverage with limits not less than One Million Dollars (\$1,000,000) each accident and policy limit by disease (except that such insurance in excess of One Hundred Thousand (\$100,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy) covering liability for all persons directly employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

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

(vi) Business Automobile Insurance. Tenant will maintain, or require to be maintained, policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles (including electric carts) to be used by Tenant and its Agents in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than Five Million Dollars (\$5,000,000) per accident and annual aggregate.

(vii) Business Income Insurance. For any Building, Tenant will maintain business income insurance, including loss of rents and extra expense caused by any of the perils or hazards set forth in and required to be insured pursuant to **Section 20.1(a)(ii)** covering an interruption period of not less than two (2) years, with a limit of not less than twenty-four (24) months' of Gross Rental Revenues.

(viii) Contractor's Pollution Legal Liability Insurance. Tenant will cause to be maintained during the period of construction of Subsequent Construction requiring Port's prior approval, Contractor's Pollution Legal Liability Insurance for any and all Losses caused by pollution conditions, that are sudden, accidental or gradual, resulting from the contractor's operations, or for which contractor is legally liable, in connection with the construction of the Existing Improvements or Subsequent Construction, whether such operations be by Tenant or Tenant's contractors, subcontractors, consultants or suppliers of the contractor. The foregoing policy will contain minimum liability limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate with a deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Existing Improvements or any Subsequent Construction; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Existing Improvements or any Subsequent Construction, including transportation of any Hazardous Materials to or from the project site, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Existing Improvements or any Subsequent Construction under this Lease or in connection with any Remediation obligation of Tenant pursuant to **Article 19** is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not

available on an occurrence form, then on a claims-made form. If the foregoing policy is written on a claims made form, then the foregoing policy will be maintained for, or contain an extended reporting period of, at least five (5) years. The foregoing policy definition of “Covered Operations” or any other such designation of services or operations performed by Tenant’s contractors must include all work or services performed by Tenant’s contractors and their respective subcontractors, consultants, or suppliers.

(ix) Professional Liability. Tenant will maintain or require to be maintained, project-specific professional liability (errors and omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate, with respect to all professional services, including architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to the construction of the Existing Improvements and any Subsequent Construction requiring Port’s prior approval with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) each claim (the “lead policy”). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this *Section 20.1(a)(ix)*, to require that any architects, contractors and sub-contractors performing professional services in connection with such Existing Improvements or Subsequent Construction, as applicable, carry professional liability insurance (errors and omissions) in an amount not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). Such insurance will provide coverage during the period when such professional services are performed and for a period of three (3) years after completion of the Existing Improvements or Subsequent Construction requiring Port’s prior approval, as applicable.

(x) Other Insurance. Tenant will obtain such other insurance or increase the coverage limits set forth in this *Section 20.1(a)* as is reasonably requested by City’s Risk Manager.

(b) General Requirements.

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

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

(iii) As to all insurance required under this Lease, such insurance will be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the date of the issuance of a Certificate of Occupancy for the Existing Improvements. Following consultation with Tenant, Port may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City’s Risk Manager it is the general commercial practice in San Francisco to carry insurance for facilities of comparable size and use to the Premises in amounts substantially greater than the amounts being carried by Tenant with respect to risks comparable to those associated with the uses of the Premises. If the City’s Risk Manager determines that the insurance limits required under this *Article 20* may be decreased in light of such commercial practice and the risks associated with the uses of the Premises, Port will notify Tenant of such



determination, and Tenant will have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant will promptly deliver to Port a certificate evidencing such new insurance amounts and additional insured endorsements in form satisfactory to Port;

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

(v) As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. The policies must name the CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AS ADDITIONAL INSURED;

(vi) As to liability, automobile, worker's compensation, and property insurance required under this Lease, such insurance will provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses of the type covered under the policies required by *Section 20.1(a)*;

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

(viii) If any of the policies of liability required under this Lease is provided under a claims-made form of policy, Tenant will maintain such coverage continuously throughout the Term, and following the expiration or earlier termination of the Term, Tenant will maintain, or require to be maintained, such coverage without lapse for a period of three (3) years beyond the expiration or earlier termination of this Lease, or, in the case of construction, for ten (10) years after issuance of a Certificate of Occupancy for the Existing Improvements or Subsequent Construction, as applicable; and

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant will furnish Port certificates with respect to the policies required under this *Article 20* and additional insured endorsements in form satisfactory to Port, (i) on or before the Commencement Date (to the extent such policy is required to be carried as of the Commencement Date), (ii) for such policies required to be carried after the Commencement Date, on or before the date such policies are required, and (iii) with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy. Within thirty (30) days after Port's request, Tenant also will provide Port with copies of each such policy, or will otherwise make such policy available to Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to this *Article 20*, or fails to deliver certificates and/or endorsements as required then, upon ten (10) days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) days following demand, Tenant will reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors, or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the Premises, Tenant will require that such policies be endorsed to include the CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR

RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS as additional insureds. Notwithstanding the foregoing, Tenant will require all contractors and subcontractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars (\$1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the Premises.

**20.2. Port Entitled to Participate.** Except to the extent inconsistent with the terms of *Article 34*, with respect to property insurance, Port is entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any Loss in excess of Two Million Dollars (\$2,000,000), as Indexed, covered by the insurance required to be carried under this Lease; provided, however, that (i) Port's consent will not be unreasonably withheld, and (ii) no consent of Port will be required in connection with any such settlement, compromise, or agreement concerning damage to all or any portion of the Improvements if Tenant will have agreed in writing to commence and Complete Restoration.

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

**20.4. No Limitation.** The Indemnification requirements under this Lease will not be limited by the insurance requirements.

## **21. DELAY DUE TO FORCE MAJEURE**

For all purposes of this Lease, a Party whose performance of its obligations under this Lease is hindered or affected by events of Force Majeure will not be considered in breach of or in default of its obligations to the extent of any delay resulting from Force Majeure, and the time fixed for performance of any such obligation will be extended by a period of time equal to the duration of the Force Majeure event; provided, however, that the provisions of this *Article 21* will not apply to Tenant's obligation to pay Rent, Port's Transfer Participation, or Port's Refinancing Participation. A Party seeking an extension of time pursuant to the provisions of this *Article 21* must give notice to the other Party describing with reasonable particularity the facts and circumstances constituting Force Majeure within the earlier to occur of: (a) a reasonable time (but not more than fifteen (15) business days) after knowledge of the beginning of such Force Majeure event, or (b) within ten (10) business days after the other Party's demand for performance.

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

**22.1. Port May Pay Sums Owed by Tenant Following Tenant's Failure to Pay.** Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Tenant Event of Default, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition with respect to which the provisions of *Section 6.2* (Port's Right to Pay) apply), Port may, at its sole option, but will not be obligated to, upon ten (10) days' prior notice to Tenant, pay such sum for and on behalf of Tenant.

**22.2. Tenant's Obligation to Reimburse Port** If pursuant to *Section 22.1* Port pays any sum required to be paid by Tenant under this Lease, Tenant will reimburse Port as Additional Rent. All sums paid by Port are due from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, will bear interest at the Default Rate from the date such sum is paid by Port until Port is reimbursed by Tenant. Port's rights under this *Article 22* are in addition to its rights under any other provision of this Lease or under applicable Laws. The provisions of this *Section 22.2* will survive the expiration or earlier termination of this Lease.

## **23. TENANT EVENTS OF DEFAULT**

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

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

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

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

(d) The Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion, and such Prohibited Use(s) continues for a period of five (5) business days following written notice from Port; provided, however, if such default cannot reasonably be cured within such five (5) business day period, Tenant will not be in default of this Lease if Tenant promptly commences to cure the default within such five (5) business day period and diligently and in good faith continues to cure the default;

(e) Tenant fails to comply with the provisions of *Sections 19.1—19.4* (Hazardous Materials), and such failure(s) continues for a period of ten (10) business days following written notice from Port; provided, however, if such default cannot reasonably be cured within such ten (10) business day period, Tenant will not be in default of this Lease if Tenant promptly commences to cure the default within such ten (10) business day period and diligently and in good faith continues to cure the default;

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

(g) A writ of execution is levied on the Leasehold Estate which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed

within one hundred twenty (120) days; provided, however, that the exercise by the most senior Mortgagee of any of its remedies under its Permitted Mortgage will not, in and of itself, constitute a default under this **Section 23.1(g)**;

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

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

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

## **24. PORT'S REMEDIES**

**24.1. Port's Remedies Generally.** Upon the occurrence and during the continuance of a Tenant Event of Default (but without obligation on the part of Port following the occurrence of a Tenant Event of Default to accept a cure of such Tenant Event of Default other than as required by Law or by this Lease), Port has all rights and remedies provided in this Lease or available at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate). All of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

### **24.2. Right to Keep Lease in Effect.**

(a) Continuation of Lease. Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations) under which Port may continue this Lease in full force and effect. In the event Port elects this remedy, Port has the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent when due. Upon the occurrence of a Tenant Event of Default, Port, upon prior written notice to Tenant, may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant will be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including Attorneys' Fees and Costs, brokers' fees or commissions, expenses of remodeling the Premises required by the reletting and similar costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port determines in its sole discretion.

(b) No Termination Without Notice. No act by Port allowed by this **Section 24.2**, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a Transfer or termination of a Transfer in accordance herewith, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If Port elects to relet the Premises as provided in **Section 24.2(a)**, the rent that Port receives from reletting will be applied to the payment of:

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

(ii) Second, the payments of any indebtedness other than Rent due and unpaid under this Lease from Tenant to Port;

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

(iv) After deducting the payments referred to in this **Section 24.2(c)**, any sum remaining from the rent Port receives from reletting will be held by Port and applied to monthly installments of future Rent as such amounts become due under this Lease. In no event will Tenant be entitled to any excess rent received by Port. If on a date Rent or other amount is due under this Lease, the rent received by Port as of such date from any reletting is less than the Rent or other amount due on that date, or if any costs incurred by Port in reletting, remain after applying the rent received from such reletting, Tenant will pay to Port such deficiency. Such deficiency will be calculated and paid monthly.

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

**24.3. Right to Terminate Lease.** Port may terminate this Lease at any time after the occurrence of and during the continuation of a Tenant Event of Default by providing Tenant with a second written notice ("**Second Default Notice**") and the additional cure period set forth below:

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

(b) For an Event of Default under **Section 23.1(b)**, Tenant will have ten (10) business days following delivery of the Second Default Notice to cure, or, if such cure cannot reasonably be completed within such ten (10) business day period, if Tenant does not within such ten (10) business day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(c) For an Event of Default under **Section 23.1(d)** or **Section 23.1(e)**, Tenant will have five (5) business days following delivery of the Second Default Notice to cure, or, if such cure cannot reasonably be completed within such five (5) business day period, if Tenant does not within such five (5) business day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

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

(e) For an Event of Default under **Sections 23.1(f), 23.1(g)** or **23.1(h)**, Tenant will have thirty (30) days following delivery of the Second Default Notice to cure, which may include a dismissal or stay, as applicable;

(f) Subject to the foregoing procedures, at any time after the expiration of the cure periods under a Second Default Notice without a cure, the termination of this Lease will occur on the date set forth in such Second Default Notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder will not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing will terminate this Lease. Upon termination of this Lease, Port has the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including the following:

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

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

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

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

"The worth at the time of award" as used in *Sections 24.3(f)(i)* and *24.3(f)(ii)* will be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of award" as used in *Section 24.3(f)(iii)* will be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

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

**24.5. Net Worth Guaranty.** After the occurrence of and during the continuation of a Tenant Event of Default, and without limiting any other remedy provided hereunder, if a Net Worth Guaranty has terminated pursuant to *Section 17.1(d)(vii)* with respect to the Tenant then in possession of the Premises, then within [ten (10) business days] of the start of a Tenant Event of Default, Tenant shall provide Port with its financial statements and other information necessary for the Port to evaluate whether Tenant meets the Net Worth Requirement. In the event the Port reasonably determines that Tenant does not meet the Net Worth Requirement, Port shall so notify Tenant in writing and Tenant shall promptly provide a Net Worth Guaranty which complies with the terms of *Section 17.1(d)(vi)* within thirty (30) days after Port's written notification to Tenant that Tenant does not meet the Net Worth Requirement.

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

**24.7. *Appointment of Receiver.*** From and after a Tenant Event of Default, Port has the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself will constitute an election by Port to terminate this Lease.

