

DDA Exhibit D3



**[FORM PARCEL LEASE FOR WATERFRONT SITE  
(EXCLUDES HISTORIC BUILDING PARCELS AND E4)]**

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

---

**LEASE NO. L-[\_\_\_\_\_]**

**BETWEEN THE**

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

**AS LANDLORD**

**AND**

**[TENANT]**

**AS TENANT**

**DATED AS OF \_\_\_\_\_, 20[\_\_\_\_\_]**

---

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

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

DDA Exhibit D3

DRAFT

## TABLE OF CONTENTS

	<u>Page</u>
1. PREMISES; TERM .....	5
1.1. Premises .....	5
(a) Lease of Premises; Description.....	5
(b) Permitted Title Exceptions.....	5
(c) Accessibility Inspection Disclosure .....	5
(d) San Francisco Disability Access Disclosures .....	5
(e) No Right to Encroach.....	5
(f) Subsurface Mineral Rights.....	6
(g) AS IS WITH ALL FAULTS\ .....	7
(h) Title Defect .....	8
(i) No Light, Air or View Easement .....	8
(j) Unique Nature of Premises .....	8
(k) Memorandum of Technical Corrections .....	8
(l) Port’s Reservation of Rights .....	8
1.2. Term.....	8
2. RENT .....	8
3. USES.....	9
3.1. Permitted Use.....	9
3.2. Prohibited Use.....	9
3.3. Liquidated Damages for Repeat Prohibited Uses .....	10
3.4. Advertising and Signs .....	10
3.5. Restrictions on Encumbering Port’s Reversionary Interest .....	10
3.6. Required Public Access Areas .....	10
3.7. Required Public Benefits .....	11
4. Development Projects .....	11
4.1. Generally.....	11
4.2. Pier 70 .....	11
5. TAXES AND ASSESSMENTS .....	12
5.1. Payment of Possessory Interest Taxes and Other Impositions .....	12

5.2.	Acknowledgements and Covenants Regarding Community Facilities Districts and Assessment Matters .....	14
5.3.	Port’s Right to Pay .....	14
6.	CONTESTS .....	14
6.1.	Right of Tenant to Contest Impositions and Liens .....	14
6.2.	Port’s Right to Contest Impositions.....	15
7.	COMPLIANCE WITH LAWS.....	15
7.1.	Tenant’s Obligation to Comply .....	15
7.2.	Unforeseen Requirements .....	15
7.3.	Right to Terminate Lease.....	16
8.	REGULATORY APPROVALS .....	17
9.	TENANT’S MANAGEMENT AND OPERATING COVENANTS.....	19
9.1.	Operating Standards.....	19
9.2.	Leasing of Premises .....	19
9.3.	Reporting of Subleases .....	19
9.4.	Restaurant/Retail Businesses Open to the General Public.....	20
9.5.	Flags.....	20
9.6.	Graffiti Removal .....	20
9.7.	Mitigation Monitoring and Reporting Program.....	21
9.8.	Transportation Demand Management (TDM) Plan.....	21
9.9.	Pier 70 Risk Management Plan.....	21
10.	REPAIR AND MAINTENANCE; FACILITIES CONDITION REPORT; RESERVE ACCOUNT .....	21
10.1.	Covenants to Repair and Maintain the Premises .....	21
10.2.	Facilities Condition Report.....	21
10.3.	Capital Reserves.....	22
10.4.	No Obligation of Port; Waiver of Rights .....	22
10.5.	Port’s Right to Repair .....	23
11.	IMPROVEMENTS .....	23
11.1.	Tenant’s Obligation to Construct the Initial Improvements [and Deferred Infrastructure] .....	23
11.2.	Deferred Infrastructure.....	23
11.3.	Title to Improvements.....	24

12.	CONSTRUCTION.....	24
	12.1. Port Approval.....	24
	12.2. Permits/Design Review/Tenant Improvements .....	24
	12.3. Construction Schedule .....	25
	12.4. Construction.....	25
	12.5. Safety Matters .....	26
	12.6. Record Drawings .....	26
	12.7. Certification of Entitlement Costs and Total Development Costs.....	27
13.	UTILITY AND TELECOMMUNICATIONS SERVICES .....	27
	13.1. Utility Services.....	27
	13.2. Energy Consumption .....	28
	13.3. Rooftop and Other District-Wide Equipment.....	28
	13.4. Electricity .....	29
	13.5. Waiver.....	29
14.	DAMAGE OR DESTRUCTION.....	29
	14.1. Damage or Destruction .....	29
	14.2. Restoration Obligation .....	30
	14.3. Termination Due to Major or Uninsured Casualty .....	30
	14.4. Distribution Upon Lease Termination Due to Tenant Failure to Restore.....	32
15.	CONDEMNATION.....	32
	15.1. General; Notice; Waiver .....	32
	15.2. Total Condemnation.....	32
	15.3. Substantial Condemnation, Partial Condemnation .....	32
	15.4. Awards .....	33
	15.5. Temporary Condemnation .....	34
	15.6. Relocation Benefits, Personal Property .....	34
16.	LIENS .....	34
	16.1. Liens.....	34
	16.2. Mechanics' Liens .....	34
17.	Deposits.....	34
	17.1. Base Rent Deposit.....	34
	17.2. Environmental Financial Performance Deposit .....	35
	17.3. Environmental Oversight Deposit.....	35

17.4.	Generally.....	36
18.	ASSIGNMENT AND SUBLETTING .....	36
18.1.	Transfer .....	36
18.2.	Assignment of Rents .....	40
18.3.	Subletting by Tenant .....	41
18.4.	Non-Disturbance of Subtenants and Attornment .....	42
18.5.	No Further Amendment or Consent Implied .....	45
18.6.	No Release of Tenant.....	45
18.7.	Acknowledgement .....	45
19.	INDEMNIFICATION OF PORT .....	45
19.1.	General Indemnification of the Indemnified Parties.....	45
19.2.	Hazardous Materials Indemnification.....	46
19.3.	Scope of Indemnities; Obligation to Defend .....	47
19.4.	Exclusions from Indemnifications, Waivers and Releases.....	47
19.5.	Survival.....	48
19.6.	Defense .....	48
19.7.	Waiver.....	48
20.	INSURANCE.....	50
21.	HAZARDOUS MATERIALS .....	50
21.1.	Compliance with Environmental Laws.....	50
21.2.	Tenant Responsibility .....	50
21.3.	Tenant’s Environmental Condition Notification Requirements .....	50
21.4.	Remediation Requirement .....	52
21.5.	Pesticide Prohibition .....	52
21.6.	Additional Definitions .....	52
22.	DELAY DUE TO FORCE MAJEURE .....	55
23.	PORT’S RIGHT TO PAY SUMS OWED BY TENANT .....	55
23.1.	Port May Pay Sums Owed by Tenant Following Tenant’s Failure to Pay .....	55
23.2.	Tenant’s Obligation to Reimburse Port .....	55
24.	EVENTS OF DEFAULT .....	55
24.1.	Events of Default .....	55
24.2.	Special Provisions Concerning Lenders and Events of Default .....	57
25.	REMEDIES.....	57

25.1.	Port’s Remedies Generally .....	57
25.2.	Right to Keep Lease in Effect.....	57
25.3.	Port’s Right to Cure Tenant’s Default .....	58
25.4.	Termination of Tenant’s Right to Possession.....	58
25.5.	Continuation of Subleases and Other Agreements .....	59
25.6.	Appointment of Receiver.....	59
25.7.	Waiver of Redemption.....	60
25.8.	Liquidated Damages for Repeat Prohibited Uses .....	60
25.9.	Horizontal Developer Right to Perform Deferred Infrastructure.....	60
25.10.	Remedies Not Exclusive.....	60
26.	EQUITABLE RELIEF.....	60
27.	NO WAIVER.....	60
27.1.	No Waiver by Port or Tenant.....	60
27.2.	No Accord or Satisfaction.....	60
28.	DEFAULT BY PORT; TENANT’S REMEDIES.....	61
28.1.	Default by Port.....	61
28.2.	Tenant’s Exclusive Remedies.....	61
29.	TENANT’S RECOURSE AGAINST PORT .....	61
29.1.	No Recourse Beyond Value of Property Except as Specified .....	61
29.2.	No Recourse Against Specified Persons.....	61
29.3.	Nonliability of Tenant’s Members, Partners, Shareholders, Directors, Officers and Employees.....	61
30.	LIMITATIONS ON LIABILITY .....	62
30.1.	Waiver of Indirect or Consequential, Incidental, Punitive or Special Damages.....	62
30.2.	Limitation on Parties’ Liability Upon Transfer .....	62
31.	ESTOPPEL CERTIFICATES BY TENANT AND SUBTENANT .....	62
32.	ESTOPPEL CERTIFICATES BY PORT.....	62
33.	APPROVALS BY PORT; STANDARD OF REVIEW; FEES FOR REVIEW .....	63
33.1.	Approvals by Port; Standard of Review; Fees for Review .....	63
33.2.	Standard of Review.....	63
33.3.	Fees for Review .....	63
34.	NO MERGER OF TITLE.....	64
35.	QUIET ENJOYMENT.....	64

36.	SURRENDER OF PREMISES .....	64
	36.1. Condition of Premises.....	64
	36.2. Demolition of Improvements.....	64
	36.3. Personal Property .....	65
	36.4. Quitclaim.....	65
37.	HOLD OVER.....	65
38.	NOTICES.....	66
	38.1. Notices .....	66
	38.2. Form and Effect of Notice .....	66
39.	ACCESS TO THE PREMISES BY PORT .....	67
	39.1. Entry by Port .....	67
	39.2. General Entry .....	67
	39.3. Emergency Entry .....	67
	39.4. No Liability.....	67
	39.5. Non-Disturbance.....	68
	39.6. Subtenant Agreement.....	68
40.	MORTGAGES.....	68
	40.1. Mortgages .....	68
	40.2. Copy of Notice of Default to Lender.....	69
	40.3. Lender’s Option to Cure Defaults.....	69
	40.4. Lender’s Obligations with Respect to the Property .....	70
	40.5. Required Provisions of Any Mortgage .....	71
	40.6. No Impairment of Mortgage.....	71
	40.7. Multiple Mortgages.....	71
	40.8. Cured Defaults .....	71
	40.9. Limitation on Liability of Lender .....	71
	40.10. New Lease.....	72
	40.11. Nominee.....	72
	40.12. Subleases and Other Property Agreements.....	73
	40.13. Consent of Lender.....	73
	40.14. Cooperation.....	73
41.	NO JOINT VENTURE.....	73
42.	ECONOMIC ACCESS .....	73



43.	REPRESENTATIONS AND WARRANTIES.....	74
44.	MITIGATION AND IMPROVEMENT MEASURES .....	74
45.	PORT AND CITY SPECIAL PROVISIONS .....	75
46.	GENERAL.....	75
46.1.	Time of Performance .....	75
46.2.	Interpretation of Agreement.....	75
46.3.	Successors and Assigns.....	76
46.4.	No Third-Party Beneficiaries .....	76
46.5.	Real Estate Commissions.....	76
46.6.	Counterparts.....	76
46.7.	Entire Agreement .....	76
46.8.	Amendment.....	76
46.9.	Governing Law; Selection of Forum .....	76
46.10.	Recordation.....	76
46.11.	Attorneys' Fees .....	77
46.12.	Effective Date .....	77
46.13.	Severability .....	77
47.	DEFINITION OF CERTAIN TERMS .....	77

**Exhibits: [Exhibit Letters to be Updated]**

Exhibit A	Legal Description of Property
Exhibit B	Site Plan
Exhibit C-1	Scope of Development
Exhibit C-2	Affordable Housing Requirements
Exhibit D	Rent
Exhibit XX	Project Approvals
Exhibit XX	Permitted Title Exceptions
Exhibit XX	Notices of Special Tax
Exhibit XX	CFD and Assessment Matters
Exhibit XX	Traffic Management Plan
Exhibit XX	Horizontal Developer Infrastructure and Deferred Infrastructure
Exhibit XX	Workforce Development Plan
Exhibit XX	Form of Estoppel Certificate
Exhibit XX	Form on Non-Disturbance Agreement
Exhibit XX	Insurance Requirements
Exhibit XX	Form of Lessor Estoppel Certificate for Lenders
Exhibit XX	Form of Lessor Estoppel Certificate for Transferees
Exhibit XX	Mitigation and Improvement Measures
Exhibit XX	Port and City Special Provisions [ <b>Note: Port and City Special Provisions will be updated to include all requirements applicable as of execution date.</b> ]
Exhibit XX	Rules of Interpretation

Exhibit XX	Form of Memorandum of Lease
Exhibit XX	Form of Facilities Condition Report
Exhibit XX	Form of Assignment and Assumption Agreement
Exhibit XX	Review Procedures for Subsequent Construction on Historic Buildings

DRAFT

## BASIC LEASE INFORMATION

Each reference to the Basic Lease Information in this Lease will incorporate the applicable Basic Lease Information specified herein.

As defined in the Disposition and Development Agreement between the Port and Forest City Development California, Inc., dated as of \_\_\_\_\_, 20\_\_ (the “**DDA**”), this Lease is a **[fully prepaid lease] [or] [Hybrid Ground Lease] of unimproved property to a [Vertical Developer Affiliate of Horizontal Developer][or][Third Party lessee]**.

<b>Lease No.</b>	Lease No. L-XXXX
<b>Effective Date:</b>	_____, 20__
<b>Landlord:</b>	<b>THE CITY AND COUNTY OF SAN FRANCISCO</b> operating by and through the <b>SAN FRANCISCO PORT COMMISSION</b>
<b>Tenant:</b>	
<b>Tenant’s Address for Notices:</b>	
<b>Landlord’s Address for Notices:</b>	
<b>Premises:</b>	All that real property located in the City and County of San Francisco, California, as more particularly described in <i>Exhibit A</i> attached hereto (the “ <b>Property</b> ”). The Property contains approximately ___ square feet of unimproved land area (the “ <b>Land</b> ”), together with all rights and privileges appurtenant to the Property and owned by Port, and any Improvements hereafter constructed on the Property. The Property is shown generally on the Site Plan attached hereto as <i>Exhibit B</i> . The Property and all Improvements now and hereafter located on the Property are referred to in this Lease as the “ <b>Premises.</b> ”
<b>Single Point of Entry for State Mineral</b>	Located in Zone 3, California grid System, at a point Reservation Entry where X equals ___ and Y equals _____,
<b>Permitted Use Before Commencement of Construction of the Project:</b>	Construction staging only to advance either the Vertical Project or the Horizontal Improvements. Any other use requires the prior approval of Port, which approval may be withheld in its sole

discretion.

