

File No. 170150

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date March 16, 2017

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Linda Wong Date March 10, 2017
 Completed by: Linda Wong Date _____

1 [Lease Agreement - SP Plus-Hyde Parking Joint Venture - Northern Waterfront Surface
2 Parking Lots - \$2,955,607 Estimated Total Rent in First Year]

3 **Resolution approving Lease No. L-16141 between the Port and SP Plus-Hyde Parking**
4 **Joint Venture for a lease of surface parking lots in Port jurisdiction in the northern**
5 **waterfront, including: a five-year term for Seawall Lot 321; a three-year term with two**
6 **one-year Port options for Seawall Lots 323-324; and interim month-to-month parking at**
7 **Seawall Lot 322-1, Pier 19½, and Pier 29½, such terms to commence following Board**
8 **approval, with estimated total rent generated under the Lease for the first year of**
9 **operations of \$2,955,607.**

10
11 WHEREAS, Charter, Section B3.581 empowers the San Francisco Port Commission
12 ("Port Commission") with the power and duty to use, conduct, operate, maintain, manage,
13 regulate and control Port area of the City and County of San Francisco; and

14 WHEREAS, On May 26, 2015, the Port Commission, by Resolution 15-20, authorized
15 Port staff to issue a request for proposals for a leasing opportunity at Seawall Lots 321, 322-1,
16 and 323-324, Pier Sheds 19½ and 29½ located in the Northern Waterfront and other
17 expansion lots (collectively, the "Parking Sites"); and

18 WHEREAS, On November 5, 2015, Port issued the Proposal Opportunity for Lease
19 and Operation of Surface Parking Lots in the Northern Waterfront (the "Parking RFP"); and

20 WHEREAS, In an effort to create opportunities for small local businesses, the Parking
21 RFP required proposers to include a local business partner to share management
22 opportunities, profits and to create a shared power structure; and

23 WHEREAS, The Port staff recommended the proposal from the team of SP+
24 Corporation and Hyde Park Management which received the highest overall score from the
25 selection panel; and

1 WHEREAS, Hyde Park Management (HPM) is a small parking and management
2 company located and operating in San Francisco and SP+ Corporation is an industry leader in
3 providing public and private parking management, transportation and maintenance services
4 and operates in more than 4,200 locations and in over 400 cities; and

5 WHEREAS, On March 22, 2016, the Port Commission, by Resolution 16-12, awarded
6 the opportunity to the team of SP+ Corporation and HPM and authorized Port staff to
7 negotiate a lease with their joint venture partnership ("Tenant") for the Parking Sites ("Lease");
8 and

9 WHEREAS, The length of the term for each of the parking lots vary from a month-to-
10 month term to five years due to future developments and other needs contemplated by the
11 Port on several of the parking lots; and

12 WHEREAS, Rent under the Lease is the greater of a minimum monthly base rent
13 or 66% of the monthly gross receipts as applicable to each Parking Site; and

14 WHEREAS, The total rent generated under the Lease for the first year of operations is
15 estimated at \$2,955,607; and

16 WHEREAS, Tenant will be required to maintain the parking surfaces, utilities, lighting,
17 revenue equipment, attendant booths, bollards, signage striping in good repair and keep the
18 general appearance in a condition satisfactory to the Port; and

19 WHEREAS, The permitted use will be a continuation of the existing use and is not a
20 project subject to review under California Environmental Quality Act; and

21 WHEREAS, The Port Commission approved the Lease on June 16, 2016 in
22 Resolution 16-26; and

23 WHEREAS, San Francisco Charter, Section 9.118 requires Board of Supervisors'
24 approval of real property leases with anticipated revenue to the City of \$1,000,000 or more;
25 and

1 WHEREAS, The Lease has an anticipated revenue exceeding \$1,000,000; now,
2 therefore, be it

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

4 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
5 Director of the Port or her designee (the "Executive Director") to execute the Lease in a form
6 approved by the City Attorney and substantially the form of file with the Clerk of the Board of
7 the Supervisors in File No. 170150; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
9 Director to enter into any additions, amendments or other modifications to the Lease
10 (including, without limitation, preparation and attachment of, or changes to, any or all of the
11 exhibits and ancillary agreements) that the Executive Director, in consultation with the City
12 Attorney, determines to be in the best interest of the Port, do not materially increase the
13 obligations or liabilities of the City or Port, and are necessary or advisable to complete the
14 transactions which the Lease contemplates and effectuate the purpose and intent of this
15 Resolution, such determination to be conclusively evidenced by the execution and delivery by
16 the Executive Director of any such amendments; and, be it

17 FURTHER RESOLVED, That within thirty (30) days of the Lease being fully executed
18 by all parties, the Port shall provide copies of the Lease to the Clerk of the Board for inclusion
19 into the official file.
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<p>Item 1 File 17-0150</p>	<p>Department: Port</p>
<p>EXECUTIVE SUMMARY</p>	
<p>Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolution would approve Lease No. L-16141 between the Port and SP Plus-Hyde Parking Joint Venture for surface parking lots in the northern waterfront, including (a) a five-year term for Seawall Lot 321; (b) a three-year term with two one-year options for Seawall Lots 323-324; and (c) interim month-to-month terms at Seawall Lot 322-1, Pier 19½ and Pier 29½, with such terms to commence after Board of Supervisors approval, with estimated total rent generated of \$2,955,607 in the first year of the Lease. 	
<p>Key Points</p>	
<ul style="list-style-type: none"> • In November 2009, the Board of Supervisors approved a lease between the Port and Priority Parking-CA for public surface parking on Seawall Lots 321, 322-1, 323 and 324 for three years from January 1, 2010 through December 31, 2012. The lease expired on January 1, 2013 and has continued on a month-to-month holdover basis since then. This lease allowed for expansion, such that parking lots at Piers 19½, 29½, and 33 were added. • In October 2015, Priority Parking-CA terminated their lease with the Port and the Port amended another lease with Central Parking Systems Inc. to add the Priority Parking lots to Central Parking Systems Inc. lease, on the same terms. • On May 21, 2015, the Port Commission authorized Port staff to issue a Request for Proposal (RFP) for lease of three surface parking lots at Seawall Lot 321, Seawall Lot 322-1, Seawall Lots 323-324 and two sheds in Pier 19½ and 29½. The Port received four responses and found the most qualified respondent was SP+ and Hyde Park Joint Venture. 	
<p>Fiscal Impact</p>	
<ul style="list-style-type: none"> • For Seawall Lot 321 and Seawall Lot 323-324 the Port will receive rent of the greater of (a) minimum monthly base rent, increased by 3.5% annually or (b) 66% of the monthly gross receipts, net of parking taxes. For the other parking lots, the Port will receive 66% of monthly gross revenue, net of parking taxes. Based on 66% of gross revenues net of parking taxes, the Port will receive \$2,955,607 from these five parking lots in the first year, with slight revenue increases each subsequent year. • The City will receive between \$1.1 million and \$1.2 million of parking taxes each year from this lease. • As compared to 2016, the proposed lease is projected to generate approximately \$748,037 of additional annual rental revenues for the Port and approximately \$280,277 of additional annual parking taxes for the City. • The Port revenues realized from this parking lease are used to support the Port's annual operating budget. Parking taxes are used to support the City's General Fund. 	
<p>Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118 requires the Board of Supervisors' approval by resolution of contracts with anticipated revenue to the City of \$1,000,000 or more.

BACKGROUND**Existing Port Parking Leases**

On November 10, 2009, based on a competitive bid process, the Board of Supervisors approved a lease between the Port and Priority Parking-CA for public surface parking on Seawall Lots 321, 322-1, and 323-324 for three years from January 1, 2010 through December 31, 2012 (Resolution No. 446-09). Under the lease, Priority Parking-CA paid the Port the greater of minimum monthly amounts or 66% of gross revenues net of City parking taxes. The lease expired on January 1, 2013 and has continued on a month-to-month holdover basis since then, with annual 3% increases to the minimum monthly rents¹. The Port lease with Priority Parking-CA allowed for expansion to other Port parking sites, such that the Port added parking sheds at Piers 19½, 29½, and 33 with rental payment of 66% of gross revenue net of City parking taxes.

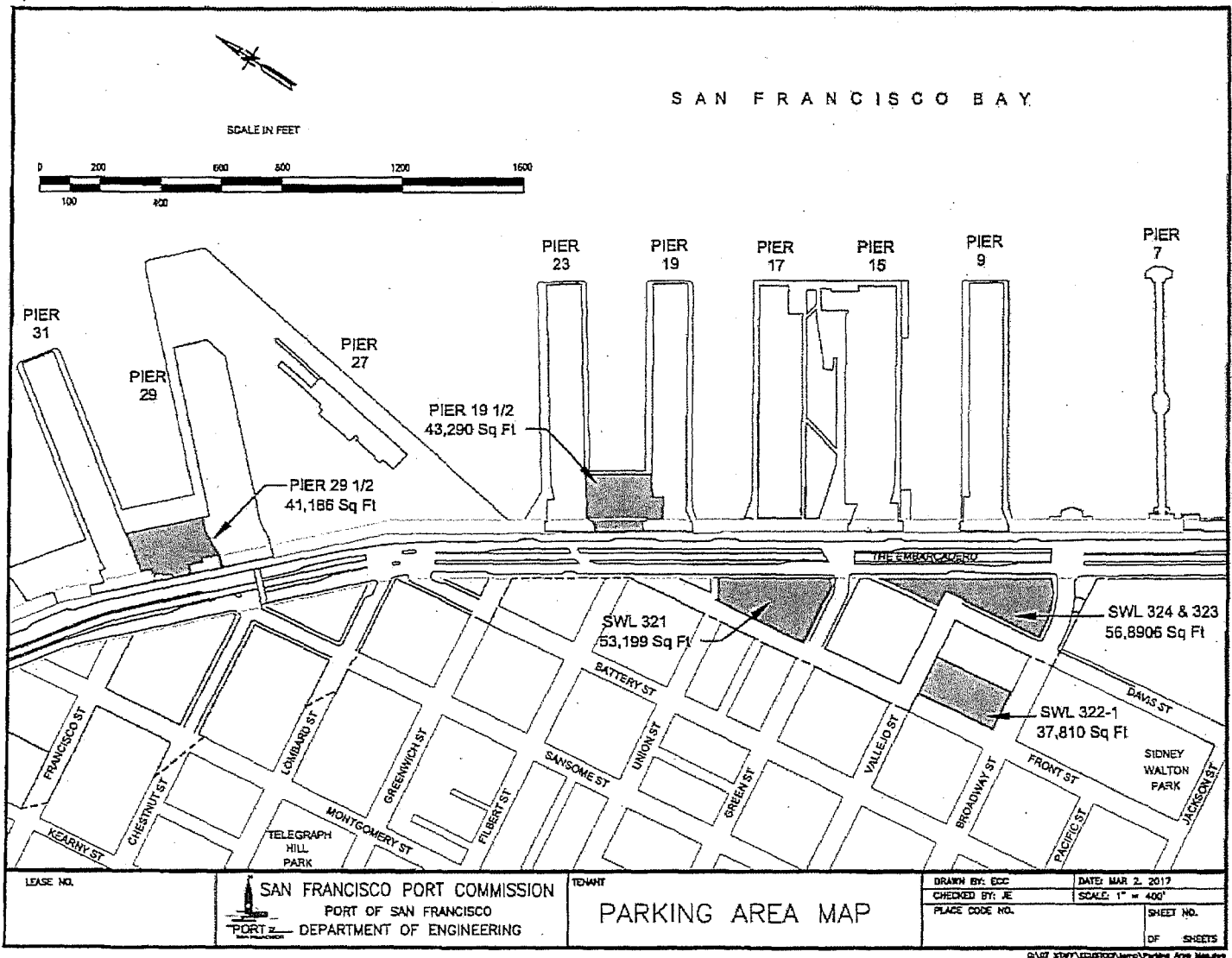
In October 2015, Priority Parking-CA issued a 30-day notice of termination of the lease to the Port, indicating that Priority Parking-CA would no longer operate any of these Port parking lots due to Priority Parking-CA's financial and personnel issues. In order to keep these parking lots operating, Port staff amended the existing lease with Central Parking Systems Inc. (now owned by SP+), on the same terms as Priority Parking-CA had operated these Port lots. The Port lease with Central Parking Systems Inc. continues on a month-to-month basis.

Request for Proposal Process

On May 21, 2015, the Port Commission authorized Port staff to issue a Request for Proposal (RFP) for lease of the Port's northern waterfront parking lots (Port Resolution No. 15-20). This included the three surface parking lots at Seawall Lot 321, Seawall Lot 322-1 and Seawall Lots 323-324 and two sheds in Pier 19½ and 29½². The map on the following page identifies the northern waterfront and highlights the location of the parking lots.