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

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

## **25. NO WAIVER**

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

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

## **26. LIMITATION ON LIABILITY**

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

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

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

**26.4. No Liability for Consequential, Incidental or Punitive Damages.** As a material part of the consideration for this Lease, neither Party (including the Indemnified Parties) will be liable for, and each Party hereby waives any claims against the Other Party for any consequential, incidental, or punitive damages. Without limiting the foregoing, Tenant expressly acknowledges and agrees that the amounts payable by Tenant under this Lease does not take into account any potential liability of the Indemnified Parties for any consequential, incidental, or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental, or punitive damages due to the acts or omissions of the Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental, and punitive damages (including, without limitation, lost profits) and covenants not to sue or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties arising out of this Lease or the uses authorized under this Lease, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

## **27. ESTOPPEL CERTIFICATES**

**27.1. Estoppel Certificate by Tenant.** Tenant will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser, lessee, or mortgagee of Port's interest in the Premises), within fifteen (15) business days after request, a certificate in substantially the same form as **Exhibit G**. In addition, if requested by Port, Tenant will attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that such attachment is a true, correct, and complete copy of this Lease, as applicable, including all modifications thereto. Port, any successor agency, and any prospective purchaser, lessee, or mortgagee of the Premises or any part of Port's interest in the Premises, may rely upon any such certificate. Tenant also will include a provision similar to this **Section 27.1** into each Sublease and use its best efforts to cause Subtenants under Subleases to execute, acknowledge, and deliver to Port, within twenty (20) business days after request, an estoppel certificate in substantially the same form as **Exhibit G** with respect to each such applicable Sublease, but Tenant will not be in default under this Lease for failure of any particular Subtenant to deliver such estoppel certificate to Port.

**27.2. Estoppel Certificate by Port.** Subject to Port's receipt of its review costs as set forth in **Section 28.3**, Port will execute, acknowledge, and deliver to Tenant (or at Tenant's request, to a prospective Subtenant, Mortgagee, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after request, a certificate in substantially the same form as **Exhibit J**. In addition, if requested, Port will attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that such attachment is a true, correct, and complete copy of this Lease,



including all modifications thereto. Tenant, any prospective Subtenant, Mortgagee, or other prospective transferee of Tenant's interest under this Lease may rely upon any such certificate.

## **28. APPROVALS BY PORT; FEES FOR REVIEW**

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

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

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

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

**28.3. *Fees for Review.*** Unless a different time period is required in this Lease, within ten (10) business days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including Attorneys' Fees and Costs, consultant's costs, and costs for Port staff time, incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed Transfer, Sublease, Non-Disturbance Agreement, Mortgage Confirmation Statement, Mortgage, Refinancing, certificate, or Subsequent Construction (excluding any such costs incurred by Port's regulatory capacity such as Port building permits, which costs will be paid separately by Tenant to the extent required in connection with the review or processing of such regulatory request). Tenant will pay such costs regardless of whether or not Port consents to such proposal.

## **29. NO MERGER OF TITLE**

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

### 30. SURRENDER OF PREMISES

**30.1. Surrender.** Upon the expiration or earlier termination of this Lease, Tenant will quit and surrender to Port the Premises (a) in good order and condition, ordinary wear and tear excepted and except as provided in **Articles 13** (Damage and Destruction) and **14** (Condemnation); (b) clean, free of debris, waste, and Hazardous Materials; and (c) free and clear of all liens and encumbrances other than the Permitted Title Exceptions or those that are being contested in accordance with **Article 6**. If it is determined by Port that the condition of all or any portion of the Premises is not in compliance with the provisions of this Lease with respect to Hazardous Materials at the expiration or earlier termination of this Lease, then at Port's sole option, Port may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Port in the condition required.

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

#### **30.2. Demolition of Improvements.**

(a) **Notice.** At the expiration or earlier termination of this Lease, at Port's sole election ("**Demolition Option**"), Port may require Tenant, at Tenant's sole cost, to Demolish and Remove the Improvements and surrender the Premises as a vacant parcel of unimproved real property, provided; however, Port's Demolition Option shall apply only to those Improvements or portions of Improvements that are or will be, at the termination of this Lease, not reasonably capable of continued occupancy for three (3) or more years without substantial repairs and/or renovations (or, if Tenant elects to terminate this Lease in accordance with **Section 13.4** (Termination for Major Casualty), as required by **Section 13.4(b)(i)**). Port will use commercially reasonable efforts to notify Tenant of Port's election to exercise the Demolition Option (i) at least twenty-four (24) months prior to the expiration of this Lease, (ii) or within ninety (90) days following Tenant's election to terminate this Lease in accordance with **Section 13.4** (Termination for Major Casualty), or **Article 14** (Condemnation), or (iii) upon termination of this Lease due to an Event of Default.

(b) **Access After Termination.** If Port exercises the Demolition Option in accordance with **Section 30.2(a)**, then if Port agrees that Tenant will complete the Demolition and Removal after the expiration or earlier termination of this Lease, Port and Tenant will enter into Port's standard license granting Tenant non-possessory access to the Premises in order for Tenant to perform the Demolition and Removal following the expiration or earlier termination of this Lease; provided, however, Tenant will perform the Demolition and Removal in compliance with **Article 10** (Subsequent Construction) and Port may require insurance, bond, guaranty, Indemnification, and other requirements that exceed the coverage amounts or licensee obligations set forth in Port's standard license, that Port determines are reasonably appropriate to protect its interest in light of the risks and liabilities associated with the Demolition and Removal.

(c) Period to Complete. Tenant must commence and complete the Demolition and Removal in a timely manner, with due diligence and care, and complete the same within the time period agreed to between the Parties, but in no event shall Tenant commence such Demolition and Removal later than six (6) months following the expiration or earlier termination of this Lease.

**30.3. *Quitclaim.*** Upon the expiration or earlier termination of this Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens (other than the Permitted Title Exceptions, the Sublease(s) of any Subtenants that are permitted to remain on the Premises beyond the termination of this Lease in accordance with a Non-Disturbance Agreement previously entered into between the applicable Subtenant and Port and without payment therefore by Port and will be surrendered to Port upon such date. At any time if requested by Port, Tenant will promptly deliver to Port, without charge, a duly executed and acknowledged quitclaim deed, suitable for recording in the Official Records and in form and content reasonably satisfactory to Port and the City Attorney, to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effectuate the termination of Tenant's Leasehold Estate and to effectuate such transfer or vesting of title to the Premises, the Improvements, and Personal Property that Port agrees are to remain within the Premises. Port will hold the quitclaim and other instruments in trust until the expiration or earlier termination of this Lease, at which time they will be deemed to be delivered from Tenant to Port. Port may record the quitclaim deed at any time on or after the expiration or earlier termination of this Lease, without the need for any approval or further act of Tenant.

**30.4. *Survival.*** Tenant's obligations under this *Article 30* will survive the expiration or earlier termination of this Lease.

### **31. HOLD OVER**

Any holding over after the expiration of the Term will not constitute a renewal hereof but will be deemed a month-to-month tenancy and will be upon all other terms, conditions, and covenants of this Lease, except that Base Rent payable for the applicable month will be equal to one hundred fifty percent (150%) of the monthly Base Rent payable for the month immediately preceding the expiration of the Term. Either Party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other Party. For the avoidance of doubt, if Tenant has entered into a license and is using or occupying the Premises after the expiration or termination of this Lease pursuant to *Section 30.2(c)* (Access After Termination), such use or occupancy shall not be deemed a hold over by Tenant.

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

### **32. NOTICES**

Except as otherwise expressly provided in this Lease, all notices, demands, approvals, consents, and other formal communications between Port and Tenant required or permitted under this Lease must be in writing, delivered by one of the following methods, and will be deemed given and effective on the date of receipt, as evidenced by: (i) if given by personal delivery, then the records of the deliverer or (ii) if sent by (x) the U.S. Postal Service certified, return receipt requested, then the return receipt, or (y) a nationally recognized overnight courier, then the

records of the courier, to Port or Tenant at their respective addresses for notice designated 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 below. For convenience of the Parties, copies of notices may also be given by electronic mail, to the electronic mail address set forth in the Basic Lease Information or such other electronic mail address as may be provided from time to time by notice given in the manner required under this Lease; however, no notice sent by electronic mail will be deemed given or binding.

### **33. ACCESS TO THE PREMISES**

**33.1. Entry by Port; Cooperation re: Flood Protection Measures.** Subject to the rights of Subtenants, Tenant will permit Port and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time and without notice in the event of an emergency) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease; (ii) inspecting the construction of Improvements for compliance with the provisions of this Lease; (iii) performing any work on the Premises that Port has right or obligation to perform; (iv) inspecting, sampling, testing, surveying, or monitoring the Premises or any portion thereof, including the Buildings, grounds, and subsurface areas, as Port reasonably deems necessary or appropriate for evaluation of Hazardous Materials, or other physical, geotechnical, or environmental conditions; (v) to serve, post, or keep posted any notices required or allowed under the provisions of this Lease; (vi) in connection with its reserved rights under this Lease; and (vii) during the last eighteen (18) months of the Term for the purpose of showing the Premises to prospective tenants or licensees.

Nothing in this Section implies any duty on the part of Port to conduct inspections, and Port's right of inspection does not relieve Tenant of its independent responsibility to operate, manage, maintain, and repair the Premises and Improvements in accordance with this Lease. Additionally, Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

As acknowledged by the Parties in the Waterfront Resilience Program section of the Basic Lease Information and in **Section 2.9** (Resilience Project; Nearby Projects and Events), Port-owned property faces coastal flood risks due to sea level rise, the impacts of which are currently unknown but may become known during the Term. If, in connection with its Resilience Project or otherwise, the Port identifies risks to the Premises and potential interventions, such as flood protection measures and/or upgrades to utility infrastructure that would be prudent or necessary to implement at the Premises, the Parties shall meet and confer in good faith to determine appropriate interventions reasonably acceptable to each, including implementation time frames, procedures and parameters around Port entry, reasonably designed to address impacts of sea level rise on the Premises or to accommodate upgraded utility needs of the Port or its tenants or other users in the area while minimizing impacts on the use and operation of the Premises as contemplated by this Lease.

Nothing in this Lease implies any duty on the part of Port to perform any work that Tenant is required to perform, nor to place upon Port any obligation or liability for the care, supervision, or repair of the Premises; provided, however, Port will use commercially reasonable efforts to minimize interference with the activities of Tenant, its Subtenants and their respective Invitees during any inspection.

**33.2. Notice, Right to Accompany.** Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises, except in an emergency, for the purposes set forth in **Section 33.1** (Entry by Port). Tenant has the right to have a representative of Tenant accompany

Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice is required for Port's entry onto public access areas or other public areas of the Premises during hours such areas are open.

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

**33.4. *No Liability.*** Port will not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in this **Article 33** 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.

**33.5. *Nondisturbance.*** Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in this **Article 33** in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to the Tenant, its Subtenants and their respective Invitees but in no event will inconvenience or disturbance caused by Port's activities under this **Article 33** 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.

## **34. LEASEHOLD MORTGAGE**

### **34.1. *No Mortgage Except as Permitted.***

(a) **Right to Grant Mortgages.** . Tenant has the right during the Term, to grant a mortgage, deed of trust or other security instrument (each a "**Mortgage**") encumbering (i) all or a portion of the Leasehold Estate in all or a portion of the Premises, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under or in connection with this Lease for the benefit of a Bona Fide Institutional Mortgagee (together with its successors and assigns, a "**Mortgagee**") as security for one or more loans related solely to the Premises, the proceeds from which are used in whole or in part to pay or reimburse costs incurred in connection with the Project and/or the Property, subject to the terms and conditions contained in this **Article 34**.

(b) **Restrictions on Financing.** No Mortgage will be granted to secure obligations unrelated to the Property or to provide compensation or rights to a Mortgagee in return for matters unrelated to the Project and/or the Property.

(c) **Leasehold Mortgages Subject to this Lease.** With the exception of the rights expressly granted to Mortgagees in this **Article 34** the execution and delivery of a Mortgage will not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(d) **Transfer by Mortgagees.** A Mortgagee may transfer or assign all or any part of or interest in any Mortgage to a Bona Fide Institutional Mortgagee without the consent of or notice to any Party; provided, however, that Port will have no obligations under this

Agreement to a Mortgagee unless Port is notified of such Mortgagee. Furthermore, Port's receipt of notice of a Mortgagee following Port's delivery of a notice or demand to Tenant or to one or more Mortgagees under **Section 34.4** (Mortgagee's Obligations with Respect to the Property) will not result in an extension of any of the time periods in this **Article 34** including the cure periods specified in **Section 34.5** (Provisions of Any Mortgage).

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

(f) Violation of Covenant. Any Mortgage not permitted by this **Article 34** 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.

### **34.2. Copy of Notice of Default to Mortgagee.**

(a) Copy to Mortgagee. Whenever Port delivers any notice or demand to Tenant for any breach or default by Tenant in its obligations or covenants under this Lease, Port will at the same time forward a copy of such notice or demand to each Mortgagee and Mezzanine Lender that has previously made a written request to Port for a copy of any such notices in accordance with **Section 34.2(b)** (Notice from Mortgagee to Port). A delay or failure by Port to provide such notice or demand to any (i) Mortgagee that has previously made a written request therefor will extend, by the number of days until notice is given, the time allowed to such Mortgagee to cure (ii) Mezzanine Lender that has previously made a written request therefor will not extend the time to cure.