**Permitted Use After Commencement of Construction of the Project<sup>1</sup>:**

The use and operation of the Premises will be [insert more tailored/specific uses] subject to the Required Uses, the limitations set forth in the Scope of Development attached hereto as *Exhibit C* and the SUD [add if applicable: and the Affordable Housing Restrictions described in *Exhibit C-2* attached hereto] (collectively, the “Project”) and as further specified below and in *Article 3*.

“Required Uses” means the use of at least the Minimum Public Benefit Area within the Premises dedicated solely to [PDR/childcare/other required public benefit] throughout the Term in accordance with *Section 3.7*.

“Minimum Public Benefit Area” means XXX square feet of the Premises dedicated solely to the Required Uses in the location identified in *Exhibit XX* attached hereto.

**Commencement Date:**

The Effective Date of this Lease.

**Expiration Date:**

\_\_\_\_\_, \_\_\_\_ [(99 years after the Commencement Date)]

**Prepaid Rent:**

[Fully Prepaid][Third Party Hybrid Amount]: \$\_\_\_\_ or [the Vertical Developer Affiliate Hybrid Amount]: \$\_\_\_\_

**Rent:**

As set forth in *Exhibit D* attached hereto.

**Security Deposit [For Hybrid Leases]:**

An amount equal to two (2) months of Base Rent

**[Environmental Oversight Deposit:]**

[Note: May be applicable for certain leases based on hazardous materials uses]

**[Environmental Financial Assurances Deposit:]**

[Note: May be applicable for certain leases based on hazardous materials uses]

**Project Approvals:**

Those certain project approvals for the Waterfront

<sup>1</sup> Note: it is anticipated that the Scope of Development will simply include the type of use (residential or office with accessory retail, etc....) and the maximum density and parking if applicable. It is not intended to lock in any specific development project subject to these broad limitations. The Affordable Housing restrictions would be applied to apartment projects through the recordation of applicable affordable housing agreements/restrictions recorded against title at close of escrow, which would be described and/or attached as Exhibit C-2.

Site listed in *Exhibit E* attached hereto and made a part hereof, as may be amended from time to time.

DRAFT

**LEASE NO. L-XXXX**

THIS LEASE NO. L-XXXX (this “Lease”) is dated as of the Effective Date, by and between **THE CITY AND COUNTY OF SAN FRANCISCO**, operating by and through the **SAN FRANCISCO PORT COMMISSION** (“Port”), as landlord, and [REDACTED] (“Tenant”). The Basic Lease Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this Lease and will be construed as a single instrument and referred to herein as this “Lease.” In the event of any conflict or inconsistency between the Basic Lease Information and the Lease provisions, the Basic Lease Information will control. All initially capitalized terms used herein are defined in *Article 47* or have the meanings given them when first defined.

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

**A.** Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. The Waterfront Plan is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

**B.** Port has jurisdiction of approximately sixty-nine (69) acres of land along San Francisco’s Central Waterfront, generally bounded by Mariposa Street, Illinois Street, 22nd Street, and San Francisco Bay, commonly known as Pier 70. Previously known as the San Francisco Yard and the Bethlehem Steel Shipyard, Pier 70 is a former 19th century ship building and repair facility, and the most intact historic maritime industrial complex of that era west of the Mississippi River. A portion of the site remains an active ship repair facility.

**C.** The Port and [insert name of Forest City entity] (“Horizontal Developer”), are parties to that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 201\_ (the “DDA”) and that certain Lease No. L-XX dated as of \_\_\_\_\_, 20\_\_ (the “Master Lease”). The DDA and Master Lease govern the mixed-use development of an approximately 28-acre site, known as the “Waterfront Site,” as more particularly described in the DDA and Master Lease. The DDA and Master Lease set forth a parcel disposition process under which the Port will enter into fully-prepaid or partially-prepaid ground leases for developable parcels within the Waterfront Site with Horizontal Developer, on behalf of itself or through its **Vertical Developer Affiliates**, or, if Horizontal Developer fails to exercise its option to lease such developable parcel, to third parties selected in accordance with the requirements of the DDA.

**D.** This Lease is a **[fully] [partially]** prepaid ground lease with a [Vertical Developer Affiliate] [Third Party]. The form of this Lease was authorized by the Port Commission by Resolution No. XXX and the Board of Supervisors by Resolution No. XXX, which resolutions authorized the Port’s Executive Director to enter into this Lease without further approval by the Port Commission or the Board of Supervisors under Charter Section 9.118.

**E.** **[Include additional Recitals that describe exercise of Option, if applicable, the parcel disposition process as provided under the DDA, the escrow instructions approved and submitted by the parties, close of escrow and any other relevant facts and circumstances leading up to execution of this Lease]**

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

## 1. PREMISES; TERM.

### 1.1. Premises.

(a) **Lease of Premises; Description.** For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises described in the Basic Lease Information as of the Commencement Date.

(b) **Permitted Title Exceptions.** The interests granted by Port to Tenant pursuant to *Section 1.1(a)* are subject to (i) the matters reflected in *Exhibit XX* (the “**Permitted Title Exceptions**”), and (ii) such other matters as Tenant will cause or suffer to arise subject to the terms and conditions of this Lease, and (iii) the rights of Port and the public reserved under the terms of this Lease.

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

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

(d) **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 *Article 7* (Compliance with Laws), Tenant further understands and agrees that it is Tenant’s obligation, at no cost to Port, to cause the Premises and Tenant’s use thereof to be conducted in compliance with the Disabled Access Laws and any other federal or state disability access Laws. Tenant will 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.

(e) **No Right to Encroach.**

(i) 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 will immediately vacate such Encroachment Area and if such Encroachment Area is controlled by Port, 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 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 will be prorated based on a thirty (30) day month. In no event will 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.

(ii) In addition, Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00), which amount will be increased by One Hundred Dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, 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 will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars (\$400.00), which amount will be increased by One Hundred Dollars (\$100.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, 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 will be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. **[Note: Amounts to increase by \$50 every 5 years from DDA execution.]**

(iii) In addition to Port's rights and remedies under this *Section 1.1(e)*, the terms and conditions of the Indemnity and waiver provision set forth in *Article 19* (Indemnification of Port) will 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 will 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.

(iv) All amounts set forth in this *Section 1.1(e)* will 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 1.1(e)* and the reasonableness of the amount of the charges described in this *Section 1.1(e)*.

(f) **Subsurface Mineral Rights.** Under the terms and conditions of Article 2 of the Burton Act, the State has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises as identified in the Basic Lease Information, provided that such right will not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by *Article 14*. Port will have no liability under this Lease arising out of any exercise by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(g) **“AS IS WITH ALL FAULTS”.** TENANT AGREES THAT PORT IS LEASING THE PREMISES TO TENANT, AND THE PREMISES ARE HEREBY



ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, "AS IS, WITH ALL FAULTS." TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, ABOVE, OR ABOUT THE PREMISES, TITLE TO THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE, OR OPERATION OF THE IMPROVEMENTS, THE COMPLIANCE OF THE PREMISES WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR ANY OTHER MATTER PERTAINING TO THE PREMISES, ANY APPURTENANCES THERETO OR THE IMPROVEMENTS, AND AS FURTHER DESCRIBED HEREIN.

Tenant further acknowledges and agrees that it has been afforded a full opportunity to inspect Port's records relating to conditions in, on, around, under, and pertaining to the Premises. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this *Section 1.1(g)*. Tenant represents and warrants to Port that Tenant has performed a diligent and thorough inspection and investigation in, on, around, under, and pertaining to the Premises, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the Premises including the structural elements, foundation, and all other physical and functional aspects in, on, around, under, and pertaining to the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition in, on, around, under, and pertaining to the Premises, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability in, on, around, under, and pertaining to the Premises for the Improvements and Tenant's planned use of the Premises; (iv) title matters, the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction in, on, around, under, and pertaining to on the Premises; and (v) all other matters of material significance affecting in, on, around, under, and pertaining to the Premises and its development and use under this Lease.

As part of its agreement to accept the Premises in their "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port, the City, and their respective Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the development of the Improvements, the Permitted Uses, value, occupancy or enjoyment of the Premises, (iii) title matters, the zoning land use regulations, historic preservation laws, and other Laws applicable thereto, including Environmental Laws, or any other matter pertaining to the Premises, any appurtenances thereto or the Improvements; (iv) all other matters of material significance affecting in, on, around, under, and pertaining to the Premises and its development and use under this Lease.

In connection with the foregoing release, Tenant acknowledges that it is familiar with California Civil Code, Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED  
THE SETTLEMENT WITH THE DEBTOR.

Tenant agrees that the release contemplated by this *Section 1.1(g)* includes unknown claims pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the release contained in this *Section 1.1(g)*.

Tenant Initials: \_\_\_\_\_

The provisions of this *Section 1.1(g)* will survive the expiration or earlier termination of this Lease.

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

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

(j) **Unique Nature of Premises.** Tenant acknowledges that: (a) 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; (b) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and (c) there is a risk that sea level rise will increase the cost of operations, maintenance, and repair of the Premises.

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

(l) **[Port's Reservation of Rights.] [Note: Placeholder in the event may be necessary for certain leases]**<sup>2</sup>

**1.2. Term.** The effectiveness of this Lease will commence on the Commencement Date as shown in the Basic Lease Information. The Lease will expire at 11:59 p.m. on the date that is nine-nine (99) years thereafter, unless earlier terminated or extended in accordance with the terms of this Lease. The period from the Commencement Date until the final expiration of the Lease is referred to as the "Term."

**2. RENT.**

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in *Exhibit D* attached hereto and incorporated herein by this reference.

**3. USES.**

**3.1. Permitted Uses.** Tenant will use and operate the Premises in accordance with this Lease and solely for the Permitted Uses described in the Basic Lease Information. Tenant will not seek any amendment to the Required Uses, Project Approvals, including, without limitation,

<sup>2</sup> Note: it is anticipated that the Reservation of Rights will be included in parcel-specific circumstances, such as where a public access area is included within the boundaries of the Premises.

the SUD or Design for Development that would be substantially inconsistent with the land use restrictions set forth in the Scope of Development without the prior written consent of the Port Commission and, during the term of the DDA, Horizontal Developer, each in its sole discretion. The Parties recognize that from time to time, Tenant may desire to obtain additional use, zoning, regulatory or land use approvals or conditional use authorization relating to the Premises. Port agrees, from time to time, to reasonably cooperate with Tenant, at no cost to Port, in pursuing such regulatory approvals or authorizations, including, but not limited to, executing documents, applications or petitions relating thereto, subject to the limitations of this *Section 3.1*, *Section 3.7*, and *Article 8*.

**3.2. Prohibited Uses.** Tenant will not conduct or permit on the Premises any of the following activities (in each instance, a “Prohibited Use” and collectively, “Prohibited Uses”):

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use or not previously approved by Port in writing, in its sole discretion;
- (b) any activity or object which will materially overload or cause material damage to the Premises (other than which would be considered reasonable wear and tear or which is otherwise repaired by Tenant in accordance with the terms of this Lease);
- (c) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any unusually objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;
- (d) any activity which will in any way injure, obstruct or interfere with the rights of ingress and egress of other owners, tenants, or occupants of adjacent properties;
- (e) the placement of any Sign on or near the Premises related to any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;
- (f) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids; provided, however, the foregoing prohibition does not apply to standard equipment maintenance for office equipment (such as printers, computer, and copiers) and residential equipment (such as washing machines, dryers, and kitchen appliances) or to charging stations for electric vehicles and equipment;
- (g) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes (unless such use is reasonably required on a temporary basis to allow for the construction of the Initial Improvements, Subsequent Construction, or the repair or maintenance of the Improvements);
- (h) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials (unless such use is reasonably required on a temporary basis to allow for the construction of the Initial Improvements, Subsequent Construction, or the repair or maintenance of the Improvements); or
- (i) the washing of any vehicles or equipment (unless such use is (i) reasonably required on a temporary basis to comply with the Pier 70 Risk Management Plan during construction of the Initial Improvements or (ii) is ancillary to the Permitted Use and in accordance with a Port approved operations plan).

**3.3. Liquidated Damages for Repeat Prohibited Uses.** In addition to the other remedies available to Port under this Lease for an Event of Default under *Section 24.1(f)*, if Tenant uses the Premises for the same type of Prohibited Use more than two (2) times within any twenty-four (24) month period, then Tenant will pay Port an amount equal to Twenty-Five Thousand Dollars (\$25,000.00) (as adjusted periodically, the “Prohibited Use Charge”) for the

third such Prohibited Use and for each such Prohibited Use thereafter as liquidated damages, which Twenty-Five Thousand Dollars (\$25,000.00) will be increased by fifteen percent (15%) on the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter. [ **Note: \$25K will increase annually by 3% from and after the date of DDA execution until execution of this Lease.** ]

THE PARTIES HAVE AGREED THAT PORT’S ACTUAL DAMAGES, IN THE EVENT TENANT USES THE PREMISES FOR A PROHIBITED USE MORE THAN TWO (2) TIMES WITHIN A TWENTY-FOUR (24) MONTH PERIOD, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS LEASE, THE AMOUNT OF THE PROHIBITED USE CHARGE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Initials:

\_\_\_\_\_

Port

Tenant

**3.4. Advertising and Signs.** Subject to the prohibition on tobacco and alcohol advertising provided in *Article 45*, Tenant will have the right to install signs and advertising inside the Premises and the Improvements in accordance with the Pier 70 Master Signage Program, as may be amended from time to time. Tenant will have the right to place, construct or maintain any sign, flag, advertisement, awning, banner or other decoration (collectively, “Sign”) on, or visible from, the exterior of the Premises without the prior written consent of Port acting in its proprietary capacity, provided any Sign that Tenant places, constructs or maintains on the Premises will comply with all Laws relating thereto, including but not limited to the Design for Development and the Pier 70 Master Signage Program, building permit requirements, and Tenant will 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, will remove all Signs placed by it on the Premises at the expiration or earlier termination of this Lease.