¹ The Port advises that this lease has continued on a month-to-month basis for over four years because (1) when the prior lease expired at the end of 2012, the America's Cup event was being planned for these adjacent Port properties and it was deemed prudent to keep the existing parking operator in place until the America's Cup agreement expired in 2014; (2) in October 2013 Port staff prepared a Request for Bid (RFB), for parking operators, however, the Port Commission wanted to issue a new Request for Proposal (RFP) and to include a major local business enterprise (LBE) joint venture component; (3) after extensive outreach to qualify more LBE parking operators, in May 2015, the Port Commission approved a new RFP with a major LBE component; (4) in November 2015, the RFP was issued with responses received in March 2016; (5) In June 2016, the Port Commission approved SP+/Hyde Park to negotiate lease; and (6) the Port negotiated and executed lease terms in December 2016.

² The parking shed at Pier 33 was removed from the northern waterfront parking lot RFP because this lot only contains 25 spaces that are currently leased to Port tenants and not available for public parking, and corrective work was required due to Fire Code violations.



LEASE NO.	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT	DRAWN BY: ECC CHECKED BY: JE PLACE CODE NO.	DATE: MAR 2, 2017 SCALE: 1" = 400' SHEET NO.
			PARKING AREA MAP	

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The Port issued the RFP on November 5, 2015, which requested that established prime parking operators submit proposals that share operations, management and profits with certified local business enterprise (LBE) parking operators in order to expand business parking opportunities in San Francisco. The Port received four responses by the due date on December 22, 2015 from: (1) SP+ and Hyde Park Management Joint Venture, (2) LAZ/ABC, (3) Impark/Convenient, and (4) SF Waterfront Parking. Based on the results of the selection panel³, the most qualified respondent was SP+ and Hyde Park Joint Venture. SP+ Corporation is a national parking operator and Hyde Park Management LLC is a certified local business enterprise in San Francisco.

On March 22, 2016, the Port Commission authorized Port staff to negotiate a lease for review and approval by the Port Commission and Board of Supervisors. On June 14, 2016, the Port Commission approved the subject lease (Port Resolution No. 16-26). Mr. Jay Edwards, Senior Property Manager for the Port advises that, due to various issues regarding the joint venture partnership and extensive legal review, this lease was not executed until December 2016.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease (No. L-16141) between the Port of San Francisco and SP Plus Corporation and Hyde Parking Management LLC, Joint Venture (SP+ and Hyde Park) to operate the following five northern waterfront surface parking lots:

- A five-year lease term at Seawall Lot 321, bounded by the Embarcadero, Front Street and Green Street;
- A three-year lease term with two one-year options to renew at sole discretion of the Port at Seawall Lot 323-324, bounded by the Embarcadero, Broadway and Davis Streets;
- Interim month-to-month terms at (a) Seawall Lot 322-1 bounded by Broadway, Front and Vallejo Streets, (b) Pier 19½ on the Embarcadero at Greenwich Street, and (c) Pier 29½ on the Embarcadero at Chestnut Street.

As noted above, each of these surface parking lots are currently operated by Central Parking Systems Inc. (now owned by SP+) on month-to-month holdover terms. Mr. Edwards advises that the different length of the terms for each lot is related to existing obligations and the future development status on each lot:

- Seawall Lot 321 is subject to the 15-year Exploratorium lease, which requires the Port to provide parking for visitors on this site, and this lease includes capital improvements such that a fixed five-year term will allow the operator to amortize these improvements.
- Seawall Lot 323-324 was considered a development site when the RFP was issued, and although no development deal has been finalized, the three-year and two one-year options lease term will allow flexibility for development on this site in the future.

³ The three-member selection panel included a Property Manager from the Port, the Port's Assistant Deputy Director of Real Estate and a Municipal Transportation Agency contract manager. The evaluation included both the written proposals and an oral interview.

- Seawall Lot 322-1 is a month-to-month lease term because a Memorandum of Understanding (MOU) exists between the Port and the Mayor’s Office of Housing and Community Development (MOHCD) for an affordable housing development on this site, which will require the Port to reduce, phase out or terminate the lease for this site.
- Pier 19½ and Pier 29½ are month-to-month leases because all Port shed parking is considered an interim use, to allow the Port maximum flexibility to provide future higher and better use of these facilities.

Table 1 below shows the size in terms of square feet and number of parking spaces at each site.

Table 1: Square Feet and Parking Spaces per Site

Site	Square Feet	Parking Spaces
SWL 321	53,199	300 valet spaces ⁴
SWL 322-1	37,810	151 self-park +200 valet spaces
SWL 323-324	56,906	227 self-park spaces ⁵
Pier 19½ shed	37,500	100 self-park spaces
Pier 29½ shed	42,500	75 self-park spaces

For Seawall Lot 321 and Seawall Lot 323-324 the Port will receive rent of the greater of (a) minimum monthly base rent, increased by 3.5% annually, as shown in Table 2 below or (b) 66% of the monthly gross receipts, net of parking taxes. Minimum monthly base rents were set for these two parking lots because they are not on month-to-month terms and to provide the Port minimum revenue in the non-peak months primarily during the winter when demand is lower.

Table 2: Monthly Base Rent

Site	Year 1	Year 2	Year 3	Year 4	Year 5
SWL 321	\$73,000	\$75,555	\$78,200	\$80,937	\$83,770
SWL 323-324 ⁶	\$78,000	\$80,730	\$83,555	\$86,480	\$89,507

For Seawall Lot 322-1 and Pier 19½ and Pier 29½, the Port will receive 66% of gross receipts, net of parking taxes. Under the proposed lease, the Port can add additional Port public parking lots as-needed, for which the parking operator would pay 66% of gross receipts, after parking taxes, to the Port⁷. Table 3 below identifies the main provisions of the proposed lease.

⁴ Primarily serves the Exploratorium, which must provide 200 public parking spaces at market rates.

⁵ Port has right to up to 64 self-park spaces for Port employees, whose fees are excluded from gross revenues.

⁶ The proposed lease is for three years, with options to extend for two additional one year terms at the Port’s sole discretion. Therefore, Year 4 and Year 5 in Table 2 reflect the optional periods.

⁷ Mr. Edwards advises that this provision allows the Port the flexibility to activate a vacant shed or seawall lot periodically for interim parking, or in the event of default by an existing parking operator to provide interim operations until the Port can issue a new RFP.

Table 3: Summary of Other Lease Provisions Between Port and SP+ and Hyde Park

Effective Date	Upon approval by Board of Supervisors and execution by Port.
Rent	For Seawall Lots 321 and 323-324, greater of minimum monthly base (see Table 2 above) or 66% of monthly gross receipts net of City parking taxes. All other sites 66% of gross monthly receipts net of City parking taxes.
Rent Credits	Up to \$200,000 for installing permanent energy efficient lighting as specified on SWL 321. Up to \$100,000 in 24-month period to provide additional improvements as requested by the Port.
Maintenance	SP+ and Hyde Park to maintain parking surfaces, utilities, lighting, revenue equipment, attendant booths, signage and striping.
Additional Requirements	Port may require additional parking spaces for Car Share Program, Zip Car Share and electric vehicle charging stations and equipment

According to the subject joint venture lease agreement, SP+ and Hyde Park will both participate in day-to-day parking operations and share proportionally in all revenue, expenses, profits, risks and capital requirements.

FISCAL IMPACT

As shown in Table 4 below, based on 66% of gross revenues less parking taxes, the Port is projected to receive \$2,955,607 of rental revenue from these five parking lots in the first year, with slight revenue increases each subsequent year. If the lease is extended for five years for all five parking lots, based on 66% of gross revenues less parking taxes, the Port is projected to receive \$15,691,723 in rental revenues.

Table 4: Projected Parking Revenue and Port's Lease Revenue

Site	Year 1	Year 2	Year 3	Year 4	Year 5	Total
SWL 321	\$1,768,536	\$1,821,593	\$1,876,242	\$1,932,528	\$1,990,502	\$9,389,401
SWL 322-1	1,129,323	1,163,202	1,198,098	1,234,044	1,272,064	5,995,731
SWL 323-324	1,544,709	1,591,048	1,638,780	1,687,941	1,738,576	8,201,054
Pier 19½ shed	441,706	454,957	468,609	482,671	497,151	2,345,095
Pier 29½ shed	706,750	727,952	749,790	772,283	795,453	3,752,228
Gross Revenue	\$5,591,023	\$5,758,752	\$5,931,520	\$6,109,747	\$6,292,747	\$29,683,510
City Parking Tax	\$1,112,831	\$1,146,215	\$1,180,603	\$1,216,021	\$1,252,501	\$5,908,172
Revenue Less Tax	\$4,478,192	\$4,612,537	\$4,750,917	\$4,893,446	\$5,040,246	\$23,775,338
Port 66% Rent	\$2,955,607	\$3,044,274	\$3,135,605	\$3,229,674	\$3,326,562	\$15,691,723

As also shown in Table 4 above, the City is projected to receive between approximately \$1.1 million to \$1.2 million of parking taxes each year from this lease and a total of approximately \$5.9 million of parking tax revenues over five years from all these parking lots.

In 2016 total gross revenues of \$4,177,357 were generated from these northern waterfront Port parking lots⁸. Included in this amount was \$832,554 of parking taxes which were paid by the parking operator directly to the City. Based on \$3,344,803 of net gross revenues from these parking lots in 2016, the Port received \$2,207,570 of revenues in 2016. Therefore, the proposed lease is projected to generate approximately \$748,037 (\$2,955,607 projected first year revenues under this lease agreement less \$2,207,570 received in 2016 under the current lease) of additional rental revenues in the first year for the Port and approximately \$280,277 (\$1,112,831 less \$832,554) of additional parking taxes in the first year for the City.

The Port revenues realized from this parking lease are used to support the Port's annual operating budget. Parking taxes are used to support the City's General Fund.

RECOMMENDATION

Approve the proposed resolution.

⁸ The 2016 revenues include additional revenues from Pier 33 parking lot and reduced revenues from Pier 29½ for six months due to renovations to this facility.



**CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR**

LEASE NO. L-16141

BY AND BETWEEN

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

AND

**SP PLUS-HYDE PARKING JOINT
VENTURE, A CALIFORNIA GENERAL
PARTNERSHIP**

NORTHERN WATERFRONT PARKING LOTS
Seawall Lot 321, Seawall Lots 323-324, Seawall Lot 322-1 and
portions of the Pier 19½ Shed and Pier 29½ Shed

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

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SCHEDULE 3	FEMA DISCLOSURE NOTICE
SCHEDULE 4	HAZARDOUS MATERIALS DISCLOSURE

BASIC LEASE INFORMATION

<i>Lease Date:</i>	September 1, 2016
<i>Lease Number:</i>	L-16141
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	SP Plus – Hyde Parking Joint Venture, a California General Partnership Tenant is a joint venture between SP Plus Corporation, a Delaware Corporation (“SP+”), and Hyde Park Management LLC, a California Limited Liability Company (“Hyde Park”)
<i>Tenant's Main Contact Person and Mailing Address:</i>	William Kepp SP Plus Corporation Regional Manager 100 Pine Street, Suite 210 San Francisco, CA 94111 Telephone: (415) 205-7457 Facsimile: (415) 723-7457 Email: bkepp@spplus.com
<i>Tenant's Billing Contact and Address:</i>	Same as above
<i>Tenant's Emergency Contact and Address:</i>	William Kepp SP Plus Corporation Regional Manager 100 Pine Street, Suite 210 San Francisco, CA 94111 Telephone: (415) 205-7457 Facsimile: (415) 723-7457 Email: bkepp@spplus.com
<i>Tenant's Insurance Contact and Address:</i>	Timothy Nickerson Vice President of Risk Management SP Plus Corporation

<i>(not broker):</i>	200 East Randolph Street, Suite 7700 Chicago, IL 60601 Telephone: (312) 274-2185 Facsimile: (312) 640-8218 Email: tnickerson@spplus.com
<i>Contact Information for Tenant's Agent for Service of Process:</i>	Corporation Service Company Which Will Do Business In California As CSC - Lawyers Incorporating Service 2710 Gateway Oaks Dr Ste 150N Sacramento, CA 95833
<i>Premises:</i>	The Premises shall consist of: (i) Seawall Lot 321 ("SWL 321") and Seawall Lots 323-324 ("SWL 323-324"); (ii) Seawall Lot 322-1 and portions of the Pier 19½ Shed, and Pier 29½ Shed (each, an "Interim Lot"); (iii) any Expansion Site during an Expansion Period (each as defined below) on the terms described herein; and (iv) all Improvements and Alterations and Port Equipment located thereon. The Interim Lots will be delivered as part of the Premises on the Commencement Date, but can be unilaterally terminated by Port with thirty (30) days' prior written notice. Once an Interim Lot is terminated, it will be treated as an Expansion Site under this Lease.
<i>Permitted Use:</i>	The Premises shall be used solely for operation of parking lots and occasional temporary Special Events approved by Port in its sole discretion and for no other purpose.
<i>Lease Commencement Date:</i>	This Lease will commence upon execution by Port after approvals by the Port Commission and Board of Supervisors. Promptly following the actual Lease Commencement Date, Port and Tenant shall execute a Lease Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as Exhibit B , confirming the actual Lease Commencement Date and Expiration Date as to each parcel, but either party's failure to do so shall not affect the commencement or expiration of the Term as to each parcel.
<i>Rent Commencement Date:</i>	Commencement Date for each parcel.
<i>Rent:</i>	Rent for each lot as described below including any Expansion Site, shall be calculated and reported independently.
Specific Parcel/Lot:	Terms and Conditions
Parcel A SWL 321	<u>Description:</u> approximately 53,199 square feet with approximately 300 valet parking stalls