(b) Notice From Mortgagee to Port. Each Mortgagee and Mezzanine Lender is entitled to receive notices in accordance with **Section 34.2(a)** (Copy to Mortgagee) provided such Mortgagee or Mezzanine Lender, as applicable, has delivered a notice to Port in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee/Mezzanine Lender, as such term is defined in that certain lease entered into by and between the City and County of San Francisco, operating by and through the San Francisco Port Commission, as landlord, and [insert name of Tenant], as tenant (the "**Lease**"), of tenant's interest in the Lease demising the property, a legal description of which is attached hereto as **Exhibit A** and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to tenant by Port be sent to the undersigned at the following address: \_\_\_\_\_."

(c) If Mortgagee or Mezzanine Lender desires to have Port acknowledge receipt of Mortgagee's or Mezzanine Lender's name and address delivered to Port pursuant to this **Section 34.2(b)**, then such request must be made in bold, underlined and in capitalized letters. Any notices to Mezzanine Lender will be delivered only for courtesy purposes and any delay or failure to deliver such notice will have no impact on, and will not extend, the period to cure a Tenant default.

### **34.3. Mortgagee's Option to Cure Defaults.**

(a) Before or after receiving any notice of failure to cure referred to in **Section 34.2** (Copy to Mortgagee), each Mortgagee will have the right (but not the obligation), at its option, to commence to cure or cause to be cured any Event of Default, within the same period afforded to Tenant hereunder plus an additional period of (i) fifteen (15) days with respect

to a monetary Event of Default and (ii) forty-five (45) days with respect to a non-monetary Event of Default that is susceptible of cure by such Mortgagee without obtaining title to the applicable property subject to the applicable Mortgage or acquiring the ownership interests in Tenant, as applicable.

(b) If a non-monetary Event of Default cannot be cured by Mortgagee without obtaining title to the Leasehold Estate, or applicable portion thereof, Port will refrain from exercising its right to terminate this Lease and will permit the cure by a Mortgagee of such Event of Default if, within the cure period set forth in **Section 34.3(a)**: (i) such Mortgagee notifies Port in writing that such Mortgagee intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property or ownership interests, as applicable; (ii) such Mortgagee commences foreclosure proceedings whether by non-judicial foreclosure, judicial foreclosure, by appointment of a receiver, or deed (or assignment) in lieu of foreclosure, within sixty (60) days after giving such notice, and diligently pursues such proceedings to completion; and (iii) after obtaining title, such Mortgagee, subject to **Section 34.4** (Mortgagee's Obligations with Respect to the Property), diligently proceeds to cure those Events of Default that are susceptible of cure by such Mortgagee. The period from the date Mortgagee so notifies Port until a Mortgagee acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the "**Foreclosure Period**."

(c) Nothing in this **Article 34** will preclude Port from exercising any rights or remedies under this Lease against Tenant (other than a termination of this Lease) with respect to any other Events of Default during the Foreclosure Period.

(d) Notwithstanding the foregoing, no Mortgagee will be required to cure any non-monetary Event of Default that is specific or personal to Tenant which cannot be cured by Mortgagee (by way of example and not limitation, Tenant bankruptcy, or the failure to submit required information in the possession of Tenant). Mortgagee's acquisition of title to the Leasehold Estate, or the completion of a foreclosure (or assignment in lieu thereof), as applicable, will be deemed to be a cure of such Events of Default specific or personal to Tenant. The foregoing will not excuse a Mortgagee's failure to cure any continuing default that is curable by Mortgagee.

(e) If a Mortgagee is prohibited by any law, injunction, or any bankruptcy, insolvency or other judicial proceeding from commencing or prosecuting a foreclosure action, then the times specified for commencing or prosecuting such foreclosure action, as applicable, will be extended by each day of such prohibition.

(f) Before or after receiving any notice of failure to cure referred to in **Section 34.2** (Copy of Notice of Default to Mortgagee), each Mezzanine Lender will have the right (but not the obligation), at its option, to commence to cure or cause to be cured any Event of Default, within the same period afforded to Tenant.

#### **34.4. Mortgagee's Obligations with Respect to the Property.**

(a) Rights and Obligations upon Mortgagee Acquisition. Except as set forth in this **Article 34**, no Mortgagee will have any obligations or other liabilities under this Lease unless and until it acquires title by any method to the Leasehold Estate (referred to as "**Foreclosed Property**"). Except as otherwise provided herein (including, without limitation, **Sections 34.4(b)-(d)**), a Mortgagee (or its designee, successor or assign) or other winning bidder at a foreclosure sale (collectively, a "**Successor Owner**") that acquires title to any Foreclosed Property (a "**Mortgagee Acquisition**") will take title subject to all of the terms and conditions of this Lease to the extent applicable to the Foreclosed Property. Upon completion of a Mortgagee Acquisition, Port will recognize the Successor Owner as Tenant under this Agreement. Such recognition will

be effective and self-operative without the execution of any further instruments; provided, upon request, at no cost to Port, Port will execute a written agreement recognizing Successor Owner. A Successor Owner, upon a Mortgagee Acquisition, will be required promptly to cure all monetary defaults and all other ongoing defaults then reasonably susceptible of being cured by such Successor Owner to the extent not cured prior to completion of the Mortgagee Acquisition. The foregoing obligation includes any obligation to Restore, except as set forth in **Section 34.4(c)** (No Obligation to Restore).

(b) **Obligations of Mortgagee Prior to Mortgagee Acquisition.** Prior to a Mortgagee Acquisition, Port will have no right to enforce any obligation under this Lease against any Mortgagee unless such Mortgagee expressly assumes and agrees to be bound by this Lease in a form reasonably approved in writing by Mortgagee and Port, which form will be consistent with the terms of this Lease (for the avoidance of doubt, the foregoing will not limit Port's rights and remedies against Tenant notwithstanding any interest Mortgagee may have in Tenant or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this **Article 34**. However, Mortgagee agrees to comply during a Foreclosure Period with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by Mortgagee prior to acquiring possession of the Lease, including the payment of all Impositions and any other sums due and owing hereunder.

(c) **No Obligation to Restore.** Subject to **Sections 34.4(d)** (Obligation to Sell If Not Restore) and (e) (Mortgagee Agreement to Complete or Restore), Mortgagee, including any Mortgagee who obtains title to Foreclosed Property through a Mortgagee Acquisition will not be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements beyond the extent necessary to preserve or protect the Improvements already made, to remove any debris and to perform other reasonable measures to protect the public; provided, however, any other Person who thereafter obtains title to the Leasehold Estate, or any interest therein from or through such Mortgagee (or its designee), or any other Successor Owner (other than such Mortgagee ) will be obligated to Restore any damage or destruction to the Improvements in accordance with this Lease, except that any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the date of the Mortgagee Acquisition.

(d) **Obligation to Sell If Not Restore.** In the event that Mortgagee acquires the Foreclosed Property through a Mortgagee Acquisition and Mortgagee chooses not to complete or Restore the Improvements following a casualty event, it will notify Port in writing of its election within one hundred twenty (120) days following the later of the Mortgagee Acquisition or the casualty, and will therefore use good faith efforts to sell its interest with reasonable diligence to a purchaser that will be obligated to Restore the Improvements, but in any event Mortgagee will use good faith efforts to cause such sale to occur within nine (9) months following Mortgagee's written notice to Port of its election not to Restore (the "**Sale Period**").

(e) **Mortgagee Agreement to Restore.** If Mortgagee fails to sell its interest in the Leasehold Estate within the Sale Period, such failure will not constitute a default hereunder but Mortgagee will be obligated to Restore the Improvements to the extent this Lease obligates Tenant to so Restore (except that, if the applicable casualty or condemnation occurred prior to the Mortgagee Acquisition, any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the date of the Mortgagee Acquisition). In the event Mortgagee agrees, or is deemed to have agreed, to Restore the Improvements, (i) all such work will be performed in accordance with all the requirements set forth in this Lease, (ii) Mortgagee shall engage a qualified construction manager with at least ten (10) years' experience managing construction projects of a similar nature, and (iii) Mortgagee shall confirm to Port in writing that its construction manager satisfies the foregoing requirement.



**34.5. Provisions of Any Mortgage.** Each Mortgage must provide that Mortgagee will during the Term, (i) promptly provide Port by registered or certified mail a copy of any notice delivered by Mortgagee to Tenant of a borrower event of default (i.e., following the expiration of all notice and cure periods) under the Mortgage, and (ii) give Port prior notice before Mortgagee initiates any Mortgage foreclosure action with respect to the Property or the Project.

**34.6. No Impairment of Mortgage.** No default by Tenant under this Lease will invalidate or defeat the lien of any Mortgagee. Neither a breach of any obligation in a Mortgage, nor a foreclosure under any Mortgage will defeat, diminish, render invalid or unenforceable or otherwise impair Tenant's rights or obligations under this Lease or constitute, by itself, a default under this Lease.

**34.7. Multiple Mortgages.**

(a) If at any time there is more than one Mortgage constituting a lien on a single portion of the Property or any interest therein, the lien of Mortgagee prior in time to all others (the "Senior Mortgage") will be vested with the rights under *Sections 34.3* (Mortgagee's Option to Cure Defaults), *34.10* (New Lease), *34.13* (Consent of Mortgagee), *34.15* (Cooperation), *34.18* (Casualty Provisions) and *34.19* (Condemnation Provisions) to the exclusion of the holder of any other Mortgage except if the Senior Mortgagee fails to exercise the rights set forth in *Sections 34.3* (Mortgagee's Option to Cure Defaults), *34.10* (New Lease), *34.18* (Casualty Provisions) and *34.19* (Condemnation Provisions), as applicable, then the holder of a junior Mortgage that has provided notice to Port in accordance with *Section 34.2* (Copy of Notice of Default to Mortgagee) will succeed to the rights set forth in *Sections 34.3* (Mortgagee's Option to Cure Defaults), *34.10* (New Lease), *34.18* (Casualty Provisions) and *34.19* (Condemnation Provisions), as applicable, only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in *Sections 34.3* (Mortgagee's Option to Cure Defaults), *34.10* (New Lease), *34.18* (Casualty Provisions) and *34.19* (Condemnation Provisions), as applicable.

(b) A Senior Mortgagee's failure to exercise its rights under *Sections 34.3* (Mortgagee's Option to Cure Defaults), *34.10* (New Lease), *34.13* (Consent of Mortgagee), *34.15* (Cooperation), *34.18* (Casualty Provisions) and *34.19* (Condemnation Provisions), as applicable, or any delay in the response of any Mortgagee to any notice by Port will not extend (i) any cure period, (ii) period to enter into a New Lease, or (iii) Tenant's or any Mortgagee's rights under this *Article 34*. For purposes of this *Section 34.7*, in the absence of an order of a court of competent jurisdiction that is served on Port, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priorities of the liens of Mortgages on real property, may be relied upon by Port as conclusive evidence of priority.

(c) Senior Mortgagee may designate its rights set forth in *Sections 34.3* (Mortgagee's Option to Cure Defaults) to any other Bona Fide Institutional Lender which is a Mortgagee or Mezzanine Lender, and Port agrees to recognize a cure by such Bona Fide Institutional Lender pursuant to *Section 34.8* (Cured Defaults).

**34.8. Cured Defaults.** Port will accept performance by a Mortgagee with the same force and effect as it performed by Tenant. No such performance on behalf of Tenant in and of itself will cause Mortgagee to become a "mortgagee in possession" or otherwise cause it to be bound by or liable under this Lease.

**34.9. Limitation on Liability of Mortgagee.** Notwithstanding anything herein to the contrary, no Mortgagee will become liable under the provisions of this Lease unless and until such time as it becomes the owner of the Leasehold Estate and then only for so long as it remains

the owner of the Leasehold Estate and only with respect to the obligations arising during such period of ownership.

If a Mortgagee becomes the owner of the Leasehold Estate under this Lease or under a New Lease, (i) except as set forth in **Sections 34.4(c)** (No Obligation to Restore) and **34.4(d)** (Obligation to Sell if Not Restore), such Mortgagee will be liable to Port for the obligations of Tenant hereunder only to the extent such obligations arise during the period that such Mortgagee remains the owner of the Leasehold Estate, and (ii) in no event will Mortgagee have personal liability under this Lease or New Lease, as applicable, greater than Mortgagee's interest in this Lease or such New Lease, and Port will have no recourse against Mortgagee's assets other than its interest herein or therein.

**34.10. New Lease.** In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, or (ii) as the result of damage or destruction as provided in **Article 13** (Damage or Destruction), Port will serve upon Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Mortgagee will thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions ("**New Lease**"):

(a) Upon the written request of Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated ("**New Lease Execution Period**"), Port will enter into a New Lease of the Premises with the most senior Mortgagee giving notice within such period or its designee, provided that Mortgagee assumes Tenant's obligations as sublandlord under any Subleases then in effect; and

(b) Such New Lease will be entered into at the Mortgagee's cost, will be effective as of the date of termination of this Lease, and will be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). The New Lease will have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. The New Lease will require Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the New Lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is continuing and is reasonably susceptible of being performed by such Mortgagee, including any obligation to Restore subject to **Sections 34.4(d)** (Obligation to Sell If Not Restore) and **34.4(e)** (Mortgagee Agreement to Restore). Upon the execution of the New Lease, Mortgagee will pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and will pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such New Lease. The provisions of this **Section 34.10(b)** will survive any termination of this Lease (except as otherwise expressly set out in the first sentence of **Section 34.10**), and will constitute a separate agreement by Port for the benefit of and enforceable by Mortgagee.