**3.5. Restrictions on Encumbering Port’s Reversionary Interest.** Tenant may not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on Port’s reversionary interest in the Premises without Port’s prior written consent, which consent may be withheld in Port’s sole discretion, and subject to the provisions of *Article 6*.

**3.6. Required Public Access Areas.** [ **Note: Placeholder for leases where Public Access is required or part of the project.** ] Tenant must maintain throughout the Term, dedicated public access areas within the Premises as depicted on *Exhibit XX* attached hereto. The Public Access Areas may be amended from time to time between the Parties, provided, however, in no event will the Public Access Areas be reduced from the Public Access Areas depicted on *Exhibit XX* as of the Commencement Date without Port’s prior written consent, or increased from the Public Access Areas depicted on *Exhibit XX* as of the Commencement Date without Tenant’s prior written consent, in each case which consent may be withheld in its sole discretion. Tenant must maintain the Public Access Areas in accordance with, and in compliance with, this Lease and must comply with the Rules and Regulations for Public Access Areas set forth in *Exhibit XX* attached hereto.

**3.7. Required Public Benefits.** [Note: Applicable for certain leases.] Tenant may not use the Minimum Public Benefit Area for any use other than the Required Uses without the prior written consent of Port, which consent may be granted, withheld or conditioned in Port's sole discretion. Tenant must include with any request to use the Minimum Public Benefit Area for uses other than the Required Uses evidence of its efforts to lease the Premises for the Required Uses, including outreach and marketing efforts. Port's consent to any one request to reduce the Minimum Public Benefit Area for Required Uses or use of such area for other uses will not be construed as consent for any subsequent request.

#### **4. DEVELOPMENT PROJECTS.**

**4.1. Generally.** Tenant acknowledges that during the Term, other development projects will be developed or constructed in the immediate vicinity of the Premises (as generally described in *Section 4.2*), and other development projects on or near Port property [(such as the development projects at Seawall Lot 337, Pier 48, Pier 80, SFPUC's Bay Corridor Transmission and Distribution Project along Illinois Street from 16th Street to 23rd Street, the proposed development of over 5 million square feet on the 29-acre Central Waterfront site at or around 1201 Illinois Street (bounded by Illinois, the Bay, 22<sup>nd</sup> and 23<sup>rd</sup> Streets) [redacted] also may be constructed in the vicinity of the Premises (collectively, "Development Projects"). Tenant is aware that construction of the Development Projects and other construction projects of Port tenants, licensees or occupants or projects of third parties in the vicinity of the Premises and the activities associated with such construction may generate adverse impacts on construction of the Initial Improvements or any Subsequent Construction, use and/or operation of the Premises after construction, or may result in inconvenience to or disturbance of Tenant and its Agents and Invitees. Said impacts may include increased vehicle and truck traffic, closure of traffic lanes, re-routing of traffic, traffic delays, loss of street and public parking, dust, dirt, construction noise, and visual obstructions (collectively, "Construction Impacts").

Tenant hereby waives any and all Losses against the Indemnified Parties arising out of any inconvenience or disturbance to Tenant, its Agents or Invitees, from Construction Impacts. The Parties will each use reasonable efforts to coordinate its construction efforts with each other and with others engaged in construction on such other projects in a manner that will seek, to the extent reasonably possible, to reduce construction conflicts.

#### **4.2. Pier 70.**

(a) **Generally.** Tenant acknowledges that the Port Commission endorsed the vision, goals, objectives, and design criteria of the Pier 70 Master Plan. A brief description of the some of the existing and planned development in Pier 70 is as follows, all of which will create Construction Impacts:

- (i) Pier 70 "Cove" and "Hill" sites. The Pier 70 Master
- (ii) Plan identifies development opportunities at the "Cove" and "Hill" sites located at the south west corner of 20<sup>th</sup> Street and Illinois Street. [Development of these sites may impede views from the Premises.]
- (iii) New 21<sup>st</sup> Street and Michigan Street. Changes to streets [adjacent] to the Premises (including construction of new streets). Additionally, Michigan Street is currently an approximately 80 foot right of way. Port is exploring alternate permanent configurations, redesign, or path of travel, of or on Michigan Street, including narrowing the width of Michigan Street to no less than sixty-eight (68) feet and the City's potential vacation all or a portion of Michigan Street. Tenant has no objections to narrowing the width of Michigan Street to no less than sixty-eight (68) feet nor does Tenant object to the City's vacation of all or any portion of Michigan Street.

(iv) *New 19<sup>th</sup> Street*. Proposed extension of 19<sup>th</sup> Street east from Illinois Street that will accommodate heavy truck traffic for the ship repair facility and connect to the reopened Georgia Street.

(v) *Crane Cove Park*. North of [the planned 19<sup>th</sup> Street extension], Port anticipates commencing and completing construction of Crane Cove Park during the Term.

(vi) *Louisiana Street and Georgia Street*. At any time during the Term, Port will explore alternate permanent configurations, redesign, or path of travel, of or on Georgia Street along the east side of Building 104 and Louisiana Street, including a one way southbound twenty (20) foot path of travel along Louisiana Street, and may construct an alternate permanent configuration, redesign, or path of travel, of or on Louisiana and Georgia Streets.

(vii) *Waterfront Site*. Port and [Horizontal Developer] entered into a DDA, the Master Lease, the Development Agreement, and other agreements for the Waterfront Site (collectively, the “Forest City Agreements”). The Forest City Agreements will, among other things, permit the construction of new public open space and parks, construction of new buildings, and historic Rehabilitation, which construction will take place throughout the Term. The Premises is located within the Waterfront Site.

(viii) *Historic Core*. Port and Historic Pier 70, LLC entered into a Lease Disposition and Development Agreement dated September 16, 2014 and Lease No. L-15814 dated as of July 29, 2015 for the area referred to as the “Historic Core” in the Pier 70 Master Plan, located along 20<sup>th</sup> Street, East of Illinois Street. [Add additional description information.]

(ix) *Parcel K*. [Insert description]

(x) *Hoedown Yard*. [Insert description]

(xi) *Areas Adjacent to the Historic Core*. North of 20<sup>th</sup> Street and [near] the Shipyard. [Note: Additional information to be included.]

(xii) *Shipyard*. The Pier 70 Master Plan calls for “maintaining approximately 17 acres of...[Pier 70] for ship repair.” The Shipyard is located north of 20<sup>th</sup> Street and east of Illinois Street and is adjacent to portions of the Historic Core along 20<sup>th</sup> Street. Port anticipates that the Shipyard will remain active and operational throughout the Term (including potentially expanding or increasing its operations).

(b) **Cooperation**. Tenant acknowledges and agrees that it will reasonably cooperate with Port, the tenant or operator of the Shipyard, Historic Pier 70 LLC, Forest City, and any future tenants or occupants of Pier 70 (collectively, the “Pier 70 Parties”) in the implementation of the Pier 70 Master Plan, which includes the development and/or rehabilitation of the Historic Core, Waterfront Site and Crane Cove Park, and continued operation of the Shipyard; provided, however, that such cooperation will be at no material out-of-pocket cost to Tenant.

## 5. TAXES AND ASSESSMENTS.

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

(a) **Payment of Taxes**. Tenant will pay or cause to be paid to the proper authority prior to delinquency, all Impositions assessed, levied, confirmed, or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or on its Leasehold Estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), or on any use or occupancy of the Premises hereunder, to the full extent of installments or amounts payable or arising during the Term, whether in effect at the Commencement Date or which become effective thereafter. Tenant further recognizes and agrees that the Leasehold Estate may be subject to the payment of special taxes, including without limitation a levy of

special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code and the special taxes described in **Section 5.2**. Tenant will not permit any such Impositions to become a defaulted lien on the Premises or the Improvements thereon; provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant will have the right to contest the validity, applicability or amount of any such taxes in accordance with **Article 6**. In the event of any such dispute, Tenant will Indemnify and hold the Indemnified Parties harmless from and against all Losses, including Attorneys' Fees and Costs, resulting therefrom.

(i) *Acknowledgment of Possessory Interest.* Tenant specifically recognizes and agrees that this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the County Assessor. Tenant further acknowledges that any Sublease, Transfer, or Assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) *Reporting Requirements.* San Francisco Administrative Code Sections 23.38 and 23.39 (or any successive or replacement ordinance) requires that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant will provide such information as may reasonably be requested by Port to enable Port to comply with such requirements.

(b) *Other Impositions.* Without limiting the provisions of **Section 5.1(a)**, and except as otherwise provided in this **Section 5.1(b)** and **Article 6**, Tenant will pay or cause to be paid all Impositions, to the full extent of installments or amounts payable or arising during the Term which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the Leasehold Estate, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of **Article 6**, Tenant will pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, "**Impositions**" means all taxes (including possessory interest, real, personal, and special taxes), assessments, liens, levies, fees, charges or expenses of every description, levied, assessed, confirmed or imposed by a governmental or quasi-governmental entity on the Premises, any of the Improvements or Personal Property located on the Premises, the Leasehold Estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions includes all such taxes, assessments, liens, levies, fees charged or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character including, without limitation, special taxes under the CFD. The foregoing or subsequent provisions notwithstanding, Tenant will not be responsible for any Impositions arising from or related to, Port's fee ownership interest in the Property or Premises, Port's interest as landlord under this Lease, or any transfer thereof, including but not limited to, Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Port's fee interest or transfer thereof.

(c) **Proof of Compliance.** Within a reasonable time following Port's written request which Port may give at any time and give from time to time, Tenant will deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

**5.2. Acknowledgements and Covenants Regarding Community Facilities Districts and Assessment Matters.** **[Note: Conform/update with DDA and Financing Plan.]**

(a) **Section 53341.5 Acknowledgment.** Prior to Tenant's execution and delivery of this Lease, Horizontal Developer and Port delivered to Tenant, and Tenant executed and delivered to Horizontal Developer and Port, a notice of special tax pursuant to California Government Code Section 53341.5 (the "Notice of Special Tax") confirming that Tenant has been advised of the terms and conditions of the CFD, including that the Premises are subject to the Applicable Special Taxes (as defined in *Exhibit XX*). A copy of the executed Notice of Special Tax is attached hereto as *Exhibit XX*.

(b) **Facilities and Maintenance CFD.** As material consideration for Port entering into this Lease, Tenant will comply with all of the covenants and acknowledgements set forth in *Exhibit XX* (CFD Matters) attached hereto and the Horizontal Developer is an explicit third-party beneficiary of the covenants and acknowledgements set forth in *Exhibit XX* (CFD Matters) attached hereto.

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

## 6. CONTESTS.

**6.1. Right of Tenant to Contest Impositions and Liens.** Subject to *Section 5.2*, Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Imposition, mechanics' lien, or encumbrance (including any arising from work performed or materials provided to Tenant or any Subtenant to improve all or a portion of the Premises) by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Tenant notifies Port of such contest. Tenant must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to *Section 5.2*, nothing in this Lease requires Tenant to pay any Imposition, mechanics' lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Imposition, mechanics' lien, or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition, mechanics' lien, or encumbrance to be forfeited to the entity levying such Imposition, mechanics' lien, or encumbrance as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant must comply with such condition as a condition to its right to contest. Tenant is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Tenant must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant is not required to pay any Imposition, mechanics' lien, or encumbrance being so contested during the pendency of any such proceedings unless payment is required by



the court or agency conducting such proceedings. Port, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the preceding sentence, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. Without limiting *Article 19*, Tenant will Indemnify the Indemnified Parties for all Losses resulting from Tenant's contest of any imposition.

**6.2. Port's Right to Contest Impositions.** At its own cost and after notice to Tenant of its intention to do so, Port may, but in no event will be obligated to, contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this section will require Port to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow any portion of the Premises to be forfeited to the entity levying such Imposition as a result of its nonpayment and so long as such activities do not cause a default under any Mortgage in effect at the time. Port will give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Port will reimburse Tenant within thirty (30) days after demand from Tenant for any such fines, penalties, costs, interest, expenses or fees, including Attorney's Fees and Costs, which Tenant may be legally obligated to pay solely as a result of Port's contest of such Impositions.

## 7. COMPLIANCE WITH LAWS.

**7.1. Tenant's Obligation to Comply.** During the Term, Tenant will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved), (ii) the Pier 70 Risk Management Plan, and (iii) the Mitigation Monitoring and Reporting Program, (iv) the Vertical DDA (so long as the Vertical DDA remains in effect), [(v) all applicable requirements for qualification of the Project for Historic Preservation Tax Credits, including compliance with the Secretary's Standards,] and the Transportation Demand Management Plan [note: add other requirements imposed in connection with Project Approvals, if any]. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such Permitted Uses, nor do such Permitted Uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Tenant's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws relating to or affecting the Premises.

**7.2. Unforeseen Requirements.** The Parties acknowledge and agree that Tenant's obligation under this *Section 7.2* to comply with all Laws and the other requirements set forth in *Section 7.1* is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws and the other requirements set forth in *Section 7.1* includes the obligation to make substantial improvements (including any barrier removal work or other work required to all or any portion of the Premises under Disabled Access Laws as a result of Tenant's specific use of the Premises, the Improvements, Deferred Infrastructure or any Subsequent Construction performed by or on behalf of Tenant, or substructural repairs 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, the relative benefit of the repairs to Tenant or Port, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law or the other requirements set forth in *Section 7.1* involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any Law or the other requirements set forth in *Section 7.1*, however extraordinary, relieves

Tenant of its obligations hereunder, nor gives Tenant any right to terminate this Lease (except for the Termination Option set forth in **Section 7.3**) in whole or in part or to otherwise seek redress against Port. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease (except for the Termination Option set forth in **Section 7.3**), 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.