	<p>Term: Sixty (60) months, commencing on the Lease Commencement Date and expiring on the last day of the sixtieth (60th) month after the Lease Commencement Date (“SWL 321 Expiration Date”).</p>				
	<p>Rent: Tenant shall pay the monthly Base Rent escalated annually at 3.5% rounded to the nearest dollar as shown in the table below. In addition to the monthly Base Rent specified below, Tenant shall pay a monthly Percentage Rent of sixty-six percent (66%) of monthly Gross Revenues in an amount equal to the difference between (i) the percentage rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the percentage rent exceeds the Base Rent. (See Section 5.2).</p>				
<p>Parcel A SWL 321 (continued)</p>	<p>Months 1-12 \$73,000</p>	<p>Months 13-24 \$75,555</p>	<p>Months 25-36 \$78,200</p>	<p>Months 37-48 \$80,937</p>	<p>Months 49-60 \$83,770</p>
	<p>Operational Requirements: Tenant acknowledges and will comply with the following as applicable to Tenant’s operations at SWL 321. Terms used in this section and not defined herein are defined in the Parking Agreement between Port and Exploratorium dated November 3, 2010 for reference purposes.</p> <p>The Exploratorium has the right to: (i) non-exclusive use of a maximum of 200 general parking (“General Parking”) spaces for hourly use; (ii) exclusive use of up to thirty (30) Employee parking (“Employee Parking”) spaces for monthly use; and (iii) non-exclusive use of up to twenty (20) Union Street Right of Way (“ROW”) parking spaces as outlined below.</p> <p>General Parking spaces available for the Exploratorium are reduced by a 1:1 ratio for each Employee Parking space used by the Exploratorium.</p> <p>During Exploratorium’s opening hours, Tenant must offer the General Parking and ROW spaces for short-term parking at the prevailing hourly rate as described in Tenant’s Operation Plan and reasonably approved by Port with parking charges payable to Tenant. Exploratorium pays for Employee Parking directly to Port.</p> <p>Exploratorium does not currently have any Employee Parking. Port acknowledges that, if the Exploratorium decides to convert General Parking to Employee Parking, Tenant’s revenues may be reduced since Exploratorium pays for Employee Parking directly to Port. Accordingly, Port agrees that, if the Exploratorium decides to convert General Parking to Employee Parking which results in an impact to Tenant’s revenues of \$5,250 or more, upon a written request from Tenant documenting such conditions, Port will negotiate in good faith with Tenant to reduce/offset Base Rent.</p> <p>After Exploratorium’s opening hours, Tenant may offer the General Parking spaces, ROW and Employee Parking spaces for use at the prevailing flat rate as described in Tenant’s Operation Plan and reasonably approved by Port. The above rates may be increased upon thirty (30) days’ prior written notice to Exploratorium.</p> <p>The Exploratorium may establish a discounted validated rate</p>				

	<p>("Validated Rate") for museum visitors, guests and patrons ("Museum Invitees"). Museum Invitees shall be entitled to the Validated Rate for General Parking through a validation program. Tenant shall honor the Validated Rate.</p> <p>Exploratorium has an option to arrange for a valet program for Museum Invitees, but only if Tenant agrees to operate the valet program; and the Exploratorium, Port and Tenant agree on the fee and rate structure for the valet program.</p>
<p>Parcel A SWL 321 (continued)</p>	<p><u>Power and Lighting Project Improvements/Rent Credits</u>: No later than the first Anniversary Date, Tenant must initiate the power and lighting improvements as generally described in <i>Exhibit C</i> ("Power and Lighting Project") and in compliance with Section 13. Tenant must complete the Power and Lighting Project no later than the second Anniversary Date. Port will provide power to the location shown on <i>Exhibit C</i> no later than the first day of the seventh (7th) month after the Commencement Date. If Port fails to deliver the power source by such date, then, Tenant's deadline for completion shall be extended on a day for day basis. Tenant must competitively bid the Power and Lighting Project and Port must pre-approve the costs, schedule and scope of work. Tenant estimates the cost of the Power and Lighting Project to be Two Hundred Thousand Dollars (\$200,000). Subject to the conditions of Section 5.10(a), including the submittal of satisfactory supporting documentation, Tenant shall be entitled to a rent credit not to exceed the greater of: Two Hundred Thousand Dollars (\$200,000) or Tenant's actual cost for materials, labor and installation for the Power and Lighting Project ("Total Power and Lighting Rent Credit"). The Total Power and Lighting Rent Credit shall be amortized on a straight-line monthly basis over the period beginning with the month after the Port receives the supporting documentation required in Section 5.10(a)(ii) and ending on the SWL 321 Expiration Date, yielding equal monthly amounts to be taken against Base Rent for Parcel A/SWL 321 to reimburse Tenant for such improvements. Except as in Section 4.2(a) in the case of Port's unilateral termination of SWL 321, Tenant's right to rent credits will expire or be null and void upon the earlier to occur of (i) the rent credit being fully applied, (ii) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), or (iii) an uncured default by Tenant of any term or condition of this Lease. The completion of the Power and Lighting Project is a material term of this Lease and Tenant's failure to complete the project is a material breach of this Lease.</p>
<p>Parcel B SWL 323-324 (continued)</p>	<p><u>Description</u>: approximately 56,906 square feet combined, with approximately 227 self-park stalls</p> <p><u>Term</u>: Thirty-six (36) months, commencing on the Lease Commencement Date and expiring on the last day of the thirty-sixth (36th) month after the Lease Commencement Date ("SWL 323-324 Expiration Date").</p>

	<p><u>Extension Options:</u> Subject to the terms and conditions of Section 4.4, Port, in its sole discretion, may extend the Term for SWL 323-324 through two (2) one-year options. Each extension term shall include the entirety of SWL 323-324 or any portion thereof described in the Port's offer of extension and shall be upon all of the terms, covenants and conditions of this Lease, except that the SWL 323-324 Expiration Date shall mean the last day of the extension term and the Rent shall be as shown below.</p>				
	<p><u>Rent:</u> Tenant shall pay the monthly Base Rent escalated annually at 3.5% rounded to the nearest dollar as shown in the table below. In addition to the monthly Base Rent specified below, Tenant shall pay a monthly Percentage Rent of sixty-six (66%) of monthly Gross Revenues in an amount equal to the difference between (i) the percentage rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent. (See Section 5.2).</p>				
<p>Parcel B SWL 323-324 (continued)</p>	<p>Months 1-12</p> <p>\$78,000</p>	<p>Months 13-24</p> <p>\$80,730</p>	<p>Months 25-36</p> <p>\$83,555</p>	<p>Extension Term 1 Months 37-48</p> <p>\$86,480</p>	<p>Extension Term 2 Months 49-60</p> <p>\$89,507</p>
	<p><u>Operational Requirements:</u> The lot shall be used for general public paid parking. Port reserves forty (40) stalls within the lot and twenty-four (24) spaces along Davis Street, as designated from time to time by Port, for Port employee parking; parking fees to be paid directly to Port.</p>				
	<p><u>Development Project:</u> Teatro Zinzanni/ Kenwood Investments project</p>				
<p>Interim Lot Parcel C SWL 322-I</p>	<p><u>Description:</u> approximately 37,810 square feet, with approximately 151 self-park stalls and approximately 200 valet parking stalls.</p>				
	<p><u>Term:</u> commencing on the Lease Commencement Date and expiring on the last day of the sixtieth (60th) month after the Lease Commencement Date unless terminated by Port, in its sole discretion upon thirty (30) days' prior written notice.</p>				
	<p><u>Rent:</u> On a monthly basis, Percentage Rent of sixty-six percent (66%) of Gross Revenues. There shall be no Base Rent.</p>				
	<p><u>Operational Requirements:</u> The lot shall be used for general public parking.</p>				
	<p><u>Development Project:</u> Mayor's Office of Housing Affordable Housing project</p>				

<p>Interim Lot Parcel D Pier 19½ Shed</p>	<p><u>Description:</u> approximately 43,290 square feet, with approximately 100 self-park stalls</p>
	<p><u>Term:</u> commencing on the Lease Commencement Date and expiring on the last day of the sixtieth (60th) month after the Lease Commencement Date unless terminated by Port, in its sole discretion upon thirty (30) days' prior written notice.</p>
	<p><u>Rent:</u> On a monthly basis, Percentage Rent of sixty-six percent (66%) of Gross Revenues. There shall be no Base Rent.</p>
	<p><u>Operational Requirements:</u> The lot shall be used for general public parking. Tenant may allow overnight parking for ride share service vehicles, bookmobiles, shuttles and similar vehicles.</p>
	<p><u>Development Project:</u> Pier 19-23 Project; Pier 23½ Shed Roof Repair Project</p>
<p>Interim Lot Parcel E Pier 29½ Shed</p>	<p><u>Description:</u> approximately 41,186 square feet, with approximately 75 self-park stalls.</p>
	<p><u>Term:</u> commencing on the Lease Commencement Date and expiring on the last day of the sixtieth (60th) month after the Lease Commencement Date unless terminated by Port, in its sole discretion upon thirty (30) days' prior written notice.</p>
	<p><u>Rent:</u> On a monthly basis, Percentage Rent of sixty-six percent (66%) of Gross Revenues. There shall be no Base Rent.</p>
	<p><u>Operational Requirements:</u> The lot shall be used for general public parking. Tenant may allow overnight parking for ride share service vehicles, bookmobiles, shuttles and similar vehicles.</p>
	<p><u>Development Project:</u> Pier 31 Structural Project</p>
<p>Expansion Sites</p>	<p><u>Description:</u> Subject to the conditions below, Port shall have the option, in its sole discretion, to temporarily or permanently expand the Premises to include other Port locations (including a previously terminated Interim Lot) (each an "Expansion Site"). Port's option(s) may be exercised by giving Tenant as much advance notice as possible, but no less than five (5) calendar days' prior written notice (or less if agreed by the parties) of its intent to exercise such option(s). Port's notice shall show the Expansion Site(s) on a map and specify the following: the additional lot(s), the commencement and termination dates of the expansion period ("Expansion Period") for each, any Port-owned equipment and/or property located on the Expansion Site, and the required operation for each Expansion Site, which may include without limitation: valet parking, assigned-self parking or random self-parking. Tenant agrees to accept any such Expansion Site(s) for the respective Expansion Period, and to operate parking on the Expansion Site(s) in accordance with the specifications in Port's notice and this</p>

	<p>Lease; provided that the following conditions are met: (i) Tenant and Port determine, in the reasonable discretion of each, that the Expansion Site is in good condition for use as a parking facility open to the public; (ii) Tenant, using its best efforts in an expeditious manner, is able to obtain all Regulatory Approvals necessary for its operation of the Expansion Site as a parking facility open to the public; and (iii) Tenant shall operate the Expansion Site as a paid parking operation for which it shall have the right to charge market rates as approved by Port through a revised Operations Plan or otherwise. Tenant's use and occupancy of any Expansion Site shall be on all of the terms and conditions of this Lease, including Tenant's obligation, at its sole cost and expense, to install, operate and remove Revenue Control Equipment and signage in each Expansion Site during the Expansion Period subject to all Regulatory Approvals.</p> <p><u>Term/Expansion Period:</u> Commencing and expiring on the dates specified in Port's notice, but in no case later than the last day of the sixtieth (60th) month after the Commencement Date. Notwithstanding the expected expiration date specified in Port's notice, Port has a unilateral right to terminate any Expansion Site upon ten (10) calendar days' prior written notice.</p> <p><u>Rent:</u> Rent for any Expansion Site shall be, on a monthly basis, Percentage Rent of sixty-six percent (66%) of Gross Revenues. There shall be no Base Rent.</p> <p><u>Operational Requirements:</u> As provided in Port's notice.</p>
<i>Security Deposit:</i>	Four Hundred Eighty-Five Thousand Two Hundred Sixty-Five Dollars (\$485,265) in cash or an irrevocable, stand-by and unconditional negotiable letter of credit per Section 7.2.
<i>Tenant's Property/Port's Equipment:</i>	<p>Tenant shall, at its cost, obtain permits, install, maintain and operate "Digital Pay Station" technology and revenue control equipment in compliance with all City requirements.</p> <p>Port and Tenant agree that the Revenue Control Equipment installed by Tenant and other items listed in <i>Exhibit D</i> are Tenant's Property. It is Tenant's responsibility to notify Port in writing if Tenant believes that any additional property should be deemed to be Tenant's Property including new Improvements and Alterations installed by or on behalf of Tenant during the Term. Port will determine if such property is Tenant's Property in its sole discretion.</p> <p>The remaining equipment on the Premises belongs to Port, including the existing parking attendant booths and signage ("Port's Equipment").</p>
<i>Maintenance and Repair:</i>	Tenant's responsibility as further described in this Section and Section 11 below. Tenant's maintenance and repair obligations include, without limitation, Port's Equipment; power sweeping; concrete repairs; minor asphalt repair; slurry coating and sealing; restriping and parking space numbers; graffiti removal and painting; daily routine cleaning and trash removal; all Utilities; lighting;