**34.11. Nominee.** Any rights of a Mortgagee under this **Article 34**, as amended hereby, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee; provided, however, no Mortgagee will acquire title to the Lease through a nominee or designee which is not a Person otherwise permitted to become Tenant hereunder;

provided, further that a Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Mortgagee.

**34.12. Subleases and Other Property Agreements.** Effective upon the commencement of the term of any New Lease executed pursuant to **Section 34.10** (New Lease), any Sublease then in effect will be assigned and transferred without recourse by Port to Mortgagee. Between the date of termination of this Lease and expiration of the New Lease Execution Period, Port will not (1) enter into any new management agreements or agreements for the maintenance of the Premises or the supplies therefor (collectively, “**Other Property Agreements**”) or Subleases which would be binding upon Mortgagee if Mortgagee enters into a New Lease, (2) cancel or materially modify any of the existing Subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any Subleases subject to a Non-Disturbance Agreement with the Subtenant of such Sublease or Other Property Agreement without the written consent of Mortgagee, which consent will not be unreasonably withheld or delayed; provided, however Mortgagee’s prior approval will not be required for any Other Property Agreement entered into, cancelled, or modified by Port due to an emergency. Effective upon the commencement of the term of the New Lease, Port will also quitclaim to Mortgagee, its designee or nominee (other than Tenant), without recourse, all of Tenant’s Personal Property remaining on the Premises that have been abandoned by Tenant.

**34.13. Consent of Mortgagee.** Port will not (i) modify this Lease in a manner that increases base rent or percentage rent owed to Port, decreases the Term, amends any provision of this **Article 34**, or otherwise amends the terms of this Lease in a manner that creates a material adverse effect upon Mortgagee, or (ii) terminate or cancel this Lease or accept a surrender of Tenant’s Leasehold Estate without first obtaining Senior Mortgagee’s prior written consent. Any such modification, termination or cancellation of this Lease without Senior Mortgagee’s consent will not be effective against Senior Mortgagee. The foregoing will not limit Port’s ability to terminate this Lease if there is an Uncured Tenant Event of Default, Mortgagee has been provided the opportunity to cure such Tenant Event of Default in accordance with this Lease and Mortgagee has elected not to cure and has not provided the foreclosure notice or commenced foreclosure proceedings as further described in **Section 34.3**.

**34.14. No Merger.** No merger of this Lease and the fee estate in the Premises will occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

**34.15. Cooperation.** Port, through its Executive Director, and Tenant will cooperate in including in this Lease by suitable written amendment or agreement from time to time any provision which may be reasonably requested by the Senior Mortgagee and customarily included in such amendment or agreement to implement the provisions and intent of this **Article 34**; provided, however, that any such amendment or agreement will not adversely affect in any material respect any of Port’s rights and remedies under this Lease. Port’s execution of any such amendment or agreement is conditioned on Port’s receipt of its share of Refinancing Proceeds (if any), and Attorneys’ Fees and Costs incurred in connection with the review and negotiation of such document.

**34.16. Reliance.** The provisions of this **Article 34** are for the benefit of the Mortgagee and may be relied upon and shall be enforceable by the Mortgagee.

**34.17. Priority of Mortgagee Protections.** In the event of a conflict between a provision in **Section 17.1(b)** (Mortgaging of Leasehold) and/or this **Article 34**, on the one hand, and any other provision of this Lease, on the other hand, the provision set forth in **Section 17.1(b)** (Mortgaging of Leasehold) and or this **Article 34** will control.

**34.18. Casualty Provisions.** Notwithstanding anything in this Lease to the contrary, in the case of any Casualty while a Mortgage is in effect the following provisions shall govern: (i) Tenant may not exercise any termination option under **Section 13.4** without the Mortgagee's approval, and (ii) the Mortgagee shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Premises or any improvements thereon and Mortgagee shall have the right to supervise and control the receipt and disbursements of all insurance proceeds in accordance with the provisions of **Article 13** (Damage or Destruction).

**34.19. Condemnation Provisions.** Notwithstanding anything in this Lease to the contrary, in the case of any Condemnation is in effect while a Mortgage is in effect the following provisions shall govern: If there is a Condemnation (i) Tenant may not exercise any termination option under **Section 14.3(a)** without the Mortgagee's approval, and (ii) the Mortgagee shall have the right to participate in any condemnation proceedings and settlement discussions and shall have the right to supervise and control the receipt and disbursement of all Awards payable to Tenant. All Awards payable to Tenant pursuant to **Section 14.4** (Awards) shall be applied in accordance with the terms of Mortgage. If a Substantial Condemnation occurs, Port and Tenant shall only be entitled to the balance of the Award available (if any) after payment of the debt secured by all Mortgages attributable to that portion of the Premises or Leasehold Estate that is condemned and after payment to Port of the portion of the Award payable to Port in accordance with the terms of this Lease. If there is a Partial Condemnation, the Award shall first be applied to effect the Condemnation restoration, subject to Mortgagee's right to supervise and control receipt and disbursement of the proceeds of the Award in accordance with the terms of its Mortgage. Subject to **Section 14.5** (Temporary Condemnation), if there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, this Lease shall continue and the entire Award shall be payable to Tenant, subject to the provisions of the Mortgage.

## **35. REPRESENTATIONS AND WARRANTIES**

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

(a) **Valid Existence; Good Standing.** Tenant is a limited partnership duly incorporated and validly existing under the laws of the State of Delaware. 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 to be performed by Tenant.

(c) **No Limitation on Ability to Perform.** Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibit Tenant's entry into this Lease or its performance under this Lease. No consent, authorization, or approval of, and no notice to or filing with, any governmental authority, Regulatory Agency or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations, and approvals that have already been obtained, notices that have already been given, and filings that have already been made. Except as may otherwise have been disclosed to Port in writing in accordance with the notice requirements of **Article 32** within the two (2) weeks prior to execution of this Lease, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, Regulatory Agency, or arbitrator,

that 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 under this Lease have been duly and validly authorized. When executed and delivered by Port and Tenant, this Lease will be a legal, valid, and binding obligation of Tenant.

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

(f) Financial Matters. Except as may otherwise have been disclosed to Port in writing in accordance with the notice requirements of **Article 32** within the two (2) weeks prior to execution of this Lease, Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code. There has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations. To the best of Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

Tenant's representations and warranties in this Lease will survive any termination of this Lease.

### **36. CITY AND PORT REQUIREMENTS**

The San Francisco Municipal Codes (available at [www.sfgov.org](http://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 given to them in the cited ordinance.

#### **36.1. *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 Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment 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 36.1(a) above**. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, 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 131.2 of the Labor and Employment Code.

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

(e) Penalties. Tenant understands that pursuant to Section 131.2(h) of the Labor and Employment 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.

**36.2. 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 Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q). Capitalized terms in this **Section 36.2** that are not otherwise defined in this Lease shall have the meanings ascribed to them in the HCAO.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a “small business” by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with **Section 36.2(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 121.5(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 Article 121 of Division II of the Labor and Employment Code. Tenant shall notify the 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 121.5 of the Labor and Employment Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

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

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

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

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

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

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

**36.3. 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.

**36.4. Local Business Enterprises.** The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with

CMD to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <https://sfgov.org/cmd/LBE-certification-0>.

**36.5. 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.

**36.6. 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.

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

**36.8. Prohibition of Political Activity with City Funds.** In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by Port for this Lease may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, “**Political Activity**”). Accordingly, an employee working in any position funded under this Lease shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Lease be used for any Political Activity. In the event Tenant, or any staff member in association with Tenant, engages in any Political Activity, then (i) Tenant shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Tenant shall have the burden to prove that no funding from this Lease has been used for such Political Activity. Tenant agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event Tenant violates the provisions of this section, the City or Port may, in addition to any other rights or remedies available hereunder, (i) terminate this Lease and any other agreements between Tenant and Port, (ii) prohibit Tenant from bidding on or receiving any new City or Port contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Tenant under this Lease.

**36.9. Graffiti Removal.** Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Premises 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.).

**36.10. *Restrictions on the Use of Pesticides.*** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**Pest 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 Pest 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 Pest Ordinance, as if Tenant were a City department. Among other matters, such provisions of the Pest 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 Pest 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>.

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

**36.12. *Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Tenant not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of

Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

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

**36.14. *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 36.14** 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 36.14** 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.

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

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

**36.17. *Port's Zero Waste Events and Activities Policy.*** Tenant shall comply with the Port's Zero Waste Events and Activities Policy, as it may be amended from time to time, for all special events (as defined by the policy), regardless of attendance numbers.

**36.18. *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.

**36.19. *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 Labor and Employment Code Division II, Article 102 (formerly Administrative Code Chapter 21C): a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 102.3), a Show (as defined in Section 102.4), a Special Event (as defined in Section 102.8), Broadcast Services (as defined in Section 102.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 102.10), and Security Guard Services for Events (as defined in Section 102.11).

**36.20. 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 agrees that it will comply with the Local Hiring Requirements to the extent applicable to Subsequent Construction constructed hereunder, 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 consecutive or non-consecutive days within a two-week period; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant is encouraged to contact City’s Office of Economic Workforce and Development (“**OEWD**”) to the extent that further guidance is required 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.

**36.21. 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 Premises and encouraging use of such facilities, all at Tenant’s sole expense.

**36.22. 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.

**36.23. San Francisco Bottled Water Ordinance.** Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water 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.

**36.24. 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 Labor and Employment Code Division II, Article 142 (formerly Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “**Article 142**”), 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 Article 142 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 Article 142.

(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 Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 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.

If Tenant has any questions about the applicability of Article 142, 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 142.8.

**36.25. Prevailing Wage Rate Requirement For Theatrical Workers.** City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by

the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Labor and Employment Code Division II, Section 102.4(b) (formerly Administrative Code Section 21C.4(b)). Capitalized terms in this Section shall have the meanings provided in Section 102.4. Accordingly, Tenant, as a condition of this Lease, agrees that:

(1) Tenant shall comply with the obligations in San Francisco Labor and Employment Section 102.4, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 102.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, the City shall have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 102.7, together with the remedies set forth in this Lease.

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

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

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

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

### **36.27. 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 36.27** 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.

**36.28. *Consideration of Salary History.*** Tenant shall comply with San Francisco Labor and Employment Code Division II, Article 141 (formerly 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 Article 141. Information about Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

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

**36.30. *Polystyrene Foam.*** SF Environmental Code Section 1605(a) prohibits the sale of “dock floats, mooring buoys, or anchor or navigation markers made, in whole or in part, from Polystyrene Foam that is not wholly encapsulated or encased within a more durable material.

## **37. GENERAL PROVISIONS**

### **37.1. *Time of Performance***

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

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

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

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

### **37.2. *Interpretation of Agreement***

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

(b) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and

sections of this Lease and in the table of contents have been inserted for convenience of reference only and do not define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term “including,” “include,” “such as,” or words of similar meaning when following any general term, statement, or matter will not be construed to limit that term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used. Rather, those terms 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.

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

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

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

(g) Approvals. Unless otherwise specifically stated in this Lease, wherever a Party has a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned, or delayed and such approval or consent will be given in writing. Unless this Lease otherwise expressly provides or unless the City’s Charter otherwise requires, all approvals, consents, or determinations to be made by or on behalf of the City or Port under this Agreement will be made by Port’s Executive Director.

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

**37.3. Successors and Assigns.** Subject to the limitations on assignment set forth in *Article 17*, this Lease is binding upon and will inure to the benefit of the successors and assigns of Port and Tenant. Where the term “Tenant” or “Port” is used in this Lease, it means and includes their respective successors and assigns. Whenever this Lease specifies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or a comparable public body that has succeeded to Port’s rights and obligations no longer exists, then the City (or the State, if applicable) will be deemed to be the successor and assign of Port for purposes of this Lease.

**37.4. No Third Party Beneficiaries.** This Lease is made and entered into for the sole protection and benefit of Port and Tenant and their successors and assigns. No other Person has or will acquire any right or action based upon any provisions of this Lease and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in *Article 34* with regard to Mortgagees.



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

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

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

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

**37.9. Governing Law; Selection of Forum.** This Lease will be governed by, and interpreted in accordance with, the laws of the State of California. All references in this Lease to California or federal laws and statutes shall mean such laws, regulations and statutes as they may be amended from time to time, except to the extent a contrary intent is stated. As part of the consideration for Port's entering into this Lease, Tenant agrees that any legal suit, action, or proceeding arising out of or relating to this Lease will be instituted in the Superior Court for the County of San Francisco or in the United States District Court for the Northern District of California in San Francisco or if directed by the court, Oakland (excluding bankruptcy matters). The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding arising out of or relating to this Lease in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in such court arising out of or relating to this Lease has been brought in an inconvenient forum (excluding bankruptcy matters)., Tenant further consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth in this Lease for the delivery of notices.

**37.10. Recordation.** A memorandum of this Lease will be recorded by Tenant in the Official Records on or after the Commencement Date in the form attached hereto as **Exhibit K**.