### **7.3. Right to Terminate Lease.**

(a) **Termination Option.** Notwithstanding any other provision of **Section 7.1**, in the event of any change in Laws during the last ten (10) years of the Term that would require capital repairs or improvements, including upgrades or other capital expenditures for reconstruction, replacement, expansion, Restoration, alteration or modification of the Premises (including the Improvements), Tenant will have the option, but not the obligation, to terminate this Lease (the "**Termination Option**") on the following terms and conditions:

(i) If Tenant desires to exercise the Termination Option, Tenant will deliver written notice thereof to Port of its election, at least one hundred twenty (120) days prior to the termination date specified therein ("**Termination Notice for Change in Laws**").

(ii) On or prior to the effective date of termination of this Lease in accordance with this **Section 7.3**, Tenant must:

(1) cure all Tenant monetary Events of Default and any Events of Default relating to the provisions of **Section 7.1** (other than making the capital repairs or improvements necessitated by the change in Laws leading to Tenant's exercise of the Termination Option) and **Section 10.1**,

(2) cure all Tenant Events of Default or Unmatured Events of Defaults under **Article 21**,

(3) pay in full all utility charges and Impositions due and owing up to and including the effective date of termination,

(4) maintain all the insurance required to be maintained under **Section 20** until the effective date of termination, and

(5) if requested by Port, Demolish and Remove the Improvements in accordance with this **Section 7.3**.

(b) **Demolition and Removal Requirement.** If Port desires Tenant to Demolish and Remove the Improvements, Port will notify Tenant within ninety (90) days following receipt of the Termination Notice for Change in Laws, which election may be made by Port in its sole discretion. If Tenant Demolishes and Removes the Improvements in accordance with this **Section 7.3**, Tenant will have no obligation to cure any Events of Default under **Sections 7.1 or 10.1**. If Tenant exercises its Termination Option, this Lease will terminate on the later of the date set forth in the Termination Notice for Change in Laws or the date Tenant cures all of the Events of Default required to be cured and completes the Demolition and Removal in compliance with all Laws; provided, however, if Port requests Tenant to Demolish and Remove the Improvements, and such work cannot reasonably be completed prior to termination of this Lease, then Tenant's access to the Premises to perform such work will be under Port's license, as further described in **Section 36.2**. Tenant's obligation to Demolish and Remove the Improvements in accordance with this **Section 7.3** will survive the earlier termination of this Lease.

## **8. REGULATORY APPROVALS.**

(a) **Port Acting as Owner of Property.** Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises

and not as a Regulatory Agency with certain police powers. Tenant acknowledges and agrees that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Initial Improvements can be obtained. Tenant acknowledges and agrees that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Initial Improvements will be issued by the appropriate Regulatory Agency, and Tenant understands and agrees that neither entry by Port into this Lease nor any approvals given by Port under this Lease will be deemed to imply that Tenant will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Initial Improvements and/or the Premises, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Tenant, at Tenant's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Initial Improvements. By entering into this Lease, Port is in no way modifying or limiting Tenant's obligations to cause the Premises to be developed, Restored, used and occupied in accordance with all Laws. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Tenant understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Initial Improvements or other matters related to this Lease, and any such advocacy, promotion or lobbying will be done by Tenant at Tenant's sole cost and expense. Tenant hereby waives any claims against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Initial Improvements.

**(b) Regulatory Approval; Conditions.** Tenant understands that construction of the Initial Improvements and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any Subsequent Construction, may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, RWQCB, SFPUC, and other Regulatory Agencies. Tenant is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

Port, at no cost to Port, will cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Lease, including, without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property other than the Premises, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) restrict or change the use of the Premises in a manner not otherwise permitted under this Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions (including the assumption of any unreimbursed costs or fees Port may be subject to).

Port will provide Tenant with its approval or disapproval thereof in writing to Tenant within ten (10) business days after receipt of Tenant's written request, or if Port's Executive Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Tenant's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-

five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above in this section.

Tenant will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-Premises or require off-Premises improvements, removal, or other measures. Tenant in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Tenant will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Tenant will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval. No Port Approval will limit Tenant's obligation to pay all the costs of complying with any conditions or restrictions. Tenant will take reasonable steps to cooperate with Port in connection with Port's efforts to obtain approvals from Regulatory Agencies related to development of Pier 70 that are not necessary for or related to development of the Premises.

Without limiting any other Indemnification provisions of this Lease, Tenant will Indemnify the Indemnified Parties from and against any and all Losses which may arise in connection with Tenant's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to develop and construct the Premises in accordance with the Scope of Development, except to the extent that such Losses arise solely from the negligence or willful acts or omissions of Port acting in its proprietary capacity.

(c) **Regulatory Permit Coverage.** Except as may otherwise be agreed upon between Tenant and Horizontal Developer pursuant to separate agreement(s), Tenant will not be entitled to rely upon Regulatory Approvals previously obtained by Horizontal Developer for any portion of the Waterfront Site, but will be required to obtain its own Regulatory Approvals in accordance with all applicable Laws. This includes, without limitation, Stormwater Pollution Prevention Plans (SWPPP), Dust Control Plans (DCP), Asbestos Dust Mitigation Plans (ADMP), and compliance with the City's Maher Ordinance (SFDPH Article 22A). Notwithstanding the foregoing, in accordance with its approved ADMP, Horizontal Developer will provide a sitewide air monitoring network positioned on ongoing horizontal and vertical construction work within the Waterfront Site.

## 9. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

**9.1. Operating Standards.** From and after Completion of the Initial Improvements, Tenant will maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco and in accordance with this Lease. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises.

**9.2. Leasing of Premises.** Tenant will use reasonable efforts to keep as much of the space in the Premises leased, taking into account marketplace conditions and applying in the

exercise of such efforts, the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

### 9.3. *Reporting of Subleases.*

(a) **Leasing Activity Reports.** Tenant will deliver to Port within sixty (60) days following the end of each calendar year commencing in the calendar year a certificate of occupancy is issued for the Improvements until and including the calendar year that includes the twenty-fifth (25<sup>th</sup>) anniversary of the Commencement Date, a leasing activity report for immediately prior calendar year for the Premises substantially in the form attached hereto as *Exhibit XX* (the “Leasing Activity Report”). **[Note: Leasing Activity Report will contain at least total square footage available and square footage leased, the number of tenants [the average rental rate, and to the extent publicly available, gross revenues from the Premises]** To the extent gross revenues from the Premises is made available in other public forums such as government filings, Tenant will include such information in the Leasing Activity Report. Each Leasing Activity Report will be certified by an officer of Tenant that it is a true and correct copy.

(b) **Audited Financial Statements.** Tenant will deliver to Port within ninety (90) days following the end of the calendar year that includes the twenty-sixth (26<sup>th</sup>) anniversary of the Commencement Date and within sixty (60) days following the end of each calendar year thereafter until the calendar year that includes the Expiration Date, Tenant’s audited financial statement for the Premises, certified by Tenant’s chief financial officer as being true, correct, and complete. The Parties agree and acknowledge that the audited financial statements need not include a line item for each Sublease and the pertinent financial terms related to such Sublease, but may instead, include a summary of the revenues generated by the Subleases.

(c) **Port Representative.** Throughout the Term, upon no less than forty-eight (48) hours’ prior notice to Tenant, a representative of Port may review at the property manager’s offices at the Premises during regular business hours, a complete copy of the Subleases at the Premises. Other than any Subleases Port has agreed to recognize pursuant to a Non-Disturbance Agreement, Port’s representative will not be permitted to copy any of the Subleases or take any written notes of any Sublease terms during the first twenty-nine (29) years of the Term.

(d) **Appraiser.** Until Port sells its fee interest or enters into a long-term lease for the last development parcel within the Waterfront Site, Port’s appraiser may review at the management office at the Premises or at another San Francisco location where Tenant may keep copies of Subleases, all current Subleases and rent roll, provided Port’s appraiser has entered into a customary confidentiality agreement that does not limit his or her ability to use the information in a manner necessary to inform the appraisal. The information gathered by the appraiser will be used solely to inform the appraiser in determining the fair market value of the development parcel to be sold or leased, as applicable.

9.4. ***Restaurant/Retail Businesses Open to the General Public.*** Throughout the Term, restaurants and other facilities for the exclusive use of the members of any invitation-only membership organization is prohibited on the ground floor of the Premises; provided, however, the foregoing does not prohibit amenities available only to employees of Tenant or any Subtenant (e.g. an employee cafeteria) or facilities for the exclusive use of membership organizations that are open to the general public (e.g. a membership-based gym).

9.5. ***Flags.*** **[Note: Applicable only for Buildings 12, 21, 2 and Parcel E4]** Throughout the Term, a Port flag will fly on each flagpole within the Premises (“Flagpoles”). Port will provide Port flags to Tenant. Tenant will promptly, at no charge, install, raise, lower and remove Port flags at Port’s request. The dimensions of Port flags will be similar to the dimensions of Port flags flown in the Central Waterfront. Tenant also may use the Flagpoles to fly other flags on each Flagpole, provided that such other flags, other than the flags of the United

States and the State of California, must be placed beneath the Port flag and Port must first reasonably approve the dimensions, color, text, design, and materials for such flag. If Port determines that Tenant's response to Port's request to raise or lower Port flags is inadequate, then at Port's election, Port may access the Flagpoles to adjust the Port flags accordingly without notice to Tenant.

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

**9.6. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant agrees to commence removal of graffiti from 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 San Francisco Public Works. This **Section 9.6** is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the Premises. The term "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the Planning Code, or the 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.).

**9.7. Mitigation Monitoring and Reporting Program.** In order to mitigate any potential significant environmental impacts of the Initial Improvements and operation of the Premises, Tenant agrees that the development and operation of the Improvements will be in accordance with mitigation measures set forth in the Mitigation Monitoring and Reporting

Program attached as *Exhibit XX*. As appropriate, Tenant will incorporate the Mitigation Monitoring and Reporting Program into any contract for the development and/or operation of the Improvements and the Premises.

**9.8. *Transportation Demand Management (TDM) Plan.*** Tenant will comply with the Transportation Demand Management Plan attached hereto as *Exhibit XX* throughout the Term.

**9.9. *Pier 70 Risk Management Plan.*** Tenant will comply, and will cause its Agents to comply, with all applicable provisions of the Pier 70 Risk Management Plan, a copy of which has been provided to Tenant, including requirements to notify all site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually. Any and all Subleases will require Subtenants (including its Agents) to comply with all applicable provisions of the Pier 70 Risk Management Plan.

**10. REPAIR AND MAINTENANCE; FACILITIES CONDITION REPORT; RESERVE ACCOUNT.**

**10.1. *Covenants to Repair and Maintain the Premises.*** Except as may otherwise be provided under *Articles 14* (Damage and Destruction) and *15* (Condemnation), throughout the Term, Tenant will maintain and repair, at no cost to Port, the Premises, all Improvements within the Premises (including, without limitation, all Material Systems) and Subsequent Construction thereon in accordance with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco (less reasonable wear and tear), and in compliance with all applicable Laws and this *Article 10*. Tenant will with reasonable promptness make (or cause others to make) all repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, required to comply with this *Section 10.1*, except as set forth in *Article 14* or *Article 15*. For purposes of this Lease, the term “reasonable wear and tear” will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant’s failure to comply with the terms and conditions of this Lease.

**10.2. *Facilities Condition Report.***

**(a) Additional Definitions.**

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

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

“**Capital Reserve Deposits**” means the deposits into an account for Capital Reserves.

“**FCR Date**” means the twentieth (20<sup>th</sup>) Anniversary Date and every ten (10) years thereafter until and including the sixtieth (60<sup>th</sup>) Anniversary Date and ever five (5) years thereafter until the expiration of the Term.

**(b) Facilities Condition Report.** No less than ninety (90) days before each FCR Date, Tenant will deliver to Port a facilities condition report (the “**Facilities Condition Report**”) prepared by a qualified team of construction professionals including, without limitation, a structural and mechanical engineer, each with at least ten (10) years of experience in constructing, renovating and/or evaluating major [use for residential leases: residential] [use for commercial leases: commercial] buildings in California. The Facilities Condition Report will be substantially in the form is attached hereto as *Exhibit XX*. **[Note: FCR will describe at a minimum the condition and integrity of the foundation and structural integrity of the Improvements, and the condition and integrity of all Material Systems serving the**

**Improvements within the Premises as well as an estimate of the remaining useful life of all the Material Systems.** Additionally, if a Facilities Condition Report is prepared by Tenant or another party in connection with any Transfer or Refinancing, then Tenant will provide or cause the other party to provide, a copy of such Facilities Condition Report to Port.

(c) **Failure to Revise or Submit Report.** If Port reasonably believes the Facilities Condition Report does not satisfy the requirements set forth in *Section 10.2(b)*, then Port will notify Tenant of such deficiency within forty-five (45) days following receipt of the Facilities Condition Report and Tenant will revise the Facilities Condition Report, to address Port's concerns within sixty (60) days. If Tenant fails to provide a Facilities Condition Report, or a revised Facilities Condition Report to Port within such period of time, Port after giving thirty (30) days' notice to Tenant will have the right, but not the obligation, to cause the preparation of a Facilities Condition Report by construction professionals of Port's choice, satisfying the experience requirements set forth in *Section 10.2(b)* at Tenant's sole cost. Upon Port's delivery to Tenant of an invoice for such Facilities Condition Report, Tenant will promptly reimburse Port the amount set forth in such invoice.

(d) **Maintenance and Repair of Identified Items.** Tenant will use commercially reasonable efforts to perform the recommended repairs identified in the Facilities Condition Report in accordance with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

**10.3. Capital Reserves.** Throughout the Term, Tenant will maintain commercially reasonable Capital Reserves as may be required for the repair of Capital Items from time to time consistent with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco.

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

**10.5. Port's Right to Repair.** In the event Tenant fails to maintain and repair the foundation, the structural integrity of the Improvements, the roofs, and building systems (including plumbing, sewer, mechanical, electrical and other utility systems) (collectively, "Material Systems") within the Premises in accordance with *Section 10.1* and such failure is likely to cause imminent physical harm to any Person or constitutes a violation of applicable Law, Port may repair the same at Tenant's cost and expense and Tenant will reimburse Port therefor as provided in this *Section 10.5*. Except in the event of an emergency, Port will first provide no less than fifteen (15) days prior notice to Tenant before commencing any maintenance to or repair of a Material System ("Port's Repair Notice"). If Tenant does not commence maintenance or repair of the affected Material System or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the same within such fifteen (15) day period, then Port may proceed to take the required action. If Port elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port pursuant to this *Section 10.5*, Port will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port an administrative fee equal to ten percent (10%) of the total "hard costs" of the work. "Hard costs"



include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. Tenant will pay to Port the amount set forth in the invoice within thirty (30) days after delivery of Port's invoice.