	<p>charging stations installed by Tenant; revenue control equipment; bollards; and signage, in each case, whether installed and/or owned by Port or Tenant. Tenant shall immediately repair any tripping hazards or unsafe conditions. Tenant and Port shall review the Maintenance Plan on a quarterly basis for compliance and make changes as necessary.</p> <p>Except in the event that Tenant, its Agents or Invitees cause or, through its negligence, allow any damage to the subsurface (due to sink holes or excavation for example) or to the substructure, structure or roof of any shed building (in which event Section 11.1 shall apply), neither Port nor Tenant shall have the obligation to repair or maintain the subsurface or to the substructure, structure or roof of any shed building. "Substructure" does not include the asphalt or other covering of the surface or any utilities located within or under the subsurface or a pier substructure.</p> <p>In the event that repair or maintenance to the subsurface or to the substructure, structure or roof of any shed building is necessary, either Port or Tenant may elect to repair it, which election must be made within sixty (60) days after the date that the parties became aware of such need (the "Repair Election Period"). If Tenant elects to repair, such repair shall be at its sole cost and Tenant will not be entitled to rent abatement or rent credits in any amount or any other consideration from Port except as provided immediately below.</p> <p>In the event either Port or Tenant elects to make such repair, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent during the period of repair based upon the extent to which such damage or deterioration and the making of such repair interferes with Tenant's use or occupancy of the Premises.</p> <p>If neither Port nor Tenant elects to make such repairs, then either Port or Tenant may terminate this Lease as to that portion of the Premises that is unusable for the Permitted Uses due to the condition by giving written notice to the other party of the intention to do so within thirty (30) days after the earlier of: (i) the expiration of the Repair Election Period or (ii) the date that the other party provides notice that it will not make repairs. The effective date of termination shall be specified in the notice of termination, which date shall not be less than thirty (30) days from the date of the notice.</p>
<p><i>Requirements for Special Events:</i></p>	<p>Approvals. All Special Events on the Premises are subject to Port's prior approval in its sole discretion. In addition, Tenant shall obtain all Regulatory Approvals, including without limitation, and any necessary Port permits for all Special Events. Tenant shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property, including, but not limited to musical or other performance rights in connection with Special Events. All Special Events must comply with the Port's Zero Waste Policy for Special Events.</p> <p>Notice. Tenant must provide the following minimum written advance notice to Port of its desire to use all or any portion of the Premises for a Special Event: (i) at least 45 calendar days for any Special Event that</p>

	<p>requires notice or approval by the Bay Conservation and Development Commission; and (ii) at least 14 calendar days for all other events.</p> <p>Event Promoters. Tenant may enter into agreements with other parties, each of whom shall be deemed to be Tenant's Agent or Invitee, to use the Premises for Special Events, provided that such use complies with all the terms and conditions of this Lease. Such agreements shall not be subject to Section 20 (Assignment and Subletting). Tenant's Agents and Invitees shall be subject to all terms and conditions of this Lease. A breach by Tenant's Agent or Invitee constitutes a breach by Tenant. Tenant is solely responsible for ensuring that each of its Agents and Invitees under this Lease are aware of and comply with all of the provisions of this Lease and Tenant acknowledges that it shall be subject to default and termination provisions under this Lease if its Agents or Invitees fail to comply with the terms and conditions of this Lease.</p> <p>Additional Rent for Special Events. Tenant shall ensure that the rent generated during a Special Event shall be at least equivalent to the amount of Rent that would have been due to Port assuming the maximum utilization of the area for parking during normally scheduled hours of operation had the Special Event not displaced such revenues. Accordingly, unless otherwise agreed to by Port in writing prior to the Special Event, Tenant shall pay, as Additional Rent, any difference between actual percentage rent generated during the Special Event and the amount of percentage rent that would have been due to Port assuming the maximum utilization of the area for parking only during normally scheduled hours of operation had the Special Event not displaced such revenues. Tenant shall report such Additional Rent and pay any amounts due with the Monthly Percentage Rent Statement due in the month following the Special Event.</p>
<p><i>Operations Plan:</i></p>	<p>Tenant shall, at all times, operate in compliance with the Port-approved Operations Plan ("Operations Plan") attached hereto as <i>Exhibit E</i>. The Operations Plan must outline policies and procedures for: customer service, proposed rates and potential increases including without limitation special event pricing, signage, minimum staffing levels for peak and non-peak periods, hours of operations, equipment, security plan, reporting, maintenance schedule, job descriptions, cleaning schedule, environmental compliance plan, storm water management plan and other performance standards as required and must include provisions governing, among other things: staffing; cash handling, revenue reporting, sustainability, maintenance; marketing; and safety and security. Non-compliance with the Operations Plan is a material breach of this Lease.</p> <p>Within ten (10) days of Port's written notice of an Expansion Site, Tenant, if directed by Port, shall revise and submit for Port approval a revised Plan to include the Expansion Site.</p> <p>Port may, from time to time, review the Operations Plan and make recommendations for revisions; Port and Tenant agree to discuss any such recommendations in good faith. All revisions to the Operations Plan, whether initiated by Port or Tenant, are subject to Port approval, in its sole discretion.</p>

<p><i>Training and Mentorship Plan:</i></p>	<p>Tenant shall, at all times, operate in compliance with Port-approved Training and Mentorship Plan attached hereto as Exhibit F. The Port may request changes to this plan and Port and Tenant agree to discuss any such changes in good faith.</p> <p>Within ten (10) days of Port's written notice of an Expansion Site, Tenant, if directed by Port, shall revise and submit a revised plan to include the Expansion Site.</p> <p>Port may, from time to time, review the plan and make recommendations for revisions. All revisions to such plans, whether initiated by Port or Tenant, are subject to Port approval, in its sole discretion.</p>
<p><i>Extraordinary Expenses/Rent Credits:</i></p>	<p>As described in this Section, Tenant shall be entitled to rent credits for the following items (collectively, "Extraordinary Expenses"):</p> <p>A. Tenant Improvements. Under this Lease (and with certain exceptions as described in this Lease), at its sole cost, Tenant is required to operate and maintain the Premises in compliance with Law. Notwithstanding such obligations, Port, in its sole discretion, and subject to the requirements in this Section and Section 9, may decide that certain capital outlays for Improvements that are required to comply with Laws enacted or amended after the Commencement Date or the enforcement of current or amended Laws <u>and</u> that will either (i) correct a significant life, safety or fire code issue; or (ii) would benefit the Port for financial reasons not anticipated on the Commencement Date, will be reimbursed through rent credits, subject to the Port's prior written approval as to the scope of work and the cost of such improvements. Such rent credits authorized by Port shall not exceed One Hundred Thousand Dollars (\$100,000) in any twenty-four (24) month period. Tenant must competitively bid the contract for such work and Port must pre-approve the costs, schedule and scope of work. Subject to the conditions of Section 5.10(b), Tenant shall be entitled to a rent credit not to exceed the greater of: One Hundred Thousand Dollars (\$100,000) in any twenty-four (24) month period or Tenant's actual cost for materials, labor and installation to be taken against Base Rent at a rate of One Hundred percent (100%) of total monthly Base Rent for all parcels until fully reimbursed.</p> <p>B. Staffing Costs. The Port, in its sole discretion, may request changes to the Operations Plan such as significantly increased hours of operation, staffing or security. To the extent such changes result in additional personnel costs to Tenant, subject to the Port's prior written approval as to the personnel requirements and the associated costs and to the conditions of Section 5.10(b), Tenant shall be entitled to a rent credit not to exceed the greater of: Twenty-five Thousand Dollars (\$25,000) in any twelve (12) month period or the actual cost for such personnel to be taken against Base Rent at a rate of One Hundred percent (100%) of total monthly Base Rent for all parcels until fully reimbursed.</p> <p>If, under Section 4.2(a), Port terminates this Lease in its entirety prior to the Expiration Date, approved and documented Extraordinary Expenses, not already applied as rent credits at the time of termination</p>

	will be reimbursed as further described in Section 4.2(a).
<i>Additional Requirements:</i>	<p>Port retains the right to require Tenant to set aside or allocate spaces for the City's Car Share Program, Zipcar program or similar third party programs for which Tenant shall charge the current market rates for parking.</p> <p>Port reserves the right to reduce the footprint of the Premises at any time to install beautification measures if the Port Commission adopts a policy for parking lot beautification.</p> <p>Tenant is accepting the Premises and any Expansion Site in its "as is" condition with all dangerous places and defects, including both latent and patent, and Tenant is to maintain the Premises in a secure manner. Tenant shall maintain Premises so it will not be unsafe, unsightly or unsanitary.</p> <p>Tenant agrees to clean up to Port's satisfaction any areas of pavement identified by Port from time to time as requiring clean up due to minor spills of oil, vehicle fluids, absorbent, grease buildup or the like.</p>
<i>Charging Stations:</i>	Tenant or Port or Port's agents may, at that party's expense, and subject to approval by the other party of the number and location, install charging stations in the parking lots. The party that initiates the installation shall be responsible for permitting and any maintenance and repair of the charging stations.
<i>Signage:</i>	Subject to Port's approval, the Port's sign guidelines as amended from time to time and all Regulatory Approvals, Tenant shall provide informational signage including rates, hours, validation and other conditions in a highly visible and professional manner at all parking lots. Tenant shall co-brand each lot as a "Port lot" and displaying the Port logo on the entrance to each lot.
<i>Right of Recapture:</i>	Upon not less than ten (10) calendar days' prior written notice, Port, in its sole discretion, may temporarily or permanently recapture any portion of any lot for any period of time without terminating this Lease at no cost to Port and, except as to a proportional decrease in Base Rent for Seawall Lots 321 and 323-324 based on the square footage removed, without reducing Tenant's Rent or other lease obligations. Notwithstanding the foregoing, if the Port recaptures any portion of the Seawall Lots 321 or 323-324 preventing egress from or ingress to such lot, regardless of the square footage recaptured, Base Rent for that lot shall be entirely abated during such period of recapture.
<i>Port's Right to Terminate:</i>	Port shall have the right to unilaterally terminate this Lease as to the entirety of Seawall Lot 321 and/or Seawall Lot 323-324 upon not less than One Hundred Eighty (180) days' prior written notice. Tenant's right to be reimbursed for unapplied rent credits in the event that Port terminates this Lease or a portion hereof under this Section is described in Section 4.2(a).

<i>Prevailing Rate of Wages and Displaced Work Protection Required for Workers:</i>	<p>Tenant shall comply fully and be bound by all the requirements of Sections 21C.3 and 21C.7 of the City's Administrative Code. In general, the ordinance requires operators of public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by the Port to pay employees working in such facilities not less than the Prevailing Rate of Wages, as defined by ordinance, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work. The ordinance also requires the operator of such facilities to retain for a 90-day transition employment period, the Employees, as defined by the ordinance, who have worked at least 15 hours per week and have been employed by the immediately preceding operator or its subcontractors, if any, for the preceding twelve months or longer at the facility or facilities covered by the agreement with the Port, provided that just cause does not exist to terminate any Employee. The predecessor operator's Employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor.</p>
<i>Revenue Control Equipment:</i>	<p>Tenant shall comply with Article 22 of the San Francisco Business and Tax Regulations Code, including, without limitation the requirement to install, maintain and use Revenue Control Equipment at the Premises. Tenant shall immediately notify Port in writing of any audit, inspection, alleged violation, violation or penalty action taken under such Article by any Enforcing Agency, as defined by Article 22. In addition to any other requirements under this Lease, upon Port's request, Tenant shall provide Port a copy of all information submitted to the Tax Collector and any other City department or official to demonstrate Tenant's compliance with Article 22.</p>
<i>Historic Preservation:</i>	<p>Tenant expressly acknowledges that certain portions of the leasehold are in a locally designated Historic District and in some instances may also be listed in the National Register. Accordingly, all construction and excavation on Seawall Lots 321, 322, 322-1, 323 and 324 is subject to the review standards in Section 1006.7 of Article 10 of the City Planning Code. Additionally, all interior and exterior Alterations (including but not limited to any repair, alteration, improvement, or construction to the interior or exterior of Pier Facilities) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element and the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at http://www.nps.gov/history/hps/tps/Standards/index.htm (the "Secretary's Standards") and summarized in the attached Exhibit G. Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alterations, improvement or construction.</p>
<i>Lease Prepared By:</i>	Jay Edwards, Senior Property Manager

LEASE AGREEMENT

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

1. DEMISE.

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

2. DEFINITIONS.

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

"**ACMs**" means asbestos-containing materials as defined in Cal-OSHA General Industry Safety Order for Asbestos.