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

**37.12. Further Assurances.** The Parties agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Lease. Port's Executive Director is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda, or similar documents with State, regional, or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Lease and do not materially increase the

obligations of Port under this Lease, if the Executive Director determines, in consultation with the City Attorney, that the document is necessary or proper and in Port's best interests. The Executive Director's signature on any such document will conclusively evidence such a determination by him or her.

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

**37.14. Relationship of Parties.**

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

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

**38. 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 or the Port under this Lease 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.

**39. DEFINITIONS.**

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

"ACMs" is defined in *Section 19.6*.

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

**“Adjustment Date”** is defined in the Basis Lease Information.

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

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

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

**“Annual Percentage Rent Statement”** is defined in *Section 4.2*.

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

**“Approved”** and **“Approving”** have correlative meanings.

**“Assignment”** means an assignment (other than a collateral assignment in connection with any financing, which will not require prior Port approval), conveyance, hypothecation, pledge (other than a pledge in connection with any mezzanine financing which will not require prior Port approval), or otherwise transfer of all or any of Tenant’s interest in this Lease or Leasehold Estate. For the avoidance of doubt, in no event shall a collateral assignment in connection with any financing, a pledge in connection with any mezzanine financing, nor any subletting of the Improvements be deemed an Assignment hereunder.

**“Assignment and Assumption Agreement”** is defined in *Section 17.1(d)*.

**“Attorneys’ Fees and Costs”** means reasonable attorneys’ fees, costs, expenses, and disbursements, including expert witness fees and costs, travel time, and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, communications expenses, court costs and the fees associated with any other legal, administrative, or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

**“Audit Period”** is defined in *Exhibit B*.

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

**“Base Rent”** is defined in the Basic Lease Information.

**“Basic Lease Information”** is defined in the first paragraph of this Lease.

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

**“Bona Fide Institutional Mortgagee”** means any one or more of the following, whether acting in its own interest and capacity or in an agency or a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Mortgagees: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a licensed California finance lender, any agency or instrumentality of the United States government or any state or City governmental authority, a pension fund, a commercial real estate fund, a debt fund, an investment banking or merchant banking firm, or any entity directly or indirectly sponsored or managed by any of the foregoing, or other lender, all of which, at the

time a Mortgage is recorded in favor of such entity, owns or manages assets of at least Five Hundred Million Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency), or (ii) any Affiliate of any of the foregoing.

“**Books and Records**” is defined in *Exhibit B*.

“**Buildings**” mean all or any of the building structures located within the Premises.

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

“**business day**” means any day other than a Saturday, Sunday, or other day that banks are required or permitted to be closed in the State of California.

“**Cal-OSHA**” is defined in *Section 19.6*.

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

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

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

“**Cash Consideration**” means (i) cash, or (ii) cash equivalents.

“**CASp**” is defined in *Section 2.2*.

“**Casualty**” is defined in *Section 13.1(a)*.

“**Casualty Notice**” is defined in *Section 13.1(b)*.

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

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

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

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

“**Completion** or “**Completed**” means, as the case may be, completion by Tenant of all aspects of any Subsequent Construction undertaken by Tenant under the provisions of this Lease; each in accordance with approved building permit plans, Laws, and issuance of applicable certificates of occupancy, together with completion of all Improvements that are required under conditions of any Regulatory Approvals needed for Construction of the Improvements, no uncured Tenant Event of Default or Unmatured Tenant Event of Default exists, and Tenant has paid all development exaction fees that are required to be paid to City or Port before issuance of a temporary or final certificate of occupancy for each of the applicable Improvements. “**Complete**” has a correlative meaning.

“**Commercial General Liability**” is defined in *Section 20.1(a)(iii)*.

“**Condemnation**” means the taking of all or any part of any property, or the right of possession thereof, for any public or quasi-public purpose by any lawful governmental power or authority, by exercise of the right of eminent domain, condemnation, inverse condemnation, or

appropriation. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

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

**“Condemned Land Value”** is defined in *Section 14.4(b)*.

**“Construction”** means all construction, replacement, rehabilitation, and demolition occurring in on or about the Premises, pursuant to this Lease. **“Construct”** has a correlative meaning.

**“Construction Impacts”** is defined in *Section 2.9*.

**“Control”** means, with respect to any Person, any of the following: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the day to day management, policies or activities of such Person whether through ownership of voting securities, by contract or otherwise (excluding customary limited partner or non-managing member approval rights); (ii) the ownership (direct or indirect) of more than fifty percent (50%) of the profits or capital of another Person; or (iii) the ownership (direct or indirect) of more than fifty percent (50%) of the ownership interest of such Person (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof). **“Controlled”**, **“Controlling”** and **“Common Control”** have correlative meanings.

**“Core Benefits”** is defined in *Section 36.1(c)*.

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

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

**“Current Index”** means the Index for the calendar month immediately preceding the applicable Anniversary Date.

**“Default Rate”** means an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due, but, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law.

**“Demolish and Remove”** means the demolition of the Improvements and the removal and disposal of all debris in accordance with all Laws. **“Demolition and Removal”** and **“Demolished and Removed”** have correlative meanings.

**“Demolition Option”** is defined in *Section 30.2(a)*.

**“Disabled Access Laws”** means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances,

codes, and statutes now or later 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.

**“Encroaching Improvements”** is defined in the Basic Lease Information.

**“Encroachment Area”** is defined in *Section 2.14*.

**“Encroachment Area Charge”** is defined in *Section 2.14*.

**“Encroachment Area Purchase”** is defined in the Basic Lease Information.

**“Energy Consumption Reporting Laws”** is defined in *Section 11.3*.

**“Environmental Laws”** means any present or future federal, state or local Laws or policies relating to Hazardous Material (including the Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality, and groundwater conditions, and any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises.

**“Environmental 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, the RWQCB, Cal-OSHA, and the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

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

**“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, and Improvements under this Lease. **“Exacerbation”** has a correlative meaning.

**“Excluded Transfer”** means any of the following: (i) the exercise of customary remedies by a Bona Fide Institutional Lender under mezzanine financing of Tenant or any constituent owner of Tenant whose sole asset is a direct or indirect interest in Tenant; (ii) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (iii) a change resulting from death or legal incapacity of a natural person; (iv) the sale, transfer or issuance of less than the Controlling interest of stock listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions; or (v) a transfer of direct or indirect equity interests in the Tenant so long as a party in Control immediately prior to the transaction remains in Control immediately after the transaction; provided, however, solely for purposes of evaluating

whether a Transfer is an Excluded Transfer pursuant to *Section 4.3(a)* of *Exhibit B*, “Control” shall be limited to clauses (ii) and (iii) of the definition thereof.

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

“**Existing Improvements**” means all Improvements existing on the Premises as of the Commencement Date.

“**Existing Site Reports**” is defined in *Section 6.1(b)*.

“**Existing Subleases**” is defined in *Section 17.2(b)* (Pre-Approved Subleases).

“**Experience Requirement**” means the Port’s requirement that a proposed transferee, including its consultant and management team, have direct and substantial experience (in the Port’s reasonable judgment) as a project owner and manager of projects similar in size and complexity to the development opportunity being transferred.

“**Expiration Date**” is defined in the Basic Lease Information.

“**Facilities Condition Report**” is defined in *Section 9.3(a)(i)*.

“**FEMA**” is defined in *Section 2.12*.

“**Flagpoles**” is defined in *Section 8.6*.

“**Force Majeure**” means events that cause delays in the Party’s performance of its obligations under this Lease, or in the satisfaction of a condition to the other Party’s performance under this Lease, due to causes beyond the delayed Party’s control and not caused by the acts or omissions of the delayed Party (excluding, in any case, a delayed Party’s performance of the payment of money required under the terms of this Lease), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of Regulatory Approvals (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by *Section 7.2*; fires; floods; tidal waves; pandemics; quarantine restrictions; freight embargoes; earthquakes; 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; the unanticipated presence of Hazardous Materials or other concealed conditions on the Premises that would not have reasonably been discovered through due diligence and that would actually delay or materially and adversely impair or delay Tenant’s ability to construct Improvements; archeological finds on the Premises; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between Tenant and its contractors or work performed on behalf of Tenant); inability to obtain materials or reasonably acceptable substitute materials (provided that Tenant has ordered such materials on a timely basis and Tenant is not otherwise at fault for such inability to obtain materials). The following are excluded from the definition of Force Majeure: (1) Tenant’s failure to secure anticipated financing for the applicable Improvements unless caused by a direct result of some other event of Force Majeure; (2) sea level rise; and (3) any event that does not cause an actual delay.

“**Foreclosed Property**” is defined in *Section 34.4(a)*.

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

“**Foreclosure Period**” is defined in *Section 34.3(b)*.

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

**“Hazardous Material Claim”** means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties or the Premises relating to damage, contribution, cost recovery compensation, loss, or injury resulting from the presence or Release of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, Attorneys’ Fees and Costs, and consultants’ fees and experts’ fees and costs.

**“Hazardous Material Condition”** means the Release, or threatened Release of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under or around the Premises during Tenant’s occupancy of the Premises.

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

**“HCAO”** is defined in *Section 36.2*.

**“Impositions”** means all taxes (including possessory interest, real and personal taxes), assessments, liens, levies, fees, charges, or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or levied or assessed in lieu of or in substitution of any of the foregoing of every character whether in effect at the time this Lease is entered into or that are later effective.

**“Improvements”** means the Existing Improvements, all Subsequent Construction, and all other physical alterations and construction of buildings, structures, fixtures, Material Systems, and other improvements erected, built, placed, installed, constructed, located upon or within the Premises on or after the Commencement Date.

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

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

**“Index”** 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.

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

**“Initial Lease”** is defined in the Recitals.

**“Investigate”** or **“Investigation”** when used with reference to Hazardous Materials means any activity undertaken to determine and/or characterize the nature and extent of Hazardous Materials that may be located in, on, under, around, or about the Premises or any Improvements or any portion of the Premises or the Improvements or which have been, are being, or threaten to be Released into the environment. **“Investigation”** includes preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks or pipes, and sampling and analysis of environmental conditions in, on, under, around, or about the Premises or any Improvements thereon.

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

**“IPM”** is defined in *Section 36.10*.

**“Late Charge”** is defined in *Exhibit B*.

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

**“LBEs”** is defined in *Section 36.4*.

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

**“Lease Year”** means any applicable twelve (12) month period beginning on the Commencement Date, and each Anniversary Date during the Term, and ending on the date immediately before the next succeeding Anniversary Date.

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

**“Leasing Activity Report”** is defined in *Section 8.4*.

**“Loss”** or **“Losses”** means any and all claims, demands, losses, liabilities (including direct or vicarious liabilities), damages (including foreseeable and unforeseeable, incidental and consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including reasonable Attorneys’

Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

**"Lot 3 Encroachment Area"** is defined in the Basic Lease Information.

**"Maintenance Notice"** is defined in *Section 9.5*.

**"Major Casualty"** means damage to or destruction of all or any portion of the Premises to the extent that the hard costs of Restoration will exceed thirty percent (30%) of the hard costs to replace the Premises in their entirety. The calculation of such percentage will be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Casualty.

**"Material Systems"** is defined in *Section 9.5(a)*.

**"Memo of Option"** is defined in the Recitals.

**"Memorandum of Lease [and Purchase Option]"** means the memorandum of this Lease, suitable for recordation in the Official Records and in the form of *Exhibit K*.

**"Mezzanine Lender"** means an entity that makes a Mezzanine Loan to a direct owner of Tenant.

**"Mezzanine Loan"** means a loan secured by a pledge of equity interests in Tenant.

**"Minimum Net Worth Amount"** means Twenty Nine Million Dollars (\$29,000,000), which amount will increase by ten percent (10%) on the tenth (10th) Anniversary Date and every ten (10) years thereafter.

**"Mortgage"** is defined in *Section 34.1*.

**"Mortgagee"** is defined in *Section 34.1*.

**"Mortgagee Acquisition"** is defined in *Section 34.4(a)*.

**"Net Awards and Payments"** is defined in *Section 14.4*.

**"Net Worth Guarantor"** means a Person, in combination with Tenant or the proposed transferee, as applicable, satisfying the Net Worth Requirement that is the guarantor under the Net Worth Guaranty.

**"Net Worth Guaranty"** means a guaranty of performance of all the obligations under this Lease, in an amount not to exceed the Net Worth Requirement (less the net worth of Tenant or the proposed transferee, as applicable), in a form reasonably approved by Port and delivered to Port by the Net Worth Guarantor.

**"Net Worth Requirement"** means, with respect to a proposed transferee, the proposed transferee has a net worth (inclusive of its equity in the Property) equal to at least the Minimum Net Worth Amount.

**"New Lease"** is defined in *Section 34.10*.

**"New Lease Execution Period"** is defined in *Section 34.10(a)*.

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

**"Non-Disturbance Agreement"** is defined in *Section 17.3*.

**"Notice to Cease Prohibited Use"** is defined in *Section 5.3*.

**"Notice to Vacate"** is defined in *Section 2.14*.

**"Nutritional Standards Requirements"** is defined in *Section 36.26*.

**"OEWD"** is defined in *Section 36.20*.

“**Official Records**” means, with reference to the recordation of documents, the Official Records of the City and County of San Francisco.