In the event Port notifies Tenant of a failure to maintain and repair the Premises ("Maintenance Notice"), Tenant will pay to Port, as Additional Rent, an amount equaling **[Note: amount to increase by \$50 every 5 years after DDA execution: Three Hundred Dollars (\$300)]**, which amount will be increased by one hundred dollars on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, upon delivery of the Maintenance Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this *Article 10*, then Tenant will pay to Port, as Additional Rent, an amount equaling **[Note: amount to increase by \$50 every 5 years after DDA execution: Four Hundred Dollars (\$400)]**, which amount will be increased by one hundred dollars on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges is in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. The amounts set forth in this *Section 10.5* are due within five (5) days following delivery of the applicable Maintenance Notice.

Initials: \_\_\_\_\_ Tenant

## 11. IMPROVEMENTS.

**11.1. Tenant's Obligation to Construct the Initial Improvements.** Construction of the Initial Improvements **[and Deferred Infrastructure]** will be governed by the terms and conditions of the Vertical DDA and the VCA, and subject to (i) this Lease and all applicable Laws, including without limitation, the Pier 70 SUD and the Design for Development, (ii) the Pier 70 Risk Management Plan, (iii) the Mitigation Monitoring and Reporting Program, (iv) all applicable requirements for qualification of the Project for Historic Preservation Tax Credits, including compliance with the Secretary's Standards,] and [(v) the Traffic Management Plan]. Any Subsequent Construction will be performed in accordance with *Article 12*.

### 11.2. Deferred Infrastructure.

**[Note: Tenant may need to perform Deferred Infrastructure and Horizontal Developer may perform if Tenant fails to perform. Conform with DDA obligations.]**

**11.3. Title to Improvements.** During the Term, Tenant will own all of the Improvements within the Premises, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein (except for Subtenant improvements to the extent owned by any Subtenant pursuant to the applicable sublease, trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants other than Port), will vest in Port without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants will have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes material damage to the Premises, Tenant will promptly cause the repair of such damage at no cost to Port.

## 12. CONSTRUCTION.

### 12.1. *Port Approval.*

(a) **Generally.** Tenant will have the right, from time to time during the Term, to construct the Initial Improvements and perform Subsequent Construction (collectively, “Construction”) in accordance with the provisions of this *Article 12*.

(b) **Construction Requiring Port’s Prior Approval.** Tenant has the right during the Term to perform Subsequent Construction in accordance with the provisions of this *Article 12*, provided that Tenant cannot do any of the following without Port’s prior approval, which approval may be withheld by Port in its sole discretion:

(i) [Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law); **[Note: Applicable only for leases with historic buildings.]**

(ii) [Materially alter the Historic Fabric unless pursuant to the requirements of an approved Regulatory Approval;] **[Note: applicable only for leases with historic buildings]**

(iii) Perform Subsequent Construction that would, cause a decertification of all or a portion of the Premises for Historic Preservation Tax Credits, or that does not comply with the Secretary’s Standards; **[Note: applicable only for leases with historic buildings]**

(iv) Perform Subsequent Construction to the Public Access Areas that would adversely affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of such Public Access Areas **[Note: Only applicable in leases where public access area is required.]**

**12.2. *Permits/Design Review/Tenant Improvements.*** Tenant must obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from Port itself. Without limiting the foregoing, Tenant acknowledges that the Initial Improvements and any major alterations or additions (as defined in the Design for Development) are further subject to conformance with the Port of San Francisco Union Iron Works Historic District at Pier 70, the Pier 70 Master Signage Program and the design review process set forth in **[Planning Code Section 249.79][Pier 70 SUD]**, which requires review and approval by Port for certain improvements, for consistency with the SUD and Design for Development. Without limiting anything else in this *Article 12*, Port’s approval, in its proprietary capacity, will not be required for the installation or alteration of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing does not alter Tenant’s obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from Port, in its regulatory capacity.

**[Note: Applicable only for leases with Historic Buildings. Tenant will comply with the requirements set forth in Exhibit XX (Review Procedures for Subsequent Construction on Historic Buildings).]**

### 12.3. *Construction Schedule.*

(a) **Performance.** Once commenced, Tenant will prosecute all Construction with reasonable diligence, subject to Force Majeure, and subject to any other applicable provisions regarding timing as set forth in the Vertical DDA and the VCA.

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

#### 12.4. *Construction.*

(a) **Commencement of Construction.** Tenant will not commence any Construction until all the following conditions have been satisfied or waived by Port:

(i) Tenant has obtained and paid for all required building permits (or site permits and necessary addenda) and any other required Regulatory Approvals to commence with Construction; and

(ii) If any Bond, sub-guard insurance (or other insurance product), guaranty, or other security is obtained by or for the benefit of Tenant with respect to the payment of any funds or performance obligations associated with the Initial Improvements or any Subsequent Construction, Tenant will cause to have (1) Port named as a co-obligee to any performance and/or payment bond, (2) Port named as an additional insured or third-party beneficiary with respect to any sub-guard or other insurance product, and (3) Port named as an additional beneficiary to any guaranty provided by a guarantor of any Subtenant's obligations that is granted a Non-Disturbance Agreement in accordance with *Section 18.4*; provided, however, Port's rights under such Bond, insurance product or guaranty will (x) remain subordinate to the rights of any Lender, and (y) not be exercised by Port before an Event of Default.

(b) **Construction Standards.** All Construction will be performed by duly licensed and bonded contractors or mechanics and will be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws.

(c) **Compliance with Secretary's Standards.** Tenant expressly acknowledges that the Buildings within the Premises are each individually a contributing resource to the Port of San Francisco Union Iron Works Historic District at Pier 70 which is listed on the National Register of Historic Places. Accordingly, all Construction affecting the interior or exterior of the Premises (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of any of the Buildings) is subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Plan, Secretary's Standards, and the Mitigation Monitoring and Reporting Program. Tenant expressly agrees to comply with the Secretary's Standards to Port's satisfaction for all Construction affecting the interior and exterior of the Premises. **[Note: This provision applicable only for leases with historic buildings]**

(d) **Reports and Information.** During periods of Construction, Tenant will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by Port or the County Assessor.

(e) **Costs of Construction.** Port will have no responsibility for costs of any Construction and Tenant will pay (or cause to be paid) all such costs.

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

(g) **Prevailing Wages.** Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or part out of public funds. The terms "**public work**" and "**paid for in whole or part out of public funds**" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant agrees that any person performing labor for Tenant on any public work at the Premises will be paid not less than the highest prevailing rate

of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant will include in any contract for such labor a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and will deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(h) **Compliance with Workforce Development Plan.** Tenant agrees that it will comply with the applicable provisions of the Workforce Development Plan, which provisions are attached hereto as *Exhibit XX*.

**12.5. Safety Matters.** Tenant, while performing any Construction or maintenance or repair of the Improvements (for purposes of this Section only, “Work”), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or disruption 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 will erect appropriate construction barricades to enclose the areas of such construction and maintain them until the Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

**12.6. Record Drawings.**

(a) With respect to any Construction requiring a building permit, Tenant will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to such Construction within ninety (90) days following completion of the applicable Construction and Port’s written notice to Tenant requesting same. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as (1) full-size scanned TIF files, and (2) AutoCad files of the completed and updated Construction Documents, as further described below, and in such format as is reasonably required by Port’s building department at the time of submittal. As used in this Section “**Record Drawings**” means drawings, plans and surveys showing the Construction as built on the Premises and prepared during the course of construction (including all requests for information, responses, field orders, change orders and other corrections to the documents made during the course of construction). If Tenant fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following an additional written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Construction, and the actual, third-party cost of preparing such Record Drawings must be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section will limit Tenant’s obligations, if any, to provide plans and specifications in connection with Construction under applicable regulations adopted by Port in its regulatory capacity. Tenant will be permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Tenant’s request, Port will provide Tenant with a release from liability for future use of the applicable materials, in a form acceptable to Tenant and Port.

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

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

(d) **Changes in Technology.** Port reserves the right to revise the format of the required submittals set forth in this *Section 12.6* as technology changes and new engineering/architectural software is developed.

**12.7. Certification of Entitlement Costs and Total Development Costs. Attachment I to Exhibit D** includes the provisions to certify Entitlement Costs and Total Development Costs of the Initial Tenant.

### **13. UTILITY AND TELECOMMUNICATIONS SERVICES.**

**13.1. Utility Services.** Tenant acknowledges and agrees that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. In accordance with the requirements under the DDA, the Premises will be served by the Horizontal Improvements constructed by Horizontal Developer, construction of which may occur simultaneously with construction of Tenant's Initial Improvements. If Tenant desires to coordinate construction activities with Horizontal Developer or construction of the Initial Improvements with the Horizontal Improvements, Tenant will include such provision in the VCA. Tenant, at its sole expense, will (i) arrange for the provision and construction of all on-site and any off-site utilities necessary to construct, operate and use all of the Improvements and any other portion of the Premises for their intended use, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which all of the Improvements and the Premises are put (it being acknowledged that City (including its SFPUC) is the sole and exclusive provider to the Premises of certain public utility services), and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant also must coordinate with the respective utility service provider with respect to the installation of utility services, including providing advance notice to appropriate parties of trenching requirements.

Tenant will pay or cause to be paid as the same become due, all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance, repair, replacement, and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, will abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and Port under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and Port relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent to preserve its rights hereunder that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing will not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

Notwithstanding the foregoing, to the extent installed by Horizontal Developer and included in the Master CC&Rs to be recorded against the Premises, Tenant will be required to participate in the districtwide utility systems serving the Waterfront Site, including, without limitation, procuring recycled water from the district blackwater system and electricity from the district energy system. [TBC]

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

**13.3. Rooftop and Other District-Wide Equipment.**

(a) **Telecommunications Equipment and Satellite Dish.** Tenant will have the right to install Satellite Dish(es) on the roof of the Premises and to sublease such portions to an operator, provided that Tenant (i) complies with all Laws, and (ii) obtains all required Regulatory Approvals. The Parties will cooperate in connection with the location of any Satellite Dish installed pursuant to this *Section 13.1* and the location of any Satellite Dish installed by Port or City pursuant to *Section 13.3* so as to minimize interference with the systems serviced by such Satellite Dish.

(b) **Other Equipment.**

(i) *Solar.* [placeholder for any requirements to install Rooftop Solar Thermal connected to District Energy System and Rooftop Solar PV connected to District Microgrid]

(ii) *District Blackwater System.* [placeholder for Tenant obligations to install facilities for and participate in district blackwater system]

(iii) *District Energy System.* [placeholder for Tenant obligations to install facilities for and participate in district energy system]

(iv) *Communications Facilities.* Tenant agrees that Port and City have the right to install at no charge, Satellite Dish(es) and other telecommunications facilities reasonably required for Port's or City's operations and/or District-wide programs and systems, including, without limitation, (i) facilities for City's emergency or 700-Mhz and 800-Mhz City-wide radio system communications facilities (or its successor), (ii) [public Wi-Fi networks], and (iii) [a Horizontal cellular network], which may require installation on the roof or exterior of any building within the Premises, provided that Port (i) complies with all Laws, (ii) obtains all required Regulatory Approvals, and (iii) obtains Tenant's prior reasonable approval with respect to the size, location, dimensions, color, text (if any), screening, reflectivity, and method of installation of the applicable Satellite Dish or telecommunications facility. The installation of any such Satellite Dish(es) and other telecommunications facilities will be at Port's or City's sole cost. If the installation of any such Satellite Dish or other telecommunications facility requires alterations and/or improvements of any portion of the Premises, including, without limitation, the relocation of any photo-voltaic panels or any other Satellite Dish previously installed on the roof of the Premises, such alterations and/or improvements will be at Port's sole cost and expense, and Port will promptly repair, at its sole cost, any damage to the Premises including, without limitation, to any photo-voltaic panels. All aspects and phases of Port's installation, other equipment, wiring, conduit, roof mount and base, will at all times be subject to supervision and approval by Tenant, not to be unreasonably withheld, conditioned or delayed. All approval and supervision rights of Tenant are intended solely to protect Tenant's interests. Port will be responsible for procuring, prior to any installation, and maintaining in force at all times thereafter, any and all Regulatory Approvals as may be required for the lawful installation, use

and operation of Port's or City's system. Port will be permitted access to the areas on the roof where any such installation is made, as necessary for the installation, repair, maintenance, and replacement thereof. Any access, interruptions or disturbance for the foregoing purposes will be temporary only. Port's access to the roofs will not unreasonably interfere with or disturb Tenant's or Subtenants' use and enjoyment of the Premises, will be subject to the reasonable building security procedures adopted by Tenant, and will require prior written consent for access occurring during regular business hours (except in cases of emergency). Port's access may be subject to temporary interruption in cases of emergency. Port will promptly repair and restore any damage to persons or property caused as a result of Port's access to and activities on the roof. Port will be solely responsible for all maintenance, utilities and other costs of operation of any such facility installed pursuant to the terms of this **Section 13.3**.

**13.4. Electricity.** Tenant will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the San Francisco Public Utilities Commission. If the San Francisco Public Utilities Commission determines that it cannot feasibly provide service to Tenant, Tenant may seek another provider. Nothing herein limits any remedy Tenant may have at law or in equity to recover damages for City utility's failure to deliver utility services hereunder [**Note: Maybe further revised based on final Development Agreement.**].

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

#### **14. DAMAGE OR DESTRUCTION.**

##### **14.1. Damage or Destruction.**

(a) **Tenant to Give Notice.** If at any time during the Term any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "Casualty"), Tenant will promptly give telephonic and written notice ("Casualty Notice") thereof to Port generally describing the nature and extent of such Casualty.