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

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

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

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

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

"**Article 22**" means Article 22 of the San Francisco Business and Tax Regulations Code, as amended from time to time.

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

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

"**Base Rent**" means the monthly Base Rent specified in the Basic Lease Information that shall be the minimum rent paid for each month for Seawall Lots 321 and 323-324 as described further in Section 5.1 hereof.

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

"**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to the joint venture, its business, this Lease, and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, information required by Article 22 of the Business and Tax Regulation Code, as amended from time to time, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

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

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

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

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

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

"**Commencement Date**" means the date on which the Lease Term commences as specified in the Basic Lease Information and the dates on which the Expansion Period for each Expansion Site commences as determined by the context.

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

"**Conduct Code**" is defined in Section 28.13 below.

"**Concession**" is defined in Section 31.17 below.

"**Control**" means a Person that: (a) owns or has the right to acquire fifty percent (50%) or more (twenty-five percent (25%) or more if publicly traded) of each class of equity interests in the second Person or fifty percent (50%) or more (twenty-five percent (25%) or more if publicly traded) of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the second Person; or (b) otherwise has the right to direct or cause the direction of substantially all of the management and policies of the second Person.

"**Core Benefits**" is defined in Section 28.1(c) below.

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

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

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

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

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

"**Enforcing Agency**" is defined in Article 22 of the San Francisco Business and Tax Regulations Code, as amended from time to time.

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

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

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

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

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

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

"**Expansion Period**" is defined in the Basic Lease Information.

"**Expansion Site**" is defined in the Basic Lease Information.

"**Expiration Date**" means the date on which the Term for each parcel expires as specified in the Basic Lease Information or the last day of an Expansion Period for an Expansion Site.

"**Extension Option**" is defined in Section 4.4 below.

"**Extension Period**" is defined in Section 4.4 below.

"**Extraordinary Expenses**" is defined in the Basic Lease Information.

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

"**Facility**" means, for each space inside a pier shed, the pier, building or other structure in or on which the shed space is located.

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

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

"**Gross Revenue**" means all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises including revenues generated from Special Events. Except as specified below, Gross Revenues shall include the entire amount of the price charged by Tenant or any other party for the sale of tickets and any other charges. Gross Revenues shall be determined without reserve or deduction for failure or inability to collect and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant, except as expressly set forth below. Except as specifically provided in this section, no value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.

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

(i) The amount of any refund made or credit allowed due to a bona fide complaint from a customer concerning the quality of service by Tenant;

(ii) Sums collected by Tenant to pay the San Francisco parking tax required by Article 9 of the Business and Tax Regulations Code, including any amendments thereto, to the extent such amounts are in fact paid to the appropriate governmental entities for which they are collected;

(iii) Tips paid to Tenant's employees by its customers, so long as such tips go directly to Tenant's employees (and not Tenant or Tenant's management);

(iv) Parking sold or provided to employees of Tenant, not to exceed, however, one percent (1%) of Gross Revenues in any single month;

(v) Minimal transactional or membership fees paid to third party companies that market and sell parking for the Premises on-line, such as Parkmobile, Spot Hero and Parking Panda (cost for parking is Gross Revenue);

(vi) Processing and transactional costs of enforcement for unauthorized parking including fines (cost for parking is Gross Revenue); and

(vii) Revenues generated from sales of food, beverages and merchandise by event promoters and/or vendors at Special Events that do not flow through Tenant, provided that Tenant describes such revenues in its request for Port's approval of the Special Event (revenues and fees paid directly to Tenant are included in Gross Revenues).

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

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

"**Hard costs**" is defined in Section 11.4 below.

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

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

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

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

"**HRC**" means the San Francisco Human Rights Commission.

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

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

"**Improvements Pertaining to the Realty**" means machinery or equipment installed for use on the property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

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

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

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

"**Interim Lot**" is defined in the Basic Lease Information.

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous

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

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

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

"Law" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises, including Regulatory Approvals issued to Port which require Tenant's compliance, and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of a Facility, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time. "Law" includes without limitation, Articles 6, 9 and 22 of the SF Business and Tax Regulations Code; Sections 21C.3 and 21C.7 of the SF Administrative Code; and all other provisions of the City Codes that govern parking lot operations as such provisions are amended from time to time.

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

"Monthly Percentage Rent Statement" shall have the meaning described in Section 5.2(b) below.

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

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

"Notice to Vacate" is defined in Section 3.3 below.

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

"OLSE" means the City's Office of Labor Standards Enforcement.

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

"PACMs" means presumed asbestos-containing materials as defined in Cal-OSHA General Industry Safety Order for Asbestos.

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

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

"Port" means the San Francisco Port Commission.

"Port Equipment" is defined in the Basic Lease Information.

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

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

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

"**Premises**" means the real property described in Section 3.1 below and depicted on *Exhibit A* and any Expansion Site(s) during an Expansion Period.

"**preservative-treated wood containing arsenic**" is defined in Section 28.12 below.

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

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

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

"**Regulatory Approval**" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency. Regulatory Approvals for Special Events may include the following as they may be amended, revised or expanded from time to time: Alcoholic Beverage Control License from the California Alcohol Beverage Commission; Port of San Francisco Fire Marshall approval and any required permits from SF Fire Department; Itinerant Show Permit from the SF Entertainment Commission; Mechanical Contrivance Permit from the SF Entertainment Commission; One Night Event Permit from the SF Entertainment Commission; Security Plan approved by Port and SF Police Department; Traffic Plan approved by Port and SF Police Department; Emergency Medical Services Plan from the SF Department of Public Health.

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

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

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

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

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

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

"**Revenue Control Equipment**" is defined in Article 22 of the San Francisco Business and Tax Regulations Code, as amended from time to time.

"**Rules and Regulations**" means the Rules and Regulations, if any, applicable to a Facility, as may be amended from time to time.

"**saltwater immersion**" is defined in Section 28.12 below.

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

"**Special Event**" means use of the Premises for the following types of activities: exhibitions or presentations of sporting events, exhibitions and tournaments, concerts, musical and theatrical performances and other forms of live entertainment, public ceremonies, fairs, carnivals, markets, shows, fundraising events or other public or private exhibitions and activities related thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. PREMISES; AS-IS CONDITION.

3.1. Premises.

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

3.2. Accessibility Inspection Disclosure

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

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

3.4. *No Right to Encroach.*

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

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

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

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

3.5. *Proximity of Development Project.* Tenant acknowledges that during the Term, a Port program or project and/or the Development Projects described in the Basic Lease Information are scheduled to be, or may be, constructed on property in the vicinity of the Premises. Tenant is aware that the construction of such projects and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking,

dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

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

3.7. *Unique Nature of Premises.* Tenant acknowledges that portions of the Premises are located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (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; (d) there is a risk that sea level rise will increase the cost of substructure repairs and/or prevent or limit the ability to make repairs to the substructure; and/or (e) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

3.8. *As-Is Condition.* Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the substructure reports attached as *Schedule 2* and the FEMA disclosure notice attached as *Schedule 3* and Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or a Facility (including, but not limited to the substructure), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.9. *Port's Rights Regarding Premises.* Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Premises or a Facility and Tenant agrees to be bound by any Rules and Regulations Port later imposes. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT; EXTENSION OPTION.

4.1. *Term.* The term for each parcel under this Lease (the "Term") shall be for the period specified in the Basic Lease Information or for the Expansion Period for any Expansion Site. If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and

Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.2. Termination Right for SWL 321 and/or 323-324.

(a) Port has the unilateral right to terminate this Lease under this Subsection 4.2(a) as to the entirety of SWL 321 and/or SWL 323-324 for any reason. Port may exercise this right without liability or expense, except as specifically set forth in this Section, upon one hundred eighty (180) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 180-day period.

(i) Power and Lighting Project.

(A) If Port terminates the entirety of SWL 321 under this Subsection 4.2(a) after the completion of the Power and Lighting Project, within sixty (60) days after Tenant's surrender, Port agrees to pay Tenant an amount equal to the unapplied Total Power and Lighting Rent Credit.

(B) If Port terminates the entirety of SWL 321 under this Subsection 4.2(a) prior to completion of the Power and Lighting Project, within sixty (60) days after Tenant's surrender, Port agrees to pay Tenant for those documented costs of the Power and Lighting Project incurred by Tenant prior to the delivery of Port's termination notice which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Unreimbursed Power and Lighting Project Costs**").

(ii) Extraordinary Expenses. If Port terminates this Lease in its entirety under this Subsection 4.2(a), within sixty (60) days after Tenant's surrender, Port agrees to pay Tenant for those documented Extraordinary Expenses incurred by Tenant prior to the delivery of Port's termination notice which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Unreimbursed Extraordinary Expenses**"). Such Unreimbursed Extraordinary Expenses shall be determined by the costs directly attributable to the improvements for such work and/or the personnel costs as relevant and, in either case, which were approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant in compliance with Section 5.10(b).

(b) Port has the right to terminate this Lease under this Subsection 4.2(b) if Port determines, in its sole and absolute discretion, that the condition of structures, substructure or utilities on SWL 321 and/or SWL 323-234 have deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession by the end of the notice period, except as provided in this Section.

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

(c) In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

4.3. Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation

Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease.

4.4. Port's Extension Options for SWL 323-324. Port has two (2) options to extend this Lease (each, an "Extension Option") as to all or a portion of SWL 323-324 for one (1) year each (each, an "Extension Period") commencing upon the first day after the SWL 323-324 Expiration Date. Port may exercise an Extension Option no later than three (3) months prior to the SWL 323-324 Expiration Date by providing Tenant with written notice of its desire to exercise the Extension Option. If Port does not offer an Extension Option, this Lease will expire on the SWL 323-324 Expiration Date in the Basic Lease Information. Except for Base Rent which shall increase as described in the Basic Lease Information, the lease for an Extension Period shall be upon all of the terms, covenants and conditions of this Lease, except that: (i) Base Rent will be reduced on a per square foot basis if less than the entire parcel is included in the Extension Option; and (ii) the SWL 323-324 Expiration Date shall mean the last day of an Extension Period. No later than thirty (30) days after the commencement date of the Extension Period, Tenant shall increase its Security Deposit to twice the amount of the monthly Base Rent in the last month of the Extension Period without further notice from Port.

If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Port's exercise of the Extension Option or at any time prior to the first day of the Extension Period (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Port never exercised the Extension Option.

5. RENT.

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

5.1. Base Rent. Throughout the Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information for SWL 321 and SWL 323-324. Tenant shall make the first payment of Base Rent upon execution of this Lease and from and after the Rent Commencement Date, shall pay the Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month.

5.2. Percentage Rent.

(a) SWL 321 and SWL 323-324. For each lot calculated separately, Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to Section 5.1 above, a monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.

(b) Other Lots: For each lot calculated separately, on a monthly basis, Tenant agrees to pay to Port Percentage Rent of sixty-six percent (66%) of Gross Revenues for each Interim Lot and Expansion Site. There shall be no Base Rent for these lots.

(c) Percentage Rent shall be determined for each lot separately and paid by Tenant for each calendar month within twenty (20) days after the end of the prior calendar month, except that in the event this Lease for any parcel expires or terminates on a day other than the last day of a calendar month, Percentage Rent for such calendar month shall be determined and paid within twenty (20) days after such expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement ("Monthly Percentage Rent Statement") in a form approved by Port. In addition, Tenant shall furnish to Port, within thirty (30) days after the expiration of each Lease Year, a complete statement, showing the computation of the Percentage Rent for the immediately preceding Lease Year ("Annual

Statement") in a form approved by Port. The Annual Statement is for verification and certification of Monthly Percentage Rent Statements only and shall not result in any averaging or reconciliation of monthly Percentage Rent. Each Monthly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or Lease Year on a lot-by-lot basis, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar month or Lease Year, as applicable.

By way of example, with no deductions or exclusions from Gross Revenue except for the SF parking tax:

Parking revenue for Lot X	80,000
Parking tax @25% collected from customers and paid to SF Tax Collector	<u>20,000</u>
Total collected for Lot X	<u>100,000</u>
 Total collected	 100,000
Less parking tax paid	<u>(20,000)</u>
Gross Revenue subject to % rent for Lot X	<u>80,000</u>
 Port rent @ 66% for Lot X	 52,800

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

(e) If Port receives the Percentage Rent payment but does not receive the Monthly Percentage Rent Statement therewith, such failure, until cured, shall be treated as a late payment of Percentage Rent, subject to a Late Charge, until Port receives the applicable Monthly Percentage Rent Statement. Additionally, if Tenant shall fail to deliver any Monthly Percentage Rent Statement within the time period set forth in this Section 5.2 (irrespective of whether any Percentage Rent is actually paid by Tenant to Port) and such failure shall continue for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge.

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

5.3. Books and Records. All times during the Term, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises or at another location in the City

and County of San Francisco accessible to the City and Port and reasonably acceptable to Port complete and accurate Books and Records that contain all information required to permit Port to audit Tenant's Compliance and verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records for a period of the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is terminated (the "Audit Period").