“**OLSE**” means the City’s Office of Labor Standards and Enforcement.

“**Original Loan**” *[definition to be added from Exhibit B when finalized]*.

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

“**PACMs**” is defined in *Section 19.6*.

“**Parking Garage**” is defined in the Basic Lease Information.

“**Partial Condemnation**” is defined in *Section 14.3(b)*.

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

“**Permitted Mortgage**” is a Mortgage in compliance with the provisions of *Article 34* and approved by Port.

“**Percentage Rent**” is defined in the Basic Lease Information and *Section 4.2(a)* of *Exhibit B*.

“**Permitted Title Exceptions**” is defined in *Section 2.5*.

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

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

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

“**Pest Ordinance**” is defined in *Section 36.10*.

“**PML Report**” is defined in *Section 20.1(a)(ii)(2)*

“**Political Activity**” is defined in *Section Error! Reference source not found.*

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

“**Port Representative**” is defined in *Exhibit B*.

“**Port’s Refinancing Participation**” means the amount due to Port in connection with a Refinancing as described in *Exhibit B*.

“**Port’s Transfer Participation**” means the amount due to Port in connection with a Transfer as described in *Exhibit B*.

“**Pre-Approved Subleases**” is defined in *Section 17.2(b)*.

“**Prior Lease**” is defined in the Recitals.

“**Premises**” is defined in *Section 2.1*.

“**Prime Rate**” means the base rate on corporate loans posted by at least 75% of the nation’s thirty (30) largest banks, as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source.

**“Prior Index”** means the Index published closest (but prior) to the month immediately before the applicable Anniversary Date.

**“Probable Maximum Loss”** is defined in *Section 20.1(a)(ii)(2)*.

**“Prohibited Uses”** is defined in *Section 5.2*.

**“Public Trust”** means the tidelands public trust for commerce, navigation, and fisheries, including the statutory trust imposed by the Burton Act as set forth in the Burton Act.

**“PV System”** is defined in *Section 11.2*.

**“Qualified Transferee”** means any transferee that satisfies each of the following criterion: (i) satisfies the Experience Requirement; (ii) satisfies the Net Worth Requirement; and (iii) is subject to jurisdiction of the courts of the State.

**“Qualifying Refinancing”** *[definition to be added from Exhibit B when finalized]*.

**“Record Drawings”** is defined in *Section 10.4(a)*.

**“Refinancing”** *[definition to be added from Exhibit B when finalized]*.

**“Refinancing Closing”** the date that a Refinancing closes through close of escrow or otherwise.

**“Refinancing Proceeds”** *[definition to be added from Exhibit B when finalized]*.

**“Regulatory Agency”** and **“Regulatory Agencies”** means the municipal, county, local, 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 State Lands Commission, or any other governmental agency now or later having jurisdiction over the Premises or Port property.

**“Regulatory Approval”** means any authorization, approval, endorsement, determination of trust consistency, amendment of any existing plans (including the Waterfront Plan) , or permit required or issued by any Regulatory Agency.

**“Reimbursable Subtenant Costs”** is defined in *Section 17.3(a)(vi)(3)*.

**“Related Third Party”** and **“Related Third Parties”** are defined in *Section 18.4*.

**“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 any existing improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof, or into the environment. **“Released”** has a correlative meaning.

**“Remediate”** or **“Remediation”** when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, transport, dispose, contain, treat, stabilize, monitor, remediate, remove, or otherwise control Hazardous Materials located in, on, under, or about the Premises or that have been, are being, or threaten to be Released into the environment, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with application Environmental Laws and any additional Port requirements. **“Remediation”** includes those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323. **“Remediated”** and **“Remediating”** have correlative meanings.

“**Rent**” means Base Rent, Percentage Rent, Port’s Transfer Participation, Transfer Proceeds, Port’s Refinancing Proceeds, Additional Rent, and all other sums payable by Tenant to Port under this Lease, including any Late Charges and interest assessed at the Default Rate.

“**Replacement Notice**” is defined in *Section 8.6*.

“**Repair Notice**” is defined in *Section 9.5*.

“**Resilience Project**” is defined in the Basic Lease Information.

“**Resilience Project Site**” is defined in the Basic Lease Information.

“**Resilience Work**” is defined in the Basic Lease Information.

“**Resolution No. 74-6**” is defined in the Recitals.

“**Restaurant**” means restaurants and cafes, and, subject to the Port’s consent, licensed kiosks and carts.

“**Restoration**” and “**Restore**” means the restoration, replacement, renovation, reconstruction, repair, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws (including any conditions or requirements resulting from review under the California Environmental Quality Act) then applicable. All Restoration shall be conducted in accordance with the provisions of *Article 10* (Subsequent Construction). “**Restored**” and “**Restoring**” have correlative meanings.

“**RWQCB**” means the State of California San Francisco Bay Regional Water Quality Control Board.

“**Sale Period**” is defined in *Section 34.4(d)*.

“**Santa Fe Parcel**” is defined in the Basic Lease Information.

“**Santa Fe Parcel Lot 3**” is defined in the Basic Lease Information.

“**Santa Fe Purchase Option**” is defined in the Basic Lease Information.

“**Santa Fe Lease Option**” is defined in the Basic Lease Information.

“**Satellite Dish**” means any parabolic dish, antenna array, other elevated telecommunications equipment or digital antenna systems, and any other ultra-high frequency radio or microwave system or similar telecommunications system and the equipment including cables and wires used to operate such systems, servicing the Premises or any portion thereof, including systems that provide wireless service, internet service, UHF and radio frequency service within a geographic area or structure.

“**Seawall**” means the Embarcadero Seawall which stretches from Fisherman’s Wharf to Mission Creek and 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.

“**Second Default Notice**” is defined in *Section 24.3*.

“**Second NDA Notice**” is defined in *Section 17.3(c)(ii)*.

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

“**Senior Mortgage**” is defined in *Section 34.7(a)*.

“**SFPUC**” means the San Francisco Public Utilities Commission.

“**Sign**” means any sign (whether free-standing or affixed to a structure) flag, advertisement, poster, or banner.

“**Significant Change**” means any change in the direct or indirect ownership of Tenant that results in a change in Control of Tenant; provided, however, in no event will any Excluded

Transfer be deemed a Significant Change; provided, further, solely for purposes of evaluating whether a Significant Change has occurred pursuant to **Section 4.3(a)** of **Exhibit B**, “Control” shall be limited to clauses (ii) and (iii) of the definition thereof.

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

“**State Lands**” means the California State Lands Commission.

“**Sublandlord Work**” is defined in **Section 17.3(a)(xiii)**.

“**Sublease**” means any lease, sublease, license, concession, or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

“**Sublease Rent**” means rent or fees actually received by Tenant (excluding rents or fees for the reimbursement of any operating expenses, insurance, or taxes) pursuant to all Subleases.

“**Subleased Space**” means the space which is subject to a Sublease.

“**Subsequent Construction**” means all additions, expansions, Restoration, alterations or modifications of the Existing Improvements or any Construction of additional Improvements.

“**Substantial Condemnation**” means a Condemnation of (i) less than the entire Premises that renders the Premises untenable, unsuitable, or economically unfeasible for the Permitted Uses as reasonably determined by Tenant, or (ii) property located outside the Premises that substantially and materially eliminates access to the Premises where no reasonable alternative access can be constructed or made available at reasonable cost or expense to Tenant.

“**Subtenant**” means any Person leasing, using, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

“**Successor Owner**” is defined in **Section 34.4(a)**.

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

“**SWPPP**” is defined in **Section 19.7**.

“**Permitted Financing**” means the mortgage by a Bona Fide Institutional Mortgagee that provides the permanent financing to replace the financing under the Prior Lease and any subsequent permanent lender that refinances such permanent financing.

“**Tenant**” means the entity identified in the Basic Lease Information and its permitted successors and assigns to this Lease.

“**Tenant Event of Default**” is defined in **Article 23**.

“**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 the Basic Lease Information.

“**The worth at the time of award**” is defined in **Section 24.3**.

“**Total Condemnation**” is defined in **Section 14.2**.

“**Transfer**” means an Assignment and Significant Change.

“**Transfer Closing**” the date that a Transfer closes through close of escrow or otherwise.

“**Transfer Proceeds**” **[to be imported from Exhibit B when final]**.

**“Uninsured Casualty”** means any of the following: (i) a Casualty event occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under **Article 20** (Insurance) and such costs exceed One Million Dollars (\$1,000,000), as Indexed, or (ii) a Casualty event occurring at any time during the Term that is covered under Tenant’s policies of insurance that Tenant is required to carry under **Article 20** but where the cost of Restoration (including the cost of any required code upgrades) will exceed the sum of (A) the net proceeds of any insurance payable, (B) the amount of any applicable policy deductibles, and (c) One Million Dollars (\$1,000,000), as Indexed, but shall not include any Casualty event not insured due to Tenant’s failure to maintain the requisite insurance policies and coverage requirements under **Article 20** (Insurance).

**“Unmatured Tenant Event of Default”** means any default that, with the giving of notice or the passage of time, or both, would constitute a Tenant Event of Default.

**“Waterfront Plan”** means the Port of San Francisco Waterfront Plan for the approximately 7-1/2 miles of waterfront property under Port jurisdiction.

**“Waterfront Plaza”** is defined in the Recitals.

**“WDAC”** means the Waterfront Design Advisory Committee authorized under Planning Code Section 240, whose members are appointed by the City and Port, and that is advisory to the Port Commission and to the City’s Planning Commission.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

*Port:*

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

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

Elaine Forbes, Executive Director

*Tenant:*

**JPPF WATERFRONT PLAZA, L.P.**, a Delaware limited  
partnership

By: JPPF Waterfront Plaza GP, LLC, a Delaware limited  
liability company, its: General Partner

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

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

Grace Park, Deputy City Attorney

Lease Prepared By: Ricky Tijani, Project Manager \_\_\_\_\_ (initial)

Port Commission Resolution No. –

Board of Supervisors Resolution No.



**EXHIBIT A-1**

**PREMISES LEGAL DESCRIPTION AND SITE MAP**

DRAFT

**EXHIBIT A-2**

**SANTA FE PARCEL LEGAL DESCRIPTION AND SITE MAP**

DRAFT

## **EXHIBIT B**

### **RENT; PARTICIPATION**

#### **4.1 Base Rent.**

(a) From and after the Commencement Date, Tenant will pay the monthly Base Rent described below (as also reflected in the Basic Lease Information), 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, then the Base Rent for those months shall be apportioned based on a thirty (30) day month. Under no circumstances will the Commencement Date be delayed for any reason.

(i) Years 1-5 (Months 1-60): \$83,333.34

(ii) Years 6-10 (months 61-120): \$104,166.67

(iii) From and after the 10th Anniversary Date until the expiration of the Term, Base Rent will be adjusted in accordance with subsection 4.1(b).

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

(i) Definitions.

(1) “**Adjustment Date**” means the 10th Anniversary Date and each five-year Anniversary Date thereafter during the Term.

(2) “**Adjustment Period**” means each five-year period during the Term commencing on each Adjustment Date.

(3) “**Cost of Living 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 Commencement Date, the Index shall 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 or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(4) “**Current Index**” means the Cost of Living Index for the calendar month immediately preceding the applicable Adjustment Date.

(5) “**Periodic Adjustment**” means the amount obtained by multiplying (x) the average Base Rent and Percentage Rent for the 3 years immediately prior to the applicable Periodic Adjustment Date (calculated based on a fraction, the numerator of which is the sum of all annual Base Rent and Percentage Rent due for each of the 3 years immediately prior to the applicable Periodic Adjustment Date, and the denominator of which is 3), by (y) 0.85, as shown below:

$$\frac{\text{Base Rent} + \text{Percentage Rent for 3 prior years}}{3} \times 0.85$$

(6) **“Periodic Adjustment Date”** means the 10th Anniversary Date and each ten-year Anniversary Date thereafter during the Term.

(7) **“Prior Index”** means the Cost of Living Index for the calendar month immediately preceding the month five years prior to the applicable Adjustment Date.

(ii) **Cost of Living Index Adjustments.** Except as otherwise provided in the immediately following *Section 4.1(b)(iii)*, on each Adjustment Date during the Term, the Base Rent payable under this Lease shall be adjusted to equal one hundred percent (100%) of the amount determined by multiplying the Base Rent in effect immediately prior to the applicable Adjustment Date by a fraction, the numerator of which is the Current Index and the denominator of which is the Prior Index as shown below:

$$\frac{\text{Current Index}}{\text{Prior Index}} \times \text{Base Rent} = \text{adjusted Base Rent}$$

In no event will any adjustments to Base Rent in accordance with this *Section 4.1(b)(ii)* (being the increase from the amount of the Base Rent payable for the Adjustment Period immediately prior to such Adjustment Date) be less than ten percent (10%), nor exceed twenty percent (20%) of the Base Rent as adjusted payable for the immediately preceding Adjustment Period. The adjustment to Base Rent determined in accordance with this *Section 4.1(b)(ii)* is referred to herein as the **“Cost of Living Index Adjustment”**.