(b) **No Effect on Lease.** Except as set forth in **Section 14.3**, this Lease will not terminate or be forfeited or be affected in any manner by reason of Casualty, and Tenant, notwithstanding any law or statute present or future (including without limitation, California Civil Code Sections 1932(2) and 1933(4)), waives any and all rights to quit or surrender the Premises or any part thereof, Tenant acknowledging and agreeing that the provisions of this **Article 14** will govern the rights and remedies of the parties in the event of a Casualty. Tenant expressly agrees that its obligations hereunder, including the payment of any and all Base Rent, Additional Rent and any other sums due hereunder, will continue as though said Premises and/or Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind.

**14.2. Restoration Obligation.** In the event of a Casualty, unless Tenant terminates this Lease in accordance with **Section 14.3**, Tenant will commence and diligently Restore the Improvements to the condition they were in immediately before such Casualty in accordance with then applicable Laws (including any required code upgrades) [**and Secretary's Standards**], without regard to the amount or availability of insurance proceeds, subject to Force Majeure; provided, however, subject to the rights of Lenders in accordance with **Article 40**, all all-risk coverage insurance proceeds, earthquake and flood insurance proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be first used by Tenant for Restoration of the Premises. All Restoration must be performed in accordance with the procedures set forth in **Article 12** relating to Construction and at Tenant's sole expense and must

be completed within five (5) years following the event of Casualty, subject to Force Majeure. In connection with any Restoration, any Restoration that would otherwise require Port approval under *Sections 12.1(b)* will require Port's prior approval subject to the standards set forth in such sections. The Restored Improvements must be at least equivalent in quality, appearance, public safety, and durability to the Initial Improvements and provide similar public benefit as the original Initial Improvements, subject to the Permitted Uses.

**14.3. Termination Due to Major or Uninsured Casualty.**

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

“**Uninsured Casualty**” means any of the following: (i) a Casualty event occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under *Article 20* and such costs exceed One Million Dollars (\$1,000,000.00), which amount will be increased by an additional Five Hundred Thousand Dollars (\$500,000.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, or (ii) a Casualty event occurring at any time during the Term which is covered under Tenant's policies of insurance that Tenant is required to carry under *Article 20* but where the cost of Restoration (including the cost of any required code upgrades) will exceed the sum of (A) the net proceeds of any insurance payable, (B) the amount of any applicable policy deductibles, and (c) One Million Dollars (\$1,000,000.00), which amount will be increased by an additional Five Hundred Thousand Dollars (\$500,000.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter. Any Casualty event not insured due to Tenant's failure to maintain the requisite insurance policies and coverage requirements under *Article 20* will not be considered an Uninsured Casualty.

(a) **Tenant's Election to Terminate.** If an event of Major Casualty or Uninsured Casualty occurs at any time during the Term, then within ninety (90) days following Tenant's delivery to Port of the Casualty Notice, Tenant may, by written notice to Port, terminate this Lease upon satisfaction of all the conditions set forth in *Section 14.3(b)*.

(b) **Conditions to Termination.** As a condition precedent to Tenant's right to terminate this Lease in accordance with *Section 14.3*, unless waived by Port, Tenant will do all of the following:

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

(ii) Unless the Improvements are to be demolished as set forth in *Section 14.3(b)(i)*, Tenant will provide Port the estimated cost of Restoration;

(iii) Cure all Tenant monetary Events of Defaults and any Tenant Events of Default or Unmatured Events of Default relating to the provisions of *Section 21*;

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

(v) Maintain all the insurance required to be maintained under *Section 20* until the effective date of termination;

(vi) Pay or cause to be paid the following amounts solely from the insurance proceeds as and to the extent available arising from each Casualty promptly following



receipt of such proceeds, in the order required by any senior Mortgage, and if none, in the following order of priority:

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

(2) Second, to Port, for all accrued and unpaid amounts owed to Port under this Lease, if any, by Tenant, up to the effective date of the termination;

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

(4) Fourth, to the appropriate governmental or quasi-governmental entity, all Impositions due up to the effective date of termination; and

(5) Fifth, the balance of the proceeds will be divided proportionately between Port, for the value of Port's reversionary interest in the Premises and Improvements (in their condition immediately prior to the Casualty event) as of the date the Term would have expired but for the Casualty event, and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term (in their condition immediately prior to the event of damage or destruction) less any proceeds distributed in repayment of any Mortgages as provided in *Section 14.3(b)(vi)(3)*.

(vii) Upon termination in accordance with this *Article 14*, Tenant will deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements. Upon such termination, the Parties will be released thereby without further obligation to the other Party as of the effective date of such termination; provided, however, that the Indemnification provisions hereof or any other provision that explicitly survives the expiration or earlier termination of this Lease will survive any such termination with respect to matters arising before the effective date of any such termination.

**14.4. *Distribution Upon Lease Termination Due to Tenant Failure to Restore.*** If Tenant is obligated to and fails to Restore the Improvements as provided herein and commits a Tenant Event of Default in failing to Restore the Improvements and this Lease is thereafter terminated due to such Tenant Event of Default, all insurance proceeds remaining after application pursuant to *Section 14.3(b)(vi)(1)—14.3(b)(vi)(4)* will be paid to and retained by Port.

## 15. CONDEMNATION.

### 15.1. *General; Notice; Waiver.*

(a) **General.** If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties will be determined pursuant to this *Article 15*.

(b) **Notice.** In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings will promptly give written notice of such proceedings or negotiations to the other Party. Such notice will describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) **Waiver.** Except as otherwise provided in this *Article 15*, the Parties intend that the provisions of this Lease will govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this *Article 15*, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under California Code of Civil Procedure Sections 1265.120 and 1265.130, as such section may from time to time be amended, replaced or restated.

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

**15.3. Substantial Condemnation, Partial Condemnation.** If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties will be as follows:

(a) **Substantial Condemnation.** If there is a Substantial Condemnation of a portion of the Premises, this Lease will terminate, at Tenant’s option (which must be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port), as of the Condemnation Date, as further provided below. For purposes of this *Article 15*, “**Substantial Condemnation**” means a Condemnation of (i) less than the entire Premises which renders the Project untenable, unsuitable, or economically infeasible for the Permitted Uses as reasonably determined by Tenant, or (ii) of property located outside the Premises that, in any case, substantially and materially eliminates access to the Premises where no alternative access can be constructed or made available. Notwithstanding the foregoing, Tenant will have no right to terminate this Lease under this Section if the Substantial Condemnation, as the case may be: (x) can be cured by the performance of Restoration (unless such Substantial Condemnation occurs during the last ten (10) years of the Term or if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with Port that at the time of completion of the Restoration, less than ten (10) years would remain in the Term), and (y) the cost of such Restoration does not exceed by at least One Million Dollars (\$1,000,000.00), which amount will be increased by an additional Five Hundred Thousand Dollars (\$500,000.00) on the tenth (10<sup>th</sup>) Anniversary Date and every ten (10) years thereafter, the portion of the Award fairly allocable to severance damages suffered by Tenant. In such case, this Lease will not terminate, and, upon a determination that the Lease will continue based upon the availability and amount of Award, Tenant will commence and complete such Restoration as promptly as reasonably practicable by using commercially reasonable diligence and pursuant to the provisions of *Article 12* and *Section 15.4*, subject to events of Force Majeure.

(b) **Partial Condemnation.** If there is a Condemnation of any portion of the Premises or the Leasehold Estate which does not result in a termination of this Lease under *Section 15.2* or *Section 15.3(a)* (a “**Partial Condemnation**”), this Lease will terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease will remain in full force and effect as to the portion of the Premises (or of the Leasehold Estate) remaining immediately after such Condemnation, and Tenant will promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration will be performed in accordance with the provisions of *Article 12*.

**15.4. Awards.** Except as provided in *Sections 15.5* and *15.6*, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including, without limitation, reasonable Attorneys’ Fees and Costs)

incurred in the collection thereof (“**Net Awards and Payments**”) will be allocated between Port and Tenant as follows:

- (i) First, to Port for the payment of all unpaid Rent.
- (ii) Second, in the event of a Partial Condemnation, to pay costs of Restoration incurred by Tenant, in which case, the portion of the Net Awards and Payments allocable to Restoration will be payable to Tenant, a Lender, or trustee in accordance with the requirements governing payment of insurance proceeds set forth in **Section 14.3(b)(vi)**;
- (iii) Third, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Port’s reversionary interest in the value of the Improvements (the “**Condemned Land Value**”);
- (iv) Fourth, to any non-affiliate Lender pursuant to a non-affiliate Mortgage as and to the extent provided therein, for payment of all sums secured by its non-affiliate Mortgage that remain outstanding, together with its reasonable out of pocket expenses and charges in collecting the Net Award and Payment, including without limitation, its reasonable attorneys’ fees incurred in the Condemnation.
- (v) Fifth, to Tenant to the extent that the Net Awards and Payments are attributable to Tenant’s Leasehold Estate, not including the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date;
- (vi) Sixth, the balance of the Net Awards and Payment will be divided proportionately between Port, for the value of Port’s reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.
- (vii) Notwithstanding anything to the contrary set forth above, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the value of Port’s reversionary interest in the land and Improvements, the Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, will be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

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

**15.6. Relocation Benefits, Personal Property.** Notwithstanding **Section 15.4**, Port will not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants.

## **16. LIENS.**

**16.1. Liens.** Tenant will not create or permit the attachment of, and will promptly discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or the Leasehold Estate, other than (i) this Lease, permitted Subleases, and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants or are being contested in accordance with **Article 4**), and (iii) Mortgages.

**16.2. *Mechanics' Liens.*** Tenant will keep the Premises and the Leasehold Estate free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by Tenant or any of its Agents. Tenant will provide thirty (30) days' advance written notice to Port of any Subsequent Construction to allow Port to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, it will constitute an Event of Default, and Port will have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Port (including interest at the Default Rate computed from the date of payment) for such purpose and all expenses incurred by Port in connection therewith must be reimbursed to Port by Tenant within ten (10) days following demand by Port. Port will include with its demand, supporting documentation.

## **17. DEPOSITS.**

### **17.1. *Base Rent Deposit.* [Note: Applicable only for Hybrid Leases]**

(a) On or before the Commencement Date, Tenant will pay to Port in addition to Base Rent, a security deposit (as adjusted from time to time, the "**Base Rent Deposit**") for the Premises in an amount equal to [insert an amount equal to two times the monthly base rent] (\$XXX). The Security Deposit will be increased on each Adjustment Date so that the Security Deposit held by Port always equals no less than twice the monthly installment of Base Rent. Tenant will deliver to Port within five (5) days following each Adjustment Date, the difference between the Base Rent Deposit currently held by Port and increased Base Rent Deposit.

(b) Tenant agrees that Port may, but will not be required to, apply the Base Rent Deposit in whole or in part to (i) remedy any failure by Tenant to pay Rent as and when due, (ii) cure, or attempt to cure, any Event of Default by Tenant in the performance of the terms, covenants and conditions of this Lease, (iii) repair, or attempt to repair, any damage to the Premises caused by Tenant, its Subtenants, Agents or Invitees, or (iv) compensate Port for any expense incurred or damage caused by Tenant, its Subtenants, Agents, or Invitees.

**17.2. *Environmental Financial Performance Deposit.* [Note: Parties to explore additional provisions, with corresponding required mitigations, for subtenant uses that increase environmental liability/risk.]** On or prior to the commencement of any Sublease with a Subtenant that will engage in activities on the Premises involving the use of Hazardous Materials (other than (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), and (b) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential, or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws), Tenant will deliver to Port an amount determined by Port to be reasonable security for increased environmental liabilities to Port arising out of the Subtenant's specific use of non-Excepted Hazardous Materials at the Premises (the "**Environmental Financial Performance Deposit**") as additional collateral for the full and faithful performance by Tenant of its obligations under **Article 21**. Port's determination of the amount of the Environmental Financial Performance Deposit will be consistent with the Port Commission's adoption of the Environmental Risk Policy and Financial Assurance Requirements for Real Property Agreements on [Note: update as necessary: November 13, 2007, pursuant to Resolution No. 07-81, as may be amended or updated from time to time] (the "**Port Environmental Risk Policy**"). In the event Port determines in its sole but reasonable discretion that any proposed change(s) to Tenant's (or its Subtenants') use and operation of Hazardous Materials (other than Excepted Hazardous Materials) on the Premises increase Port's risk of Loss, then prior to commencement of such Sublease, Port may require Tenant to increase the Environmental Financial Performance Deposit in a manner consistent with the Port Environmental Risk Policy. Port also has the right to increase every five (5) years the amount of the Environmental Financial Performance Deposit in

a manner consistent with the Port Environmental Risk Policy if Port reasonably believes after review of Tenant's and Subtenants' use and operation of Hazardous Materials (other than Excepted Hazardous Materials) that the then current amount is insufficient.

### **17.3. Environmental Oversight Deposit.**

(a) If Tenant is required to provide an Environmental Financial Performance Deposit in accordance with *Section 17.2*, then prior to commencement of the Sublease necessitating such deposit, Tenant will also deliver to Port an environmental oversight deposit ("Environmental Oversight Deposit") in cash, in an amount equaling [**Note: Adjust if Port Commission increases this amount for all new leases:** Ten Thousand Dollars (\$10,000)], as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration of Tenant's performance of its obligations under *Article 21*; provided, however, the Environmental Oversight Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default concerning Tenant's obligations under *Article 21*.

(b) Port at its option may demand reimbursement from Tenant within five (5) business days following demand, or use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port, for Port's costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("Environmental Notice") to Tenant and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Tenant has not begun to cure or comply with the Environmental Notice or is not working actively to cure or comply with the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, Attorneys' Fees and Costs, and inspection, collection, and laboratory analysis of environmental samples and monitoring the Hazardous Material Condition.

(c) If an Environmental Notice is delivered to Tenant, and Tenant has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port at its option may demand payment from Tenant within five (5) days following demand, or apply the sum of [**Note: amount to increase by \$50 every 5 years after DDA execution:** Five Hundred Dollars (\$500)] (which amount will be increased by one hundred dollars on the tenth (10<sup>th</sup>) anniversary of the Commencement Date and every ten years thereafter) from the Environmental Oversight Deposit, as Additional Rent for each Environmental Notice delivered to Tenant to reimburse Port for its administrative costs.