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

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

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

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

5.8. Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset, except as otherwise explicitly set forth in this Lease. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and any Improvements,

any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.9. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections 12.1 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 15.8. (Storm Water Pollution Prevention), 28.1(d) (HRC Form), and 33 below or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.6 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.9 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.9 and the reasonableness of the amount of the charges described in this Section 5.9.

5.10. Rent Credits.

(a) Rent Credit for Power and Lighting Project at Seawall Lot 321.

(i) As described in this Section, Tenant shall be entitled to a rent credit for the Power and Lighting Project at Seawall Lot 321 not to exceed the amount stated in the Basic Lease Information.

(ii) Within sixty (60) days after final completion of the Power and Lighting Project, Tenant shall deliver to Port an itemized statement of the actual costs expended by Tenant on the Power and Lighting Project, accompanied by documentation reasonably satisfactory to Port evidencing all said expenditures. Such appropriate proofs of expenditure shall include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonably approved by Port, and (v) unconditional lien waivers from all the general contractors and all subcontractors and suppliers for the particular items of the Power and Lighting Project covered by the rent credit request. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection with the Power and Lighting Project. Costs expended for the Power and Lighting Project that are eligible for rent credits shall not include any items other than those specified in *Exhibit C* and shall not include items related to Tenant's trade fixtures or any other items of personalty not intended to be affixed to or become a part of the Premises nor any fees, exactions, impositions, or similar charges imposed as a

condition to permit approval. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the work, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall maintenance, repair and/or replacement costs be eligible for rent credits. Upon receipt of and based upon said statement and accompanying documentation which substantiate the actual costs expended, Port in its reasonable discretion shall determine in writing the costs eligible for rent credits and Tenant may apply such rent credits in accordance with this Section.

(iii) In the event all or any portion of the rent credit available to Tenant exceeds such monthly installment of Base Rent due, the remaining portion of the rent credit shall be carried forward to the next installment of monthly Rent until the earlier to occur of (i) the rent credit being fully applied, (ii) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), or (iii) an uncured default by Tenant of any term or condition of this Lease.

(b) Rent Credits for Extraordinary Expenses.

(i) As described in this Section, Tenant shall be entitled to a rent credit for Extraordinary Expenses not to exceed the amounts stated in the Basic Lease Information.

(ii) Within sixty (60) days after final completion of any required improvement or of expending personnel costs, Tenant shall deliver to Port an itemized statement of the actual costs expended by Tenant on Extraordinary Expenses, accompanied by documentation reasonably satisfactory to Port evidencing all said expenditures. Such appropriate proofs of expenditure shall include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid"; (iv) and such other proofs of expenditure as may be reasonably approved by Port, and (v) unconditional lien waivers from all the general contractors and all subcontractors and suppliers for the particular items of improvements covered by the rent credit request. Tenant shall substantiate actual Extraordinary Expenses with proof of expenditure, which may include: (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid"; (iv) and such other proofs of expenditure as may be reasonably approved by Port. Port shall have the right to examine and audit Extraordinary Expenses and deductions with reasonable advance notice. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection with the Extraordinary Expenses. Costs expended for Extraordinary Expenses that are eligible for rent credits shall not include items related to Tenant's trade fixtures or any other items of personalty not intended to be affixed to or become a part of the Premises. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the improvement work, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. Upon receipt of and based upon said statement and accompanying documentation which substantiate the actual costs expended, Port in its reasonable discretion shall determine in writing the costs eligible for rent credits and Tenant may apply such rent credits in accordance with this Section and Port's direction.

(iii) From and after all the terms and conditions of this Section 5.10(b) have been met, the rent credit shall be applied against Base Rent at a rate of One Hundred percent (100%) of the monthly Base Rent due for all parcels until fully reimbursed; provided however that, in the event all or any portion of the rent credit available to Tenant exceeds such monthly installment of Base Rent due, the remaining portion of the rent credit shall be carried

forward to the next installment of monthly Base Rent until the earlier to occur of (i) the rent credit being fully applied, (ii) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), or (iii) an uncured default by Tenant of any term or condition of this Lease.

(c) Tenant agrees and acknowledges that any right or claim Tenant may have to any form of rent credit that has not yet been actually applied against Rent ("**unused rent credit**") shall, upon the earlier to occur of (a) an uncured default by Tenant of any term or condition of this Lease, (b) Tenant's failure to submit to Port within sixty (60) days adequate evidence of expenditures; or (c) except as provided in the Basic Lease Information or Section 4.2(a) for a unilateral Port termination, the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.

(d) Other than explicitly provided herein, the Power and Lighting Project and all Extraordinary Expenses shall be undertaken and borne at Tenant's sole cost and expense and Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for the Power and Lighting Project and or Extraordinary Expenses and agrees that it will not seek additional term for the purpose of amortizing such expenses. Except as explicitly provided in Section 4.2(a) with respect to termination by Port, any unapplied or unused portion of any rent credit shall remain the property of Port, and Tenant shall have no interest in said funds. Rent credits cannot be applied retroactively.

(e) Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive any rent credit in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default. Upon the occurrence of a Tenant Event of Default during period Tenant is eligible for rent credits, Tenant's right to apply any rent credit shall cease and shall not be reinstated until the Tenant Event of Default is cured. If a Tenant Event of Default occurs on a day other than the first day of the calendar month or a Tenant Event of Default is cured on a day other than the last day of the calendar month, Base Rent due to Port shall be apportioned based on a thirty (30) day month. In no event shall the cessation in the application of the rent credit against any Base Rent extend the rent credit period.

6. TAXES AND ASSESSMENTS.

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

6.2. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the Port to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

7. SECURITY DEPOSIT

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

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

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

7.2. Irrevocable Standby Letter of Credit. At Tenant's option, the Security Deposit required under Section 7.1 may be provided by an irrevocable, stand-by and unconditional negotiable letter of credit (the "Letter of Credit") substantially in the form attached

as *Exhibit H* and approved by Port in its sole discretion. Neither cash nor the Letter of Credit nor any portion of the proceeds ("**LC Proceeds**") will be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default. The "**LC Value**" means the face amount of the Letter of Credit.

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.

(b) 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.

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

8. USE OF THE PREMISES.

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

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

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

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

- (c) any activity or object which will overload or cause damage to the Premises;
- (d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;
- (e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in a Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;
- (f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;
- (g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;
- (h) Vehicle washing, detailing, or servicing of any kind;
- (i) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;
- (j) the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;
- (k) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;
- (l) the washing of any vehicles or equipment;
- (m) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the load restrictions, if any, described in the Basic Lease Information; or
- (n) any other Prohibited Uses identified in the Basic Lease Information, if any.

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

9. COMPLIANCE WITH LAWS AND REGULATIONS.

Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of a Facility and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time

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

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

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

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

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

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other

entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of a Facility or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

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

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

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

11. MAINTENANCE AND REPAIRS.

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

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

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

11.2. Maintenance and Repair of Port's Equipment. Tenant shall maintain, repair and replace in good and working order, condition and repair Port's Equipment and shall provide Port with adequate documentation of Tenant's compliance upon Port's request. Tenant may modify, remove and dispose of Port's Equipment in accordance with the following.

(a) Other than routine maintenance and in-kind repair and replacement, Tenant shall seek Port's prior written approval, which Port shall not unreasonably withhold or delay to modify Port's Equipment.

(b) If Tenant determines that Port's Equipment has deteriorated or become obsolete despite Tenant's compliance with the provisions of this Lease regarding repair and maintenance, Tenant shall evaluate and report to Port on the feasibility of options for removal and disposition of such equipment, including anticipated costs and timelines and Regulatory Approvals necessary to carry out the different options.

(c) Based on this information and after conducting any necessary environmental review, Port shall determine, in writing, whether the equipment may be removed and the method of disposition, including offering the equipment to potentially interested buyers and otherwise complying with Port policy regarding surplus equipment.

(d) Removal and disposition approved by Port shall be at Tenant's cost. No later than ninety (90) days in advance of the planned work, Tenant shall submit to Port for its approval, a plan describing the removal and disposition of the equipment. Unless otherwise determined by Port in writing, Tenant may sell the demolished equipment for salvage value, and Tenant may retain the proceeds in an amount necessary to recoup its hard and soft costs of the demolition and disposition.

Within ninety (90) days of completion of the removal and disposition, Tenant must furnish Port with a report on the removal and final disposition of the equipment and a statement of Tenant's costs for the work accompanied by proof of expenditures and adequate documentation of any proceeds from sale of the equipment. Such statement must be certified by a financial officer or other accountant employed by Tenant who is authorized and competent to make such statements, as accurate, complete and current. Any proceeds of sale in excess of Tenant's costs will be paid to Port by Tenant as Additional Rent with the statement of costs.

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

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

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

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

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

12. UTILITIES AND SERVICES.

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

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements. If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing.

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

charged for such service by the San Francisco Public Utilities Commission or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

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

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

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

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

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

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall

not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, a Facility or Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

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

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

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

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

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

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

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

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

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

(f) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.2(f), lead-based paint is "disturbed or removed" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

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

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

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

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

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

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

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

14. LIENS.

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

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

15. HAZARDOUS MATERIALS.

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

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

(a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of a Facility, or other Port property except as permitted under Section 15.1;

(b) will not cause or permit any Hazardous Material Condition; and

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of a Facility, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

15.3. Tenant's Environmental Condition Notification Requirements.

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

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

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

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

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

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

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

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

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

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

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

15.4. Requirement to Remediate.

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

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

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

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

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

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

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

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

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

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 15.5 hereof and the notice or report attached as **Schedule 1** hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any

damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

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

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

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

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

15.8. Storm Water Pollution Prevention.

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

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

the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

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

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

16. INSURANCE

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

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

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

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

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

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

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

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

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

(f) Garage Liability and Garage Keepers Legal Liability Insurance. Garage Liability and Garage Keepers Legal Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence.

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

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

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

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

16.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to a Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to a Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

16.6. General Insurance Matters.

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

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

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

(d) Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy.

If Port is using an internet-based insurance compliance tracking system, Tenant's broker shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

17. DAMAGE AND DESTRUCTION.

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

Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

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

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

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

18. EMINENT DOMAIN.

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

18.2. Partial Takings. If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining, and the Base Rent

payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination, which shall be not less than thirty (30) nor more than sixty (60) days after the date of notice.

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

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

18.5. Award; Waiver; Termination of Lease; Rent. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

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

19.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all

Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

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

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

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

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

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

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

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

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

20. ASSIGNMENT AND SUBLETTING.

20.1. Transfer.

(a) Tenant agrees that this Lease is personal to Tenant and that Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee is not reasonably acceptable to Port; (7) a change in the respective percentage interest of SP+ or Hyde Park in the joint venture that reduces Hyde Park's percentage interest to less than its percentage interest on the Commencement Date; (8) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured.

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

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

(i) For up to thirty (30) days after receipt of the complete Transfer Notice, Port will have the right to: (1) terminate this Lease as of the proposed Transfer

Date; (2) sublease or take an assignment from Tenant of the interest that Tenant proposes to Transfer, on the same terms and conditions as stated in the Transfer Agreement; and (3) negotiate and contract directly with the Transferee on terms acceptable to Port in its sole and absolute discretion.

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

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

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

20.2. Sublease. In addition to all requirements in Section 20.1, the following provisions apply to any Transfer in the form of a Sublease.

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

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

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

20.3. Notice to Port. In addition to the obligations under Section 6.2, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant

agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

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

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

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

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

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

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

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

20.6. Acknowledgement. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 20.1.

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

21. DEFAULT BY TENANT.

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

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

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

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

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

(d) failure to comply with Tenant's management covenants set forth in Section 30, as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

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

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

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

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

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

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

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

(l) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within

sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

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

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

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

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

22. PORT'S REMEDIES.

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

22.1. *Tenant's Right to Possession Not Terminated.* Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as

Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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

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

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

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

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

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

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

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

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

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

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

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

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

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

24. PORT'S ENTRY ON PREMISES.

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

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

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

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

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

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

25. SURRENDER AND QUITCLAIM.

25.1. *Surrender.* Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary

wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.2 or 26.3 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

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

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

26. HOLDING OVER.

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

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

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

26.4. Renewal Letter of Credit. During any holding over period after the expiration of the original Term (whether with or without the consent of Port), Tenant shall deliver to Port, a new Letter of Credit or certificate of renewal or extension (collectively, "Renewal LC") at least ninety (90) days prior to the then current LC Expiration Date, without any action whatsoever on the part of Port, extending the then current LC Expiration Date by an additional year. Failure to provide such Renewal LC shall entitle Port to draw on the Letter of Credit and Port shall hold the proceeds of such draw as Letter of Credit Proceeds pursuant to Section 7.2 above.

27. MINERAL RESERVATION.

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

28. CITY AND PORT REQUIREMENTS.

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

28.1. Nondiscrimination.

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

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

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

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

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

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

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

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

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have

the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify OLSE when it enters into such a Sublease or Contract and shall certify to the Office of Contract Administration that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

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

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

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

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

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

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

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

that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement and that such non-compliance shall be default of this Lease.