(iii) **Periodic 10-Year Adjustments to Base Rent.** Notwithstanding *Section 4.1(b)(ii)* above, on each Periodic Adjustment Date, Base Rent will be adjusted by the greater of (1) the applicable Cost of Living Index Adjustment, or (2) the applicable Periodic Adjustment.

## 4.2 Percentage Rent.

### (a) Definitions.

(i) **“Gross Rental Revenues”** means the average gross annual rental produced by the Improvements located on the Premises and the Santa Fe Parcel during the previous Lease Year (excluding any increases in gross annual rentals resulting from increases in “Operating Expenses” passed on to subtenants under Tenant’s standard form lease, a copy of which has been approved by Port as of the Commencement Date, or such other form as is subsequently approved by Port from time to time with respect to the treatment of “Operating Expenses”).

(ii) **“Percentage Rent”** means six and one-half percent (6.5%) of Gross Rental Revenues.

(iii) **“Percentage Rent Due Date”** means, from and after the Percentage Rent Trigger Date, one hundred twenty (120) days following each Anniversary Date.

(iv) **“Percentage Rent Payment”** means the amount of Percentage Rent to be paid by Tenant in accordance with *Section 4.2(b)* below.

(v) **“Percentage Rent Trigger Date”** means the date that is the 6th Anniversary Date (i.e., \_\_\_\_\_, 203X).

(b) **Manner of Payment and Reporting of Percentage Rent.**

(i) **Calculation and Timing.** Commencing on the Percentage Rent Trigger Date, Tenant will pay the Percentage Rent Payment to Port in accordance with this **Section 4.3(b)**. The amount of the Percentage Rent Payment shall be the amount, if any, that the total Percentage Rent received in the immediately preceding Lease Year exceeds total Base Rent due and payable for the same Lease Year; provided, however, that 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, then the first and the last Percentage Rent Payment shall be apportioned based on the number of months in the immediately preceding Lease Year, based on a thirty (30) day month. The first Percentage Rent Payment shall be due on the Percentage Rent Trigger Date and each subsequent Percentage Rent Payment shall be due on the Anniversary Date of the Percentage Rent Trigger Date during the Term. If the Expiration Date or earlier termination date of this Lease is other than the last day of a Lease Year, then the last Percentage Rent Payment shall be due on or before the date that is one hundred twenty (120) days after the Expiration Date or earlier termination date of this Lease.

(ii) **Reporting and Payment of Percentage Rent.**

(1) On or before each Percentage Rent Due Date, Tenant will deliver to Port a complete statement setting forth in reasonable detail its Gross Rental Revenues for the immediately preceding Lease Year (the **“Annual Percentage Rent Statement”**) [***substantially in the form of Schedule B-1 attached hereto***][***in such form as is reasonably approved by Port***]. The Annual Percentage Rent Statement shall include back-up information at a reasonable level of detail supporting all exclusions from Gross Rental Revenues claimed by Tenant to the extent expressly permitted under the definition of “Gross Rental Revenues” and shall compute the amount of Percentage Rent for the applicable Lease Year. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Annual Percentage Rent Statement must certify each Annual Percentage Rent Statement as accurate, complete and current. If the Annual Percentage Rent Statement shows that the amount of Percentage Rent for the applicable Lease Year exceeds the amount of Base Rent payable by Tenant for the same Lease Year, then Tenant shall also submit payment of the Percentage Rent Payment with the Annual Percentage Rent Statement. Any Percentage Rent Payment that is not paid by the Percentage Rent Due Date will be treated as a late payment of Percentage Rent, subject to a Late Charge.

(2) If Port receives a Percentage Rent Payment but does not receive the applicable Annual Percentage Rent Statement by the Percentage Rent Due Date, such failure, until cured, will be treated as a late payment of Percentage Rent, subject to a Late Charge. If Tenant fails to deliver any Annual Percentage Rent Statement by the Percentage Rent Due Date (irrespective of whether any Percentage Rent Payment is actually paid or payable by Tenant to Port) and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port will have the right, among its other remedies under this Lease, to have a Port Representative examine Tenant’s Books and Records as may be necessary to determine the amount of Percentage Rent for the period in question. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant will promptly pay

to Port the total cost of the examination, together with the full amount of the Percentage Rent Payment, if any, due and payable for the period in question, including any Late Charge and interest at the Default Rate.

(3) Acceptance by Port of any monies paid to Port by Tenant as a Percentage Rent Payment in accordance with any Annual Percentage Rent Statement will not be an admission of the accuracy of said Annual Percentage Rent Statement or the amount of such Percentage Rent payment.

#### **4.3 Port Participation in Transfer Proceeds.**

(a) Port's Transfer Participation. Upon each Transfer to occur during the Term (excluding an Excluded Transfer or any Refinancing or Transfer pursuant to **Article 34**), Tenant will pay Port One Half of One Percent (0.5%) of Transfer Proceeds from such Transfer as Port's Transfer Participation. If Tenant operates at multiple locations, then Port's Transfer Participation will be calculated using only the Transfer reasonably attributable to the Premises.

(b) Manner of Payment. No less than fifteen (15) days prior to the close of escrow for a Transfer, Tenant shall deliver to Port an estimated closing statement that includes Tenant's estimate of: (i) Transfer Proceeds and (ii) the estimated amount of Port's Transfer Participation. The estimated closing statement will be updated as of the Transfer Closing to show the actual Transfer Proceeds from such Transfer. If escrow is opened for a Transfer, then Port's share of the proceeds from such Transfer must be distributed through escrow. If no escrow is opened for a Transfer, Port's share of proceeds from such Transfer must be paid upon the closing of any such Transfer. This provision constitutes notice to Tenant that Port is to be paid in full its share of Transfer Proceeds through the close of escrow or the closing of the applicable Transfer. If Port is not paid full as of the Transfer Closing, the amount due Port will be subject to a Late Charge and will accrue interest at the Default Rate from and after the closing until paid in full to Port. Port may reference in any estoppel certificate or other representation requested from Port that payment to Port of Port's share of proceeds from a Transfer is a material obligation under the Lease, due and owing upon the closing of applicable Transfers, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of Transfer Proceeds.

(c) Statement. Within forty-five (45) days after any Transfer, transferor Tenant will submit to Port a statement prepared in accordance with sound accounting principles consistently applied, and certified by transferor Tenant's chief executive officer or chief financial officer (or equivalent position), as complete and correct, confirming the actual amount of Transfer Proceeds including a separate line item for each of the permitted deductions from Transfer Proceeds as defined herein. At Port's option, any overpayments will be either refunded to transferor Tenant or applied to any other amount then due and unpaid under the Lease. Tenant will accompany the statement of Transfer Proceeds with the amount of any underpayments. The statements delivered to Port under this Section are subject to the audit provisions of **Section 4.6** for determination of the accuracy of Tenant's reporting of Port's share of Transfer Proceeds.

(d) Survival. The provisions of this **Section 4.3** will survive the earlier termination or expiration of this Lease for Transfers occurring prior to such termination or expiration. Additionally, any release by Port of Tenant's obligations under this Lease in connection with any Transfer is conditioned on Port's receipt of Port's share of Transfer Proceeds.

(e) Additional Definitions. The following definitions apply for purposes of this *Section 4.3*:

**“Transfer Proceeds”** means all consideration actually received by or for the account of Tenant in connection with the closing of a Transfer, including Cash Consideration, the principal amount of any loan made by Tenant to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. The Cash Consideration portion of Transfer Proceeds are the funds actually due and paid to the transferor in connection with the closing of such Transfer (and for avoidance of doubt, excluding funds paid at closing to title and escrow companies, fees and commissions paid to brokers, transfer and real property taxes, and reasonable attorneys’ fees and costs), as the amount of Cash Consideration may be established by providing Port with a copy of the executed settlement statement used in connection with the applicable closing. **“Transfer Proceeds”** do not include a commitment by an owner (whether direct or indirect) of Tenant to fund its share of future capital calls to construct Capital Items; or any proceeds attributable to a Transfer of all or any portion of the Santa Fe Parcel or the Encroaching Improvements, determined as follows: if the total consideration received by or for the account of Tenant in connection with a Transfer includes consideration attributable to the Santa Fe Parcel and/or the Encroaching Improvements, then the Transfer Proceeds shall exclude the amount of consideration that results from multiplying the total amount of consideration by a fraction, the numerator of which shall be the square footage of building area for the Santa Fe Parcel (as determined by the County Assessor) plus the square footage of building area for the Encroaching Improvements (which building area square footage is agreed to be 15,728 s.f.) and the denominator of which shall be the square footage of the Premises, the Encroaching Improvements and the Santa Fe Parcel combined.

**“Transfer Closing”** the date that a Transfer closes through close of escrow or otherwise.

**4.4 Port’s Participation in Refinancing Proceeds.** In connection with any Qualifying Refinancing, Tenant will pay to Port an amount equal to One Half of One Percent (0.5%) of Net Refinancing Proceeds.

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

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

(b) Manner of Payment. The estimated closing statement will be updated as of the date for close of escrow under any Qualifying Refinancing to show the actual (i) gross Refinancing Proceeds, (ii) Net Refinancing Proceeds and Port’s share thereof, as applicable, and (iii) line-item description of the deductions and exclusions from Refinancing Proceeds to arrive at Net Refinancing Proceeds. Tenant must pay Port from the close of escrow of any Refinancing, Port’s share of the Net Refinancing Proceeds.

This provision constitutes notice to Tenant that Port is to be paid in full its share of Net Refinancing Proceeds through the close of escrow of any Qualifying Refinancing. If Port is not

paid full by such closing date, the amount due Port will be subject to a Late Charge and will accrue interest at the Default Rate from and after the closing until paid in full to Port. Port may reference in any estoppel certificate or other representation requested from Port by a Mortgagee, that payment to Port of Port's share of Net Refinancing Proceeds is a material obligation under the Lease, due and owing at close of escrow of any Qualifying Refinancing hereunder, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of Net Refinancing Proceeds.

Within forty-five (45) days after any Qualifying Refinancing, Tenant will submit to Port a statement, prepared in accordance with sound accounting principles consistently applied, and certified by Tenant's chief executive officer or chief financial officer (or equivalent position) as complete and correct, confirming the actual amount of Refinancing Proceeds disbursed, permitted deductions made from such Refinancing Proceeds, and the amount of Net Refinancing Proceeds due to Port and actually paid to Port. At Port's option, any overpayments will be either refunded to Tenant, applied to any other amount then due and unpaid, or credited against Rent due. Tenant will accompany the statement of Net Refinancing Proceeds with the amount of any underpayments. The statements delivered to Port under this **Section 4.4(b)** will be subject to the audit provisions of **Section 4.6** for determination of the accuracy of Tenant's reporting of Net Refinancing Proceeds.

(c) **Survival.** Tenant's obligation to pay Port's Refinancing Participation will survive the Refinancing Closing and the expiration or termination of this Lease.

*[Select Definitions (to be rearranged into glossary after finalization of this section)]*

**"Net Refinancing Proceeds"** means all gross principal amounts of all Qualifying Refinancings occurring during the Term (plus, in the event of secondary financing, the original principal balance of any existing financing that is not repaid as a part of such secondary financing), after subtracting the following:

- (1) amounts needed to pay the lenders' actual costs of such Refinancing paid by Tenant including application fees, closing costs, points and other customary lenders' fees such as lenders' Attorneys' Fees and Costs and title insurance costs paid at close of escrow for such Refinancing;
- (2) amounts needed to pay Port's Attorneys' Fees and Costs associated with Port's review of the Refinancing;
- (3) amounts needed to pay Tenant's Attorneys' Fees and Costs associated with the Refinancing;
- (4) any portion of the Refinancing Proceeds that will be used for Capital Items; and
- (5) brokerage commissions paid to licensed real estate brokers to arrange the Refinancing (provided, however, if commissions are paid to Affiliate brokers, such commissions must be commercially reasonable); and
- (6) the outstanding indebtedness secured by a Mortgage to be paid off by the Refinancing.

**"Original Loan"** [insert description of existing Tenant Loan in effect at time of Commencement Date].



**“Qualifying Refinancing”** means any Refinancing other than the Refinancing of the Original Loan that results in positive Net Refinancing Proceeds that is not in connection with a Transfer pursuant to which Tenant is required to pay the Port’s Transfer Participation.

**“Refinancing”** means any secured debt financing or refinancing incurred by Tenant and secured by any Mortgage, which may include secured financing from an Affiliate of Tenant and any refinancing or replacement of existing debt secured by a Mortgage; provided, however, the term **“Refinancing”** shall exclude any financing of the Original Loan, any C-PACE financing, and any financing of capital improvements.