### **17.4. Generally.**

(a) The Base Rent Deposit, Environmental Financial Performance Deposit (if any) and the Environmental Oversight Deposit (if any), are collectively referred to as the "Security Deposit." Tenant will not be entitled to any interest on the Security Deposit.

(b) The amount of the Security Deposit will not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease nor be a measure of Port's damages upon a Tenant Event of Default. Port may apply the Security Deposit as provided herein without waiving any of Port's other rights and remedies hereunder or at Law or in equity.

(c) The Security Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code.

(d) Should Port use any portion of the Security Deposit, Tenant must replenish the Security Deposit to the full extent of the required amount within five (5) business days following Port's demand.

(e) Port's obligations with respect to the Security Deposit are those of a debtor and not a trustee. Port will not be required to keep the Security Deposit separate from its general funds.

(f) Upon the expiration or earlier termination of this Lease, Port will return the unused balance of the Security Deposit to Tenant (less any amounts then due and payable from Tenant to Port under this Lease) within thirty (30) days after Tenant surrenders possession of the Premises to Port.

## 18. ASSIGNMENT AND SUBLETTING.

### 18.1. *Transfer.*

#### (a) Additional Definitions.

“**Assignment**” means an assignment, conveyance, hypothecation, pledge (other than a pledge in connection with any mezzanine financing which will not require prior Port approval), or otherwise transfer all or any of Tenant's interest in this Lease or Leasehold Estate.

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

“**Excluded Transfer**” means any of the following: (a) the exercise of customary remedies under mezzanine financing of Tenant or any constituent owner thereof; (b) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (c) a change resulting from death or legal incapacity of a natural person; or (d) the sale, transfer or issuance of less than the Controlling interest of stock listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions.

“**Managing Party**” means, with respect to any Person, both (a) the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management, policies or activities of Tenant (excluding customary limited partner or non-managing member approval rights) and (b) the ownership (direct or indirect) of more than ten percent (10%) of the profits or capital of Tenant.

“**Minimum Net Worth Amount**” means Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000.00), which amount will increase by ten percent (10%) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter. [**NOTE: \$27.5 million to increase by 5% every 5 years after DDA execution**]

“**Net Worth Guarantor**” means a Person satisfying the Net Worth Requirement that is the guarantor under the Net Worth Guaranty.

“**Net Worth Guaranty**” means a guaranty of performance of all the obligations under this Lease, in an amount not to exceed the Net Worth Requirement, and otherwise in form and substance reasonably satisfactory to Port, delivered to Port by a Person satisfying the Net Worth Requirement.

“**Net Worth Requirement**” means, with respect to a proposed transferee, the proposed transferee has (a) prior to issuance of a Certificate of Completion, a net worth (inclusive of its equity in the Property) equal to at least the Minimum Net Worth Amount, less any debt to be secured by (i) the proposed transferee's interest in the Premises or Leasehold Estate, or (ii) a

pledge of the proposed transferee's ownership interest, or (b) following the issuance of a Certificate of Completion, a net worth (inclusive of its equity in the Property) equal to or at least the lesser of (i) Minimum Net Worth Amount and (ii) thirty percent (30%) of the fair market value of the Premises, in each case.

“**Qualified Transferee**” means any transferee that satisfies each of the following criterion: (1) has, or has engaged a property manager with at least ten (10) years' experience operating [**use for commercial leases**: major commercial projects] [**use for residential leases**: residential projects]; (2) satisfies the Net Worth Requirement; and (3) is subject to jurisdiction of the courts of the State.

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

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

(b) **Conditions to Transfer Before Certificate of Completion.** Subject to *Sections 18.1(e), 18.1(h), 18.1(i)*, before Port's issuance of a Certificate of Completion, Tenant will not (A) suffer or permit any Significant Change to occur, or (B) consummate an Assignment without the prior written consent of Port, which consent may not be unreasonably withheld by Port if each of the following conditions is satisfied:

(i) In the case of an Assignment only, the proposed transferee executes and delivers an Assignment and Assumption Agreement in substantially the form attached hereto as *Exhibit XX* (an “**Assignment and Assumption Agreement**”), which Assignment and Assumption Agreement must contain:

(1) an express assumption by the proposed transferee, for itself and its successors and assigns, and expressly for the benefit of Port, of all of the obligations of Tenant arising from or after the effective date of the Transfer under this Lease, the Vertical DDA if in effect, and any other agreements or documents entered into by and between Port and Tenant pursuant to this Lease directly relating to the Project, and an express agreement by the proposed transferee to be subject to all of the conditions and restrictions to which Tenant is subject;

(2) a representation by the proposed transferee that it has conducted a thorough investigation and due diligence of the Improvements, including the condition of the real property, of all Material Systems, the roof and structural integrity of the Improvements, and if the Transfer occurs after the twentieth (20th) anniversary of the Commencement Date, has reviewed the most recent Facilities Condition Report prepared by Tenant; and

(3) a release by the proposed transferee of the Indemnified Parties and the State Lands Indemnified Parties and waiver of any and all Losses against the Indemnified Parties and the State Lands Indemnified Parties for the condition of the Improvements or the real property or any claims assignor may have against the Indemnified Parties arising prior to the effective date of the Transfer.

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

(iii) All instruments and other legal documents involved in effectuating the Transfer reasonably requested by Port, including all documentation necessary for Port to confirm the amount of Port's share of Transfer Proceeds, has been submitted to Port for its

review and reasonable approval, or at the request of Tenant, such documents are made available for Port's review at Tenant's office in San Francisco;

(iv) There is no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee where Tenant or proposed transferee have not made provisions to cure the applicable default, which provisions are satisfactory to Port in its sole discretion; and

(v) If the effective date of the Transfer is prior to Port's issuance of a Certificate of Completion, there is no Developer Event of Default or an Unmatured Developer Event of Default (as such terms are defined in the Vertical DDA) on the part of Developer under the Vertical DDA, where Tenant or the proposed transferee has not made provisions to cure the default, which provisions are satisfactory to Port;

(vi) Subject to *Section 18.1(b)(vii)*, (1) in the case of a Significant Change, Tenant must be a Qualified Transferee immediately following the consummation of such Significant Change; and (2) in the case of an Assignment, the proposed transferee is a Qualified Transferee;

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

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

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

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

The Net Worth Guaranty will otherwise be in form and substance reasonably satisfactory to Port. The Net Worth Guaranty will terminate when the Tenant benefiting from the Net Worth Guaranty meets the Net Worth Requirement. Tenant and the Net Worth Guarantor will provide Port with its financial statements and other information necessary to substantiate its position that it meets the Net Worth Requirement and that the Net Worth Guaranty should terminate.

(viii) Tenant provides to Port an estoppel certificate substantially in the form attached hereto as *Exhibit XX*, which estoppel certificate will be effective as of the effective date of Transfer;

(ix) Port receives on or prior to the effective date of Transfer (A) Port's share of Net Sale Proceeds, as described in [*Section 3.6 of Exhibit D*] and (B) a settlement statement relating to the Transfer or other evidence, reasonably satisfactory to Port, of Port's share of Net Sales Proceeds.

(x) Port receives on or prior to the effective date of Transfer sufficient funds to reimburse Port for its Attorneys' Fees and Costs to review the proposed Transfer provided, however, if Port has not delivered to Tenant an invoice for Attorney's Fees and Costs prior to the effective date of Transfer, Tenant will reimburse Port for same within ten (10) business days of receipt of such invoice.



(c) **Transfer After Certificate of Completion.** From and after Port's issuance of a Certificate of Completion, Tenant may Transfer without the prior consent of Port so long as:

(i) in the case of a Significant Change, Tenant is a Qualified Transferee immediately following the consummation of such Significant Change; or

(ii) in the case of an Assignment, the proposed transferee is a Qualified Transferee; provided, however, if Tenant (in the case of a Significant Change) or proposed transferee (in the case of an Assignment) does not satisfy the Net Worth Requirement, Tenant or the proposed transferee, as applicable, will have the right to deliver a Net Worth Guaranty in lieu of satisfying the Net Worth Requirement in accordance with *Section 18.1(b)(vii)*;

(iii) Tenant provides Port prior notice before the effective date of the Transfer;

(iv) in the case of an Assignment, within thirty (30) days after such Assignment, Tenant delivers an Assignment and Assumption Agreement to Port, executed by transferor and the transferee; and

(v) in the case of a Significant Change, within thirty (30) days after such Significant Change, Tenant delivers a Significant Change Certificate to Port.

(d) **No Limitation.** It is the intent of this Lease, to the fullest extent permitted by Law and equity that no Transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit Port of the benefits under this Lease or any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that Port would have had, had there been no such Transfer

(e) **Mortgaging of Leasehold.** Notwithstanding anything herein to the contrary, at any time during the Term, Tenant has the right, without Port's consent, to sell, assign, encumber or transfer its interest in this Lease to a Lender or other purchaser in connection with the exercise of remedies under the provisions of a Mortgage, subject to the limitations, rights and conditions set forth in *Article 40* hereof.

(f) **Limitation on Liability.** From and after an Assignment of all of the transferor's interest in this Lease or Leasehold Estate, , the transferor will be released from all obligations and liability under this Lease to the extent first arising after the date of such Assignment. In no event will the transferor be liable for a new default first arising after the date of such Assignment. The effectiveness of any Assignment hereunder is not in any way to be construed to relieve the transferor tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by the transferor tenant hereunder before the date of such Assignment.

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

(h) **Assignment to Accommodate Sale of Historic Tax Credits or Low-Income Housing Tax Credits.** Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to an entity solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable, subject to all of the following conditions: (i) at least thirty (30) days prior to such Transfer, Tenant furnishes Port with the name of the proposed assignee, together with evidence

reasonably satisfactory to Port indicating that the proposed Transfer is solely for the purpose of taking advantage of the Historic Preservation Tax Credit or Low Income Housing Tax Credit, as applicable; and (ii) the conditions set forth in *Sections 18.1(b)(i)—18.1(b)(viii), and 18.1(b)(x)* have all been met.

(i) **Transfers Not Requiring Port Consent Before Certificate of Completion.** Notwithstanding anything to the contrary set forth herein, Port's consent will not be required in the event of a Transfer to a Tenant Affiliate or a Significant Change in which there is no change of the Managing Party of Tenant, subject to all of the following conditions: (i) at least five (5) business days prior to such Transfer, Tenant provides notice thereof to Port; and (ii) the conditions set forth in *Section 18.1(b)(i)—18.1(b)(viii) and 18.1(b)(x)* have all been met.

**18.2. Assignment of Rents.** Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any present or future Subtenant as security for Tenant's obligations hereunder prior to actual receipt thereof by Tenant; provided, however, the foregoing assignment will be subject and subordinate to any assignment made to a Lender under *Article 40* until such time as Port has terminated this Lease (subject to the Port's agreement to enter into a New Lease with Lender and all other provisions of this Lease protecting Lender's interests in this Lease), at which time the rights of Port in all rents and other payments assigned pursuant to this *Section 18.2* will become prior and superior in right; provided, further, any rents collected by any Lender from any Subtenants pursuant to any assignment of rents or subleases made in its favor will promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease.

**18.3. Subletting by Tenant.**

(a) **Qualifying Subleases.** Tenant has the right to sublet all or any portion of the Improvements to one or more Subtenants by written Subleases from time to time without the necessity of obtaining the prior written consent of Port for each applicable Sublease upon satisfaction of all the conditions set forth in this *Section 18.3(a)*

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

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

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

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

(v) The Sublease contains an Indemnification and waiver of claims provision benefitting Port that is substantially and materially the same as *Article 19* except that the term "Tenant" in such provision means "Subtenant;" and

(vi) The Sublease requires that under all liability and other insurance policies, “**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES**” are additional insureds by written endorsement and acknowledging Port’s rights to demand increased coverage to normal amounts consistent with the Subtenant’s business activities on the Premises; and

(vii) Subject to the rights of any Lender, the Sublease requires Subtenant to pay the Sublease rent and other sums due under the Sublease directly to Port upon receiving written notice from Port that a Tenant Event of Default has occurred; and

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

(ix) The Sublease contains a provision similar to *Article 39* (Right to Enter) requiring Subtenant to permit Port to enter its Subleased Space for the purposes specified in *Article 39*; and

(x) The Sublease contains a provision similar to *Article 31* (Tenant Estoppel)) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as *Exhibit XX*; and

(xi) The Sublease requires Subtenant to comply with the City and Port Requirements set forth in *Article 45*;

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

(xiii) Entering into the applicable Sublease would not cause Tenant to fall below the Minimum Public Benefit Area or prevent the use of the Premises for the Required Use.

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

(c) **Required Sublease Information.** Within fifteen (15) days of executing any Sublease, Tenant must provide Port with all information related to such Sublease necessary for Port to comply with Administrative Code Sections 23.38 and 23.39 (or any successor statute).

#### **18.4. *Non-Disturbance of Subtenants and Attornment.***

(a) **Generally.** Subject to the provisions of this *Section 18.4*, from time to time upon the request of Tenant, Port will enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease resulting from a Tenant Event of Default, Port will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between Port and such Subtenant (“**Non-Disturbance Agreements**”).

(b) **Conditions for Issuance of Non-Disturbance Agreements.** Port will enter into a Non-Disturbance Agreement with a particular Subtenant if all of the following conditions are satisfied:

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

(ii) The applicable Sublease Space is comprised of at least 10,000 rentable square feet;

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

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

(v) The applicable Sublease complies with all the conditions of *Section 18.3(a)*;

(vi) The Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant will attorn to Port (provided Port agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease, except as otherwise set forth in the Non-Disturbance Agreement), and the Sublease will be deemed a direct lease between the Subtenant and Port, except that any subleases entered into by Subtenant (or its subtenants) for the Sublease Space will be terminated and Port will not be:

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

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

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

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

(5) bound by any Sublease term, including options to renew, that extend beyond the expiration date of this Lease;

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

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

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

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

(10) bound by any amendment or modification of the Sublease that increase Tenant’s obligations under the Sublease or decrease the Subtenant’s obligations

under the Sublease unless such amendment or modification has previously been approved by Port in writing.