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

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

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

28.7. 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" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

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

28.9. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises, and shall not contract with any party to provide pest abatement or control services

to the Premises, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use by Tenant's staff or contractors. If Tenant or Tenant's contractor will apply pesticides to outdoor areas, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application shall be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

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

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

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

28.13. *Notification of Limitations on Contributions.* If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 28.13 shall apply. Through its execution of this Lease, Tenant acknowledges that it

is familiar with 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 commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that if this Section 28.13 applies, Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

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

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

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

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

Tenant shall include and shall require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate

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

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

28.18. 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 a Facility and encouraging use of such facilities, all at Tenant's sole expense.

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

28.20. Consideration Of Criminal History In Hiring And Employment Decisions

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

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

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction

that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

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

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

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

with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

28.22. *San Francisco Bottled Water Ordinance* . Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the Premises with attendance of more than 100 people.

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

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

(b) 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.

(c) 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.

28.24. *Prevailing Wage Rate Requirement For Special Event or Trade Show Work*. City law entitles individuals engaged in work involving the on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property to receive the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event meets any of the exemptions in San Francisco Administrative Code Section 21C.8(b). Capitalized terms in this Section shall have the meanings provided in Sections 21.C8. Accordingly, Tenant, as a condition of this Lease, agrees that:

(a) Tenant shall comply with the obligations in San Francisco Administrative Code Section 21C.8, and shall require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.8, including the payment of Prevailing Wage Rates to workers engaged in On-site work on Trade Shows or Special Events. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, the City shall have all available remedies against Tenant to secure compliance and seek redress

for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Lease.

(b) The City may inspect and/or audit any workplace, job site, books and records pertaining to On-site work on Trade Shows or Special Events at the Premises, and may interview any individual who provides, or has provided, On-site work on Trade Shows or Special Events at the Premises.

(c) 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 a Trade Show or Special Event 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.

28.25. 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.

29. NOTICES.

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

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

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

30. TENANT'S MANAGEMENT COVENANTS.

30.1. Covenants. Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with standards for the maintenance and operation of other surface parking lots located in San Francisco. Tenant shall

be exclusively responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 11, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping; (e) security services for the Premises; (f), for Special Events, adequate security services, including crowd control and management, parking and traffic control and first aid, and (g) such other services as may be necessary or appropriate for a professionally-run surface parking lot and Special Events.

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

31. MISCELLANEOUS PROVISIONS.

31.1. *Independent Contractor.* Tenant acknowledges and agrees that it shall be deemed at all times to be an independent entity wholly responsible for the manner in which it carries out this Lease, including any work requested by Port under this Lease. Neither Tenant nor its Agents will represent or hold themselves out to be employees of the City at any time. Neither Tenant nor any of its Agents shall have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Tenant, and not Port, shall be responsible for all obligations and payments for Tenant's Agents, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to its performing services and work. Nothing in this Lease or in the manner in which it is carried out shall be construed as creating an employment or agency relationship between City and Tenant or any Agent of Tenant.

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

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

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

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

other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

31.6. Interpretation of Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31.17. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit,

concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by either the Executive Director of Port or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

32. LIMITATION ON DAMAGES.

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

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

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

33. TENANT ESTOPPEL CERTIFICATES.

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

34. APPROVAL OF BOARD OF SUPERVISORS.

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

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

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

By: _____
Mark Lozovoy
Acting Deputy Director, Real Estate

Date Signed: _____

TENANT: **SP Plus – Hyde Parking Joint Venture,**
a California general partnership

By: SP Plus Corporation,
a Delaware corporation

By: _____
Steven Aiello
Senior Vice President

By: Hyde Park Management LLC,
a California limited liability company

By: _____
Biruk Tadesse
Partner

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

By: _____
Name: Deputy City Attorney

Lease Prepared By: Jay Edwards, Senior Property Manager _____
(initial)

Port Commission Resolution 16-26

Board of Supervisors Resolution _____

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT B

LEASE COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

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

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

Parcel A: The SWL 321 Expiration Date is hereby established as _____,
20____.

Parcel B: The SWL 323-324 Expiration Date is hereby established as _____,
20____.

Parcels C, D, and E: The Expiration Date for Interim Lots is hereby established as
_____ or the thirtieth day after Port's thirty day notice to terminate.

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

By: _____
Name: _____
Title: _____

By: _____
Mark Lozovoy
Acting Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

SITE PLAN FOR POWER AND LIGHTING PROJECT AT SEAWALL LOT 321

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EXHIBIT D
TENANT'S PROPERTY

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EXHIBIT E

TENANT'S OPERATIONS PLAN (PORT-APPROVED)

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT F
TENANT'S TRAINING AND MENTORSHIP PLAN

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

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

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EXHIBIT H

FORM OF LETTER OF CREDIT

[Name of Financial Institution]

Irrevocable Standby
Letter of Credit

No. _____
Issuance Date: _____
Expiration Date: _____
Applicant: _____

Beneficiary:
City and County of San Francisco, operating by and through
the San Francisco Port Commission
Pier 1
San Francisco, CA 94111

Ladies/Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit in your favor for the account of the above referenced Applicant in the amount of _____ U.S. Dollars (\$ _____) available for payment at sight by your draft drawn on us when accompanied by the following documents:

1. An original copy of this Irrevocable Standby Letter of Credit.
2. Beneficiary's dated statement purportedly signed by an authorized signatory or agent reading: "This draw in the amount of _____ U.S. Dollars (\$ _____) under your Irrevocable Standby Letter of Credit No. _____ represents funds due and owing to us pursuant to the terms of that certain license by and between City and County of San Francisco, operating by and through the San Francisco Port Commission, as owner, and _____, as licensee, and/or any amendment to the license or any other agreement between such parties related to the license."

It is a condition of this Irrevocable Standby Letter of Credit that it will be considered automatically renewed for a one year period upon the expiration date set forth above and upon each anniversary of such date, unless at least 60 days prior to such expiration date or applicable anniversary thereof, we notify you in writing, by certified mail return receipt requested or by recognized overnight courier service, that we elect not to so renew this Irrevocable Standby Letter of Credit. A copy of any such notice shall also be sent, in the same manner, to: Port of San Francisco, Pier 1, San Francisco, CA 94111, Attention: General Counsel. In addition to the foregoing, we understand and agree that you shall be entitled to draw upon this Irrevocable Standby Letter of Credit in accordance with 1 and 2 above in the event that we elect not to renew this Irrevocable Standby Letter of Credit and, in addition, you provide us with a dated statement purportedly signed by an authorized signatory or agent of Beneficiary stating that the Applicant has failed to provide you with an acceptable substitute irrevocable standby letter of credit in accordance with the terms of the above referenced license. We further acknowledge and agree that: (a) upon receipt of the documentation required herein, we will honor your draws against this Irrevocable Standby Letter of Credit without inquiry into the accuracy of Beneficiary's signed statement and regardless of whether Applicant disputes the content of such statement; (b) this Irrevocable Standby Letter of Credit shall permit partial draws and, in the event you elect to draw upon less than the full stated amount hereof, the stated amount of this Irrevocable Standby

Letter of Credit shall be automatically reduced by the amount of such partial draw; and (c) you shall be entitled to transfer your interest in this Irrevocable Standby Letter of Credit from time to time and more than one time without our approval and without charge. In the event of a transfer, we reserve the right to require reasonable evidence of such transfer as a condition to any draw hereunder.

This Irrevocable Standby Letter of Credit shall be governed by the laws of the State of California.

This Irrevocable Standby Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 revision) ICC Publication No. 500.

We hereby engage with you to honor drafts and documents drawn under and in compliance with the terms of this Irrevocable Standby Letter of Credit.

All communications to us with respect to this Irrevocable Standby Letter of Credit must be addressed to our office located at _____, San Francisco, CA 941__ to the attention of _____.

Very truly yours,

[name]
[title]

EXHIBIT I

TENANT ESTOPPEL CERTIFICATE

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

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

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

SCHEDULE 1
ASBESTOS NOTICES FOR PIER SHEDS

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SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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SCHEDULE 3

FEMA Disclosure Notice

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

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA").

On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

FEMA is performing detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline in accordance with FEMA's February 2005 Pacific guidelines for new coastal studies. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as well as detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses will form the basis for potential revisions to the Base Flood Elevations (BFEs) and Special Flood Hazard Areas (SFHAs) within the coastal areas. The new coastal study will revise and update the flood and wave data based on current conditions within the coastal Flood Insurance Study reports and Flood Insurance Rate Maps for each of the nine counties. For San Francisco, the preliminary FIRMs will replace the preliminary FIRMs issued in 2007. FEMA issued preliminary FIRMs for San Francisco in November 2015, with an intended effective date in mid-2016.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links: <http://www.fema.gov/plan/prevent/fhm/index.shtm>; [http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20\(2\).pdf](http://www.r9map.org/Docs/Oct13-SanFranCo-FEMA_Factsheet_rev%20(2).pdf); <http://www.fema.gov/business/nfip/index.shtm>; and <http://www.sfgov.org>.

SCHEDULE 4
HAZARDOUS MATERIALS DISCLOSURE

MEMORANDUM

June 9, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Eleni Kounalakis
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Request approval of Lease No. L-16141 between the Port of San Francisco and SP Plus – Hyde Parking Joint Venture for (i) a five year lease for SWL 321, bounded by the Embarcadero, Front Street and Green Street and (ii) a three year lease with two one-year Port options to renew for SWL 323-324 surface parking lots bounded by the Embarcadero, Broadway Street and Davis Street; and (iii) interim parking at (a) Seawall Lot 322-1 bounded by Broadway Street, Front Street and Vallejo Street, (b) Pier 19½ on the Embarcadero at Greenwich Street, and (c) Pier 29½ on the Embarcadero at Chestnut Street

DIRECTOR'S RECOMMENDATION: Approve the attached resolution

EXECUTIVE SUMMARY

Port staff received authorization from the Port Commission on March 22, 2016 pursuant to Resolution No.16-12 authorizing staff to negotiate a Lease with the Joint Venture Partnership comprised of SP+ Corporation and Hyde Park Management LLC to operate surface parking lots in the Northern Waterfront including Seawall Lots 321, 323-324, 322-1 Pier Sheds 19½ and 29½ (collectively, the "Parking Sites"). These Parking Sites are currently operated on a month-to-month holdover basis.

SP+ Corporation ("SP+") and Hyde Park Management LLC ("Hyde Park"), a certified Local Business Enterprise (LBE) in San Francisco formed a joint venture partnership for the lease and operation of the Parking Sites for the Port. As required in the request for proposal, the joint venture is structured so both companies will share in the risk and reward under the terms of the Lease. The initial partnership percentage interest is 85% SP+ and 15% Hyde Park. There will be opportunities for Hyde Park to

THIS PRINT COVERS CALENDAR ITEM NO. 11C

increase its respective share upon an annual review of partnership benchmarks more fully described below. Beyond the financial aspects of the partnership, SP+ will provide mentorship opportunities to Hyde Park in key operational aspects of running and managing large parking operations. It is the hope of both SP+ and Hyde Park that this innovative partnership will lead to future opportunities for both organizations jointly and individually.

Through this partnership the proposed Lease will generate an estimated \$3 million in revenue to the Port during the first full year of operation, an approximate \$210,000 increase over the current year. In addition the partnership will invest significant up front capital to improve the signage, install new revenue control equipment, add energy efficient lighting in SWL 321 and upgrade the overall appearance of the parking lots and improve the visitor experience.

Port staff requests authorization to enter into a Lease L-16141 with the Joint Venture Partnership of SP+ and Hyde Park.

STRATEGIC OBJECTIVE

The Lease meets the goals of the Port's Strategic Plan as follows:

Livability:

By expanding the Port's diversity in lease opportunities through increased outreach to the underserved communities and through developing partnerships.

Economic Vitality:

By planning and executing a holistic and balanced strategy to the real estate portfolio and asset management by maximizing asset value and income stream.

Stability:

By increasing Port annual revenues to \$125 million and continuing to expand ongoing revenue sources and by retaining a diversified tenant base that will perform through economic cycles.

BACKGROUND

On May 21, 2015, by Resolution No.15-20, the Port Commission authorized the issuance of a request for proposal (RFP) for the Northern Waterfront Parking lots. The RFP asked for a partnership of an established parking operator and a local business enterprise (LBE) parking operator. Port staff commenced an extensive community-based outreach program in September 2015 that included several organization, individuals, associations and agencies to promote the Parking RFP to the broadest possible audience.

Staff efforts increased the number of certified LBE parking management companies from five to nine. Additionally, two additional companies are in the process of reregistering their companies in order to bid on future parking lot management opportunities the Port or other City departments may have in the future.

The Request for Proposals was advertised on November 5, 2015 and due on December 22, 2015. The Port received four timely responses. Port staff issued a Notice of the Most Qualified Respondent on February 19, 2016 to the SP+ / Hyde Park partnership. On March 22, 2016, by Resolution No.16-12, the Port Commission awarded the opportunity to the joint venture partnership of SP + and Hyde Park and authorized Port staff to negotiate a lease for Port Commission review and approval.