**“Refinancing Proceeds”** means all sums actually disbursed by a lender in connection with a Refinancing, excluding any proceeds attributable to a Refinancing of all or any portion of the Santa Fe Parcel or the Encroaching Improvements, determined as follows: if a Refinancing includes the Santa Fe Parcel and/or the Encroaching Improvements, then the Refinancing Proceeds shall exclude the amount that results from multiplying the total amount of sums actually disbursed by lender in connection with a Refinancing by a fraction, the numerator of which shall be the square footage of building area for the Santa Fe Parcel (as determined by the County Assessor) plus the square footage of building area for the Encroaching Improvements (which building area square footage is agreed to be 15,728 s.f.) and the denominator of which shall be the square footage of the Premises, the Encroaching Improvements and the Santa Fe Parcel combined.

**4.5 Books and Records.** Tenant will keep at the Premises or at another location in San Francisco, books and records in accordance with sound accounting principles or such other industry standard consistently applied. **“Books and Records”** means all of Tenant’s books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, closing and escrow statements, and any other bookkeeping documents used in business operations for the Premises or in connection with any Transfer or Refinancing. If Tenant operates all or any portion of the Premises through a Subtenant or Agent, Tenant (or its Affiliate) will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like, but in each case, solely as they relate to Tenant’s obligations under this Lease.

**4.6 Audit.** Tenant agrees to promptly make available for review (i) its Books and Records, and (ii) if Tenant operates all or a portion of the Premises through a Subtenant or Agent, the Books and Records of any such Subtenant or Agent, to Port or to any accountant employed or retained by Port or the City who is competent to examine and audit the Books and Records (collectively, **“Port Representative”**), for the purpose of examining said Books and Records to determine the accuracy of Tenant’s reporting of any amount that is due or used in determining any amount due under this Lease, as applicable, for a period of five (5) years after the payment was due or the applicable report was delivered to Port (the **“Audit Period”**). Tenant will reasonably cooperate with the Port Representative during the course of any audit; provided however, once commenced, the audit will be diligently pursued to completion by Port within a reasonable time of its commencement provided Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit has commenced, Tenant will retain the Books and Records and make them available until those

matters are resolved. If Tenant operates the Premises through a Subtenant or Agent, Tenant will require each such Subtenant or Agent to provide Port with the foregoing audit right with respect to the books and records of such Subtenant or Agent. Port shall reasonably cooperate with the reasonable requests of Tenant (or its Subtenant or Agent) to preserve the confidentiality of Tenant's proprietary financial information, including subtenant rents and tenant improvements allowances so long as such cooperation is in compliance with the Sunshine Ordinance and other applicable Laws.

If an audit reveals that Tenant has understated any of the amounts to be reported for said audit period, Tenant will pay Port, within fifteen (15) days after receipt of such audit results, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Default Rate. If Tenant understates the amounts to be reported for any audit period by five percent (5%) or more of Tenant's understated amount, Tenant will pay Port's cost of the audit. Any overpayments revealed by an audit will be credited towards Rent payments due subsequent to the audit until credited in full; provided, any overpayments at the end of the Term shall be returned to Tenant within a reasonable amount of time. As used in this **Section 4.6** and **Section 4.5**, "Tenant" includes Affiliates where applicable.

**4.7 Manner of Payment.** Tenant will pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by at least thirty (30) days' prior written notice to Tenant. Upon request of Tenant, Port shall provide confirmation of receipt of payments remitted to Port. Base Rent, Percentage Rent, Port's Transfer Participation, and Port's Refinancing Proceeds are payable without prior notice or demand. Additional Rent is on the date specified or if no date is specified, ten (10) days from Tenant's receipt of notice that such Additional Rent is due.

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

**4.9 Interest on Delinquent Rent.** If any installment or payment of Rent is not paid within five (5) days following the date due, then the unpaid amount will bear interest from the date due until paid at the Default Rate. However, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Tenant.

**4.10 Late Charge.** Tenant acknowledges and agrees that late payment by Tenant to Port of Rent or the failure to provide the Annual Percentage Rent Statement as and when due, may cause the Port increased costs not contemplated by this Lease. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Tenant will pay a late charge (the "**Late Charge**") equal to five percent (5%) of the portion of that portion of the Rent which remains unpaid more than ten (10) days following the date it is due, or, with respect to a failure by Tenant to deliver the Percentage Rent Statement to Port within ten (10) days following the date it is due, a fixed fee of One Thousand Dollars (\$1,000), which amount will be increased by an additional One Thousand Dollars (\$1,000) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter. Notwithstanding the foregoing, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Annual Percentage Rent Statement to Port, as applicable, within five (5) days of written notice from Port of such

failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant. such failure in each instance will be subject to a Late Charge, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default.

**4.11 Habitual Late Payer.** If Port notifies Tenant that Tenant is considered to be a habitual late payer, Tenant will 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 multiple late payments. Such charge may be assessed without notice and cure periods and regardless of whether any late payment results in an Event of Default. Payment of the amounts under this Section will not excuse or cure any default by Tenant. The Fifty Dollar charge in this Section will increase by Fifty Dollars (\$50.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter.

**4.12 Returned Checks.** If any check for a payment for any Lease obligation is returned without payment for any reason, Tenant will pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) and the outstanding payment will be subject to a Late Charge as well as interest at the Default Rate. The Fifty Dollar charge in this Section will increase by Fifty Dollars (\$50.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter.

**4.13 Net Lease.** It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or later arising, and whether or not beyond the present contemplation of the Parties is Port expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises. Without limiting the foregoing, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use, or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or except as set forth in this Lease, gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or later conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

**4.14 Additional Charges.** Without limiting Port's other rights and remedies set forth in this Lease, at Law or in equity, if Tenant fails to submit to the appropriate Party, on a timely basis, the items identified in *Sections: 9.3* (Facilities Condition Report), *19.3* (Tenant's Environmental Condition Notification Requirements), *19.7* (Storm Water Pollution Prevention), *36.1(c)* (CMD Form), or *27.1* (Estoppel Certificate) or to provide evidence of the required insurance coverage

described in *Article 20*<sup>4</sup>, then upon written notice from Port of such failure, Tenant will pay, as Additional Rent, One Hundred Dollars (\$100.00). If 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 will pay to Port, as Additional Rent, One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. By signing this Lease, each Party specifically agrees that the charges set forth in this *Section 4.14* represent a fair and reasonable estimate of the administrative cost and expense that Port will incur by reason of Tenant's failure to provide the documents identified in this *Section 4.14* and that Port's right to impose the foregoing charges will 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 4.13* and the reasonableness of the amount of the charges described in this *Section 4.14*. Each of the charges in this Section shall increase by One Hundred Dollars (\$100.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter.

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

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<sup>4</sup> NTD: Section references to be confirmed prior to finalization.

**SCHEDULE B-1**

**ANNUAL PERCENTAGE RENT STATEMENT**

[tbd if applicable]

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## EXHIBIT C REQUIRED INVESTMENT

### A. Definitions

**“Hard Costs”** means reasonable out-of-pocket costs actually incurred by Tenant attributable solely to the cost of labor, materials and construction of the applicable Repositioning and Maintenance Costs.

**“Minimum Investment”** means the Rent Differential calculated for the period between the Commencement Date hereof and June 30, 2029.

**“Rent Differential”** means \$1,896,377, being the difference between the base rent in effect under the Prior Lease immediately prior to the Effective Date hereof (*i.e.*, \$2,896,377) and the Initial Base Rent in effect upon the Effective Date hereof of \$1,000,000.

**“Repositioning and Maintenance Costs”** shall mean Hard Costs for the repositioning and maintenance of the Improvements and to perform Subsequent Construction, including Hard Costs expended in connection with base building improvements, common area amenities, tenant improvements or spec suite improvements, Capital Items and Material Systems.

**“Minimum Investment Date”** means the date on which the final report submitted pursuant to **Section D** below establishes that the Minimum Investment for Repositioning and Maintenance Costs has been invested.

**B. Required Investment.** The Parties acknowledge and agree that the initial Base Rent established under this Lease has been established with the expectation that Tenant will invest, or cause to be invested by a Tenant Affiliate or Agent (but not a direct or indirect payment or leasing incentive from a Subtenant) at least the Minimum Investment for Repositioning and Maintenance Costs.

During the first ten (10) years of the Term, Tenant shall use commercially reasonable efforts to expend no less than the Investment Amount for Repositioning and Maintenance Costs. Tenant shall have full discretion as to how and when to spend the Minimum Investment Amount over the first ten (10) years of the Term but shall keep the Port informed as to its expenditures on an annual basis in accordance with **Section C** below. For informational purposes only, **Schedule C-1** contains Tenant’s hypothetical capital schedule for the first five (5) years of the Lease and sets forth potential upgrades and improvements, including estimated costs therefor, that could count toward Repositioning and Maintenance Costs. The Parties acknowledge that **Schedule C-1** is for illustrative purposes only and the actual types, amounts and schedule for expenditure of Repositioning and Maintenance Costs are subject to change in Tenant’s sole discretion.

**C. Annual Reporting.** On or before the date that is one hundred and twenty (120) days after the end of each Lease Year, Tenant shall provide Port with a written description in reasonable detail setting forth the Repositioning and Maintenance Costs expended by or on behalf of Tenant for the applicable Lease Year, including a description of the work and the associated Hard Costs incurred; provided, however, that Tenant’s failure to include an item of Repositioning and Maintenance Cost in its annual report, or its failure to submit an annual report at all, shall not disqualify it from claiming such item in a later annual report or on the final report submitted under **Section D** below. Port shall have ten (10) Business Days to request additional information or to object to an item of Repositioning and Maintenance Cost but only if it reasonably determines that the item does not qualify under the requirements of **Section B** above or is not supported by documentation showing the Hard Costs expended therefor. Port’s failure

to object to an item of Repositioning and Maintenance Costs within such 10-day period shall be deemed approval.

**D. Verification of Minimum Investment.** If at any time prior to the end of the 10<sup>th</sup> Lease Year, Tenant believes that it has invested the Minimum Investment in Repositioning and Maintenance Costs, Tenant may provide Port with a final report that itemizes in reasonable detail, all Repositioning and Maintenance Costs expended prior to the date of the final report. Such final report may attach and incorporate by reference previously submitted annual reports and shall reflect all Repositioning and Maintenance Costs included in prior annual reports except those for which the Port timely objected in accordance with **Section C** above. Port shall have ten (10) Business Days to request additional information or to object to an item of Repositioning and Maintenance Cost but only if such item is not included in a prior annual report submitted pursuant to **Section C** above and the Port reasonably determines that the item does not qualify under the requirements of **Section B** above or is not supported by documentation showing the Hard Costs expended therefor. Port's failure to object to an item of Repositioning and Maintenance Costs within such 10-day period shall be deemed approval. If, following such 10-day period, the final report establishes that Tenant has invested the Minimum Investment in Repositioning and Maintenance Costs, the Port shall confirm the same in writing, and all obligations of Tenant pursuant to this **Exhibit C** shall terminate.

**E. Final Report and Reconciliation.** Provided that no final report has been submitted pursuant to **Section D** above establishing that the Minimum Investment for Repositioning and Maintenance Costs has been invested, then no later than one hundred and twenty (120) days after the end of the 10<sup>th</sup> Lease Year, Tenant shall provide Port with a final report covering the first ten (10) Lease Years that itemizes in reasonable detail, all Repositioning and Maintenance Costs expended during that period. The final report may attach and incorporate by reference previously submitted annual reports and shall reflect all Repositioning and Maintenance Costs included in prior annual reports except those for which the Port timely objected in accordance with **Section C** above. If the final report shows that Tenant expended less than the Minimum Investment Amount over the first ten (10) Lease Years, Tenant shall pay the Port within sixty (60) days after submittal of the final report, the difference, if any, by which the Minimum Investment Amount exceeds the actual amount of Repositioning and Maintenance Costs expended by Tenant.

**SCHEDULE C-1**

**MINIMUM INVESTMENT AMOUNT PLANS**

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**EXHIBIT D**

**PERMITTED TITLE EXCEPTIONS**

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**EXHIBIT E**

**SIGNIFICANT CHANGE CERTIFICATE**

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**EXHIBIT F**

**FROM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

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**EXHIBIT G**

**FORM OF TENANT ESTOPPEL CERTIFICATE**

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**EXHIBIT H**

**FORM OF SUBTENANT ESTOPPEL CERTIFICATE**

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**EXHIBIT I**

**FORM OF NON-DISTURBANCE AGREEMENT**

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**EXHIBIT J**

**FORM OF PORT ESTOPPEL CERTIFICATE**

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**EXHIBIT K**

**FORM OF MEMORANDUM OF LEASE AND PURCHASE OPTION**

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## **SCHEDULE 1**

### **FEMA-National Flood Insurance Program Disclosure Notice**

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:  
<https://onesanfrancisco.org/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:  
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:  
[www.FloodSmart.gov](http://www.FloodSmart.gov).

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**SCHEDULE 2**

**EXISTING SITE REPORTS**

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**SCHEDULE 3**

**ASBESTOS NOTIFICATION AND INFORMATION**

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**SCHEDULE 4**

**HAZARDOUS MATERIALS DISCLOSURE**

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**SCHEDULE 5.6**

**APPROVED SIGNS**

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**SCHEDULE 17.2**  
**EXISTING SUBLEASES**

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