(vii) During the continuance of any Tenant Event of Default, Port may, in its sole discretion, withhold or condition its agreement to provide a Non-Disturbance Agreement on the cure of such default as Port may specify either in a notice of default given under *Section 24.1* or in a notice withholding or conditioning its agreement to provide a Non-Disturbance Agreement; and

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

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

(2) a summary of basic terms of the Sublease,

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

(4) a statement certifying that the Sublease satisfies all the conditions and requirements set forth in *Section 18.3(a)* including that the Sublease rental rates reflect an arms-length transaction at fair market rents as reasonably determined by Tenant, and the proposed Non-Disturbance Agreement complies with all the conditions and requirements set forth in *Section 18.4(b)*, and

(5) an executed Tenant estoppel certificate substantially in the form attached hereto as *Exhibit XX*, and Tenant will certify as of the effective date of the Non-Disturbance Agreement that the certifications made by Tenant in the estoppel certificate remains unchanged; and **Note: estoppel certificate must have Tenant certify that attached Sublease and summary of basic terms is true, correct and complete and that there have been no changes in the executed Sublease and summary from the electronic copies previously delivered to Port.**

(6) all relevant information requested by Port including reasonable financial information establishing the ability of the proposed Subtenant to perform its contemplated obligations under such Sublease, and relevant information concerning the business character and operating history of the proposed Subtenant.

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

(x) Subtenant agrees that notwithstanding any Non-Disturbance Agreement, the Sublease will terminate as of the Lease termination date (1) if the Lease terminates (A) as a result of Tenant exercising its Termination Option due to change in Laws, as further described in *Section 7.3*, or (B) in the event of Casualty or Condemnation, as further described in *Articles 14 and 15*; or (2) if there is an uncured Subtenant event of default, giving effect to any notice and cure period provided therein (which agreement will be evidenced by acceptance of a Non-Disturbance Agreement reflecting the matters described in this clause (x)); and

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

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

(c) **Copy of Sublease.** To the extent a Sublease has been provided to Port in connection with a request for a Non-Disturbance Agreement, Tenant will provide Port a true and complete copy of the executed Sublease and summary of the Sublease basic terms attached to the Tenant estoppel certificate, in accordance with **Section 18.4(b)(viii)(5)** within five (5) business days after the execution thereof, which Sublease will contain substantially the same (or more favorable to the landlord) business terms as in the form of Sublease, statement, and other information previously provided to Port.

(d) **Form of Non-Disturbance Agreement.** Each Non-Disturbance Agreement will be substantially in the form of **Exhibit XX** and, if not in such form, will be in form and substance agreed upon by Tenant and Port, not to be unreasonably withheld by either party. With each request for a Non-Disturbance Agreement, Tenant will submit a copy of the form, showing any requested interlineations or deletions.

(e) **Response Period.**

(i) Port will respond to any request for a Non-Disturbance Agreement within fifteen (15) business days after receipt of all the materials described in **Section 18.4(b)(viii)**; provided, however, if Tenant requests three (3) or more Non-Disturbance Agreements whose response time overlaps at any given time, (1) Port will have an additional five (5) business days to respond for each Non-Disturbance Agreement, and (2) Tenant will pay to Port an additional administrative processing fee of One Thousand Dollars (\$1,000) for every overlapping Non-Disturbance Agreement request above two (2), which amount will be increased by Five Hundred Dollars (\$500) on the tenth (10th) Anniversary Date and every ten (10) years thereafter.

(ii) If Port fails to respond to such request within such fifteen (15) business day period (or twenty (20) business days if so extended), then Tenant will deliver to Port a second notice requesting Port's response ("**Second NDA Notice**"). The Second NDA Notice must display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following: "**APPROVAL REQUEST FOR [INSERT ADDRESS OF LEASED PREMISES]/PIER 70 SUBLEASE MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**" If Port fails to respond within five (5) business days after Port's receipt of the Second NDA Notice, then such non-response will be deemed to be approval of such Non-Disturbance Agreement and the applicable Subtenant will be entitled to rely on the terms of the applicable Non-Disturbance Agreement, provided, however, if there are any conflicts between the provisions in the Sublease and the deemed approved Non-Disturbance Agreement, on the one hand, and **Sections 18.3** and **18.4(b)** on the other hand, **Sections 18.3** and **18.4(b)** will control.

**18.5. No Further Amendment or Consent Implied.** No material terms of a Sublease after Port's execution of a Non-Disturbance Agreement, will be binding upon Port unless Port has granted its written consent thereto, which consent shall not be withheld if the amendment

conforms to the requirements of *Section 18.3* and *Section 18.4(b)*. Consent to one Sublease or amendment, as applicable, will not be construed as consent to a subsequent Sublease or amendment, as applicable.

**18.6. *No Release of Tenant.*** The acceptance by Port of Rent or other payment from any other person will not be deemed to be a waiver by Port of any provision of this Lease or to be a release of Tenant from any obligation under this Lease. Except as set forth in *Section 18.2*, no Transfer or Sublease will in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of Tenant's obligations under this Lease.

**18.7. *Acknowledgement.*** Tenant acknowledges and agrees that each of the rights of Port set forth in this *Article 18* is a reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4.

## **19. INDEMNIFICATION OF PORT.**

**19.1. *General Indemnification of the Indemnified Parties.*** Subject to *Section 19.4*, Tenant agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons or loss or destruction of or damage to property occurring in, on, under, around, or about the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

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

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

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

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

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

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy.

### **19.2. *Hazardous Materials Indemnification.***

(a) In addition to its obligations under *Section 19.1* (General Indemnity) and subject to *Section 19.4*, Tenant, for itself and on behalf of the Related Third Parties and their respective Invitees, agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises;

(iii) **[Add if Tenant responsible for Deferred Infrastructure:** without limiting Tenant's Indemnification obligations in this *Section 19.2(a)*, any Handling or Release of Hazardous Materials in, on, under, around or about any area outside the Premises boundary used by Tenant or its Agents to perform the Deferred Infrastructure, ("**Deferred Infrastructure Area**") at any time prior to Acceptance of such Deferred Infrastructure; or

(iv) without limiting Tenant's Indemnification obligations in *Sections 19.2(a)(ii) [or 19.2(a)(iii)]*, any Handling or Release of Hazardous Materials outside of the Premises, but in, on, under, around or about the 28-Acre Site, by Tenant or any Related Third Party; or

(v) any Exacerbation of any Hazardous Material Condition; or

(vi) failure by Tenant or its Agent, Subtenant, or any of their respective Agents (individually "**Related Third Party**" and collectively "**Related Third Parties**") to comply with the Pier 70 Risk Management Plan or failure by Tenant's Invitees or any Related Third Party's Invitees to comply with the Pier 70 Risk Management Plan within the Premises; or

(vii) claims by Tenant or any Related Third Party for exposure from and after **[for non-affiliate deals:** the Commencement Date.] **[for affiliates deals:** the effective date of the Master Lease] to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(b) Tenant's obligations under *Section 19.2(a)* includes: (i) actual 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) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or 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 five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Tenant understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this *Section 19.2* subject to *Section 19.4*, arises upon the earlier to occur of

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises, **[Add if Tenant responsible for Deferred Infrastructure:** and the Deferred Infrastructure Area;]

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises **[Add if Tenant responsible for Deferred Infrastructure:** the Deferred Infrastructure Area;]

(iii) the Exacerbation of any Hazardous Material Condition, or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.



**19.3. Scope of Indemnities; Obligation to Defend.** Except as otherwise provided in **Section 19.4**, Tenant's Indemnification obligations under this Lease are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Tenant, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Tenant and continues at all times thereafter until finally resolved. Tenant's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

**19.4. Exclusions from Indemnifications, Waivers and Releases.**

(a) Nothing in this **Article 19** (Indemnities) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in **Section 19.1**, (General Indemnification of Indemnified Parties), **19.2** (Hazardous Materials Indemnification), or the defense obligations set forth in **Sections 19.3** (Scope of Indemnities) and **Section 19.6**, (Defense), extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties; or

(ii) from third parties' claims for exposure to Hazardous Materials prior to **[for non-affiliate deals: the Commencement Date]** **[for affiliates deals: the effective date of the Master Lease]**; or

(iii) without limiting Tenant's Indemnification obligations under **Sections [19.2(a)(iii)], 19.2(a)(iv), 19.2(a)(vi), or 19.2(a)(vii)**, and to the extent the applicable Loss was not caused by the failure of Tenant or any of its Related Third Parties to comply with the Pier 70 Risk Management Plan or the failure of the Invitees of Tenant or the Invitees of the Related Third Parties to comply with the Pier 70 Risk Management Plan within the Premises, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Deferred Infrastructure Area after the Acceptance Date for the Deferred Infrastructure Area (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Deferred Infrastructure Area and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Tenant's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Hazardous Materials by the acts or omissions of Tenant or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under this **Section 19.4** is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under this **Section 19.4**. Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under this **Section 19.4** will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing

in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant.

**19.5. Survival.** Tenant's Indemnification obligations under this Lease and the provisions of this *Article 19* survive the expiration or earlier termination of this Lease.

**19.6. Defense.** Tenant will, at its option but subject to Approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Tenant fails, however, in Port's reasonable judgment, within a reasonable time following notice from the Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port has the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise or settlement, which expense is due and payable to Port within fifteen (15) days after receipt by Tenant of a detailed invoice for such expense.

**19.7. Waiver.** As a material part of the consideration of this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases and will include in any contract with Related Third Parties an assumption of the risk of, and waiver, discharge and release of, any and all claims against the Indemnified Parties and the State Lands Indemnified Parties from any Losses, including: (a) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging; (b) goodwill; (c) business opportunities; (d) any act or omission of persons occupying adjoining premises; (e) theft; (f) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination; (g) Building defects (including stopped, leaking or defective Material Systems); (h) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events; and (i) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises **Add if Tenant responsible for Deferred Infrastructure:** and the Deferred Infrastructure Area.], including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties or the State Lands Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties or the State Lands Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties or the State Lands Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties or the State Lands Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

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 waivers and releases in this Lease will remain effective. Therefore, with respect to the claims released in this Lease, Tenant waives any rights or benefits provided by California Civil Code, Section 1542, which reads as follows:

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

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

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

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

**20. INSURANCE.**

Tenant will comply with the insurance requirements set forth in *Exhibit XX* attached hereto throughout the Term.

**21. HAZARDOUS MATERIALS.**

**21.1. Compliance with Environmental Laws.** Tenant will comply and cause its Agents, Invitees and all Persons under any Sublease, to comply with all Environmental Laws, Operations Plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the Premises, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, (c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential, or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency (collectively, "Excepted Hazardous Material.")

**21.2. Tenant Responsibility.** Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under *Section 21.1*;

(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 any investigation, construction, operations, use or any other

activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;

(d) Tenant will be the “**Generator**” of any waste, including hazardous waste, resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to its Premises, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its Subtenants that are subject to an Operations Plan, to comply with the Operations Plan applicable to Tenant or such Subtenant.

**21.3. Tenant’s Environmental Condition Notification Requirements.** The following requirements are in addition to the notification requirements specified in the (i) Operations Plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under *Section 21.1*, Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or 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. In addition to Tenant’s notice to Port by oral or other means, Tenant must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Tenant’s receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Tenant’s receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant’s occupancy of the Premises that Tenant or its Agents or Invitees provide to an Environmental Regulatory Agency;

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

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

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant or its Agents and Invitees use in, on, under, or about the Premises during the Term or Tenant’s occupancy of the Premises; and

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice

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

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

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises. Tenant must provide Port with copies of any of the documents within the scope of this Section 22.4(d) upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises.

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

#### **21.4. Remediation Requirement.**

(a) After notifying Port in accordance with *Section 21.3* and subject to *Section 21.4(d)*, Tenant must Remediate, at its sole cost and 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; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with *Section 21.3*. Except as provided in the previous sentence, Tenant must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under *Section 21.4(a)*, before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to Subsequent Construction or construction of the Initial Improvements.

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

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

**21.5. Pesticide Prohibition.** Tenant will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the “**Pesticide Ordinance**”) which (i) prohibit the use of certain pesticides on City property and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, as further described in *Section XX* [**Note: Insert relevant section in Special City/Port Requirements Exhibit**].

**21.6. Additional Definitions.**

“**Environmental Laws**” means all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, licenses, approvals or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this Lease. “**Environmental Laws**” include the City’s Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

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

“**Environmental Regulatory Approval**” means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises 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 or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause “**Exacerbation**”. “**Exacerbate**” also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's

operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. “**Exacerbate**” also means failure to comply with the Pier 70 Risk Management Plan. “**Exacerbation**” has a correlative meaning.

“**Handle**” when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. “**Handling**” has a correlative meaning.

“**Hazardous Material**” means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a “hazardous constituent”, “hazardous substance”, “hazardous waste constituent”, “infectious waste”, “medical waste”, “biohazardous waste”, “extremely hazardous waste”, “pollutant”, “toxic pollutant”, or “contaminant”, or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. “**Hazardous Materials**” also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

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

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

“**Investigate**” or “**Investigation**” when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

“**New Hazardous Material**” means a Hazardous Material that is not a Pre-Existing Hazardous Material.

“**Pier 70 Risk Management Plan**” means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

“**Release**” means when used with respect to Hazardous Materials, any accidental, actual, imminent, or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying,

discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil, gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

“**Remediate**” or “**Remediation**” when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of “**remedy**” or “**remedial action**” in California Health and Safety Code Section 25322 and “**remove**” or “**removal**” in California Health and Safety Code Section 25323.

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

For all purposes of this Lease, a Party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure will not be considered in breach of or in default in its obligations hereunder to the extent of any delay resulting from Force Majeure, provided, however, that the provisions of this *Article 22* will not apply to Tenant’s obligation to pay Rent. A Party seeking an extension of time pursuant to the provisions of this section will give notice to the other Party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than fifteen (15) days) after knowledge of the beginning of such enforced delay or (b) promptly after the other Party’s demand for performance.

## **23. PORT’S RIGHT TO PAY SUMS OWED BY TENANT.**

### **23.1. Port