JOINT VENTURE FRAMEWORK

According to their joint venture agreement, SP+ and Hyde Park will share proportionality in all revenue, expenses, profits, risks and capital requirements. Both will participate in the day-to-day activities of the parking operations and compliance with the Lease. Some of the key provisions of the joint venture agreement are described below:

Mentorship

SP+ will provide mentorship and training to the Hyde Park team with the goal of expanding Hyde Park's management experience and exposing the staff to industry best practices. SP+ management team will provide Hyde Park with detailed operational policies and best practices for every aspect of the parking operations including the following key topics:

- Accounting and reporting
- Audit compliance
- Claims processing
- Employee training
- Interactive marketing and online sales
- Maximizing revenue
- Revenue control
- Risk and safety compliance
- Subcontractor and vendor agreements
- Traditional marketing

Improvement of Other Hyde Park Operations

The Hyde Park partners will gain insight to effectively approach operational challenges which will enable them to deploy this experience to increase profits and efficiencies at their existing and future locations.

Expand Hyde Park Access to Future Opportunities

The experience from the partnership will significantly expand Hyde Park's access to pursue future opportunities independently and jointly with SP+. Within the joint venture agreement, Hyde Park will have the potential to increase its percentage of the partnership if additional parking facilities are added. Additionally, the partnership intends to pursue new opportunities with not only the Port but with other municipalities.

Annual Review of Partnership Benchmarks

SP+ and Hyde Park will meet within 60 days after each contract year to review the success of the partnership, accomplishments of the mentorship program and operational goals to discuss options to expand the Hyde Park partnership share. The

review will include financial goals, mentorship objectives and potential to increase capital contributions from Hyde Park and resulting profit sharing.

GROSS REVENUE PROJECTIONS

In response to the RFP the partnership of SP+ / Hyde Park provided the Port the following estimated annual gross revenue projections (net of parking taxes) for each parking site (subject to any reductions of parking spaces as provided in the Lease). The Port rent will be the greater of minimum monthly base rent or 66% of the monthly gross receipts, or 66% of the monthly gross receipts only as applicable to each parking site. Outlined in the table is the total projected revenue and estimated rent to the Port over a five year period:

Revenues	Year 1	Year 2	Year 3	Year 4	Year 5	Total
SWL 321	\$ 1,416,528	\$ 1,459,025	\$ 1,502,797	\$ 1,547,880	\$ 1,594,315	\$ 7,520,545
SWL 323-324	\$ 1,237,252	\$ 1,274,368	\$ 1,312,599	\$ 1,351,975	\$ 1,392,532	\$ 6,568,726
SWL 322-1	\$ 904,544	\$ 931,680	\$ 959,630	\$ 988,421	\$ 1,018,073	\$ 4,802,348
Pier 19 ½	\$ 353,789	\$ 364,403	\$ 375,338	\$ 386,601	\$ 398,199	\$ 1,878,330
Pier 29 ½	\$ 566,079	\$ 583,061	\$ 600,553	\$ 618,569	\$ 637,127	\$ 3,005,389
Gross Revenue	\$ 4,478,192	\$ 4,612,537	\$ 4,750,917	\$ 4,893,446	\$ 5,040,246	\$ 23,775,338
Port Share Est.	\$ 2,955,607	\$ 3,044,274	\$ 3,135,605	\$ 3,229,674	\$ 3,326,562	\$ 15,691,723

Notes:

1. Estimated Port Revenue is calculated at 66% Rent Only
2. Estimated Port Revenue does not account for months where base rent exceeds percentage rent

PROPOSED LEASE TERMS

1. Term: SWL 321: five (5) years; SWL 323-4 three (3) year term with two (2) one-year options to renew, at the sole discretion of the Port. Interim parking on SWL 322-1, Pier 19 ½ and Pier 29 1/2 are on a month to month basis.
2. Annual rent adjustment: 3.5%
3. Rent: For SWL 321 / 323-4: the greater of Minimum Monthly Base Rent or Percentage Rent of 66% of gross receipts net of city parking taxes per month. For SWL 322-1 / Pier 19 ½ / Pier 29 ½: rent will be percentage only with no Minimum Monthly Base Rent. Outlined below are the Minimum Monthly Base Rent requirements for the initial year of the Lease:
 - SWL 321: \$73,000 per month
 - SWL 323, 324: \$78,000 per month
 - SWL 322-1: 66% of Gross Revenue Only
 - Pier 19½ Shed: 66% of Gross Revenue Only
 - Pier 29½ Shed: 66% of Gross Revenue Only
4. Port Option to Expand Premises: The Port may add additional public parking lots that become available on an as-needed basis (“Expansion Site”). Tenant shall pay only percentage rent to the Port of 66% of gross receipts, after parking taxes.

5. Improvements: Tenant will be responsible for installing permanent energy efficient lighting on SWL 321 per an approved plan. Since this improvement will provide a long-term benefit to the Port, the Tenant shall receive rent credits of up to \$200,000 amortized on a straight line basis over the remaining term of the lease to be deducted against monthly base rent for SWL 321.

Throughout the term of the Lease, the Tenant will be required to maintain the parking surfaces, utilities, lighting, revenue equipment, attendant booths, bollards, signage striping in good repair and keep the general appearance in a condition satisfactory to the Port. Tenant will be responsible to secure any required permits from the Port for the improvements or from any other governmental agencies as required.

The Port, in its sole discretion, may request the Tenant perform additional improvements beyond its required maintenance and repair obligations defined in the lease. The Port requested improvements would correct any life, safety or fire code issues imposed after Lease commencement or would benefit the Port for financial reasons not anticipated on the Lease Commencement Date. Subject to the Port's prior written approval as to the scope and cost of the improvements, which shall be competitively bid, Tenant shall receive a credit directly related to those additional improvements against minimum base rent or percentage rent. The total maximum rent credit and associated requested improvements shall not exceed \$100,000, in any given 24-month period. Certified and approved rent credits may be deducted on a straight basis from monthly base or percentage rent, amortized over the remaining term of the Lease.

6. Security Deposit: An amount equal to three (3) months of the minimum base rent in Lease year 3.
7. Signage: Tenant will be required to provide all signage regarding rates, hours and any other conditions such as validation in a highly visible and professional manner that will be subject to the Port signage guidelines and permits. Tenant shall co-brand the signage as a Port of San Francisco lot and display the Port logo on any entrances to the lots.
8. Additional Port Requirements: The Port will have the right to require the Tenant to provide space for the Car Share Program, Zip Car Share, and to provide space for electric vehicle charging stations and equipment.
9. Termination and/or Recapture Rights: The Port will have the right to terminate the Lease for any reason upon no less than 180 days' written notice. Port will reimburse Tenant for any unamortized improvements that were installed on the Port's behalf. Port will have the right to recapture any portion of the premises with no less than a 10 day written notice.
10. Prevailing Wages: The Lease will include the City's prevailing wages and displaced worker protection requirements for parking lots pursuant to Section

21C.3 & 21c.7 of the City's Administrative Code.

11. Revenue Monitoring Equipment: The Lease will require the Tenant to install and utilize revenue control equipment approved by the City and County of San Francisco in location(s) approved by the Port.
12. Special Restrictions:
 - SWL 321: Operator must provide a maximum of 200 non-exclusive general parking spaces at the prevailing market rates and a maximum of up to 30 exclusive parking spaces for employees of the Exploratorium. Employees would pay the posted parking lot rates.
 - SWL 323: The operator must provide up to 40 stalls within the lot and up to 24 spaces along Davis Street to Port of San Francisco employees, which the Port will designate from time to time. Port employees pay monthly parking fees directly to the Port and shall be excluded from the lot's Gross Revenues.
13. Operations Plan: Tenant has provided an Operations Plan that outlines policies and procedures for: customer service, proposed rates and potential increases, signage, minimum staffing levels for peak and non-peak periods, hours of operations, equipment, security plan, reporting, maintenance schedule, job descriptions, cleaning schedule, environmental compliance plan, storm water management plan and other performance standards as required. Special event pricing shall be subject to Port review and approval. The Port, in its sole discretion, may request changes to the Operations Plan such as significantly increased hours of operation, staffing or security. To the extent the Port requested changes result in additional personnel costs to the Tenant, the Tenant shall be entitled to a credit of up to \$25,000 per annum against minimum rent or percentage rent to offset those additional costs as pre-approved by the Port and properly documented.
14. Standard Port Lease Provisions: The Lease will contain standard insurance, indemnity, hazardous material, audit rights, security deposit, maintenance and repair provisions and all City and Port requirements.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The permitted use will be a continuation of the existing use and is not a project subject to review under California Environmental Quality Act.

RECOMMENDATION

Port staff requests Port Commission approval of the Lease with SP+/Hyde Park Joint Venture based on the terms described in this staff report. After Port Commission approval, the Lease will be subject to Board of Supervisors' approval.

Prepared by: Jay Edwards
Senior Property Manager

Robert Davis
Principal Administrative Analyst

Prepared For: Mark Lozovoy
Assistant Deputy Director of
Real Estate

Attachments:

Maps for SWL 321, 322-1, 323-324; and Piers 19½, 29½

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

RESOLUTION NO. 16-26

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, on May 26, 2015, the Port Commission, by Resolution 15-20, authorized Port staff to issue a request for proposals for leasing opportunity at Seawall Lots 321, 322-1, and 323-324, and Pier Sheds 19½ and 29½ all located in the Northern Waterfront (collectively, the "Parking Sites"); and
- WHEREAS, on November 5, 2015, Port issued the Proposal Opportunity for Lease and Operation of Surface Parking Lots in the Northern Waterfront (the "Parking RFP"); and
- WHEREAS, on March 22, 2016, the Port Commission, by Resolution 16-12 awarded the opportunity to the team of SP+ Corp and Hyde Park Management and authorized Port staff to negotiate a Lease with the joint venture partnership for the Parking Sites; and
- WHEREAS, the Lease includes the terms and conditions as described in the Memorandum dated June 9, 2016 for a five year lease for SWL 321, bounded by the Embarcadero, Front Street and Green Street and (ii) a three year lease with two one-year Port options to renew for SWL 323-324 surface parking lots bounded by the Embarcadero, Broadway Street and Davis Street; and (iii) interim parking at (a) Seawall Lot 322-1 bounded by Broadway Street, Front Street and Vallejo Street, (b) Pier 19½ on the Embarcadero at Greenwich Street, and (c) Pier 29½ on the Embarcadero at Chestnut Street; and
- WHEREAS, the permitted use will be a continuation of the existing use and is not a project subject to review under California Environmental Quality Act; now, therefore be it,
- RESOLVED, the Port Commission approves the Lease, subject to Board of Supervisors' approval and authorizes the Executive Director or her designee to seek Board of Supervisors' approval under Charter Section 9.118, and upon the effectiveness of such approval, execute the Lease; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease, and any such amendments thereto.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 14, 2016.

Amy Quesada

Digitally signed by Amy Quesada
DN: cn=Amy Quesada, o=Port of San
Francisco, ou=Port Executive,
email=amy.quesada@sfport.com, c=US
Date: 2016.06.16 14:13:30 -0700

Secretary

Port Lease No. L-16141 Legislation Summary

May 2015, by Resolution No.15-20, the Port Commission authorized the issuance of a request for proposal (RFP) for (i) a five year lease for SWL 321, bounded by the Embarcadero, Front Street and Green Street and (ii) a three year lease with two one-year Port options to renew for SWL 323-324 surface parking lots bounded by the Embarcadero, Broadway Street and Davis Street; and (iii) interim parking at (a) Seawall Lot 322-1 bounded by Broadway Street, Front Street and Vallejo Street, (b) Pier 19½ on the Embarcadero at Greenwich Street, and (c) Pier 29½ on the Embarcadero at Chestnut Street.

The RFP sought a partnership of an established parking operator and a local business enterprise (LBE) parking operator. Port staff commenced an extensive community-based outreach program that included several organization, individuals, associations and agencies to promote the Parking RFP to the broadest possible audience.

November 2015, Port issued the Proposal Opportunity for Lease and Operation of Surface Parking Lots as described. SP+ Corporation (“SP+”), a national parking operator, and Hyde Park Management LLC (“Hyde Park”), a certified Local Business Enterprise in San Francisco formed a joint venture partnership for the lease opportunity. SP+ and Hyde Park will share proportionality in all revenue, expenses, profits, risks and capital requirements. Both will participate in the day-to-day activities of the parking operations and SP+ will provide operation and financial mentorship to Hyde Park. The partnership is anticipated to generate approximately \$3 million in annual net revenue to the Port.

March 2016, the Port Commission, by Resolution 16-12 awarded the opportunity to the SP+ Corp and Hyde Park joint venture and authorized Port staff to negotiate a lease. The Lease has been executed by the joint venture partnership and Port is now seeking Board of Supervisors Resolution approving the Lease L-16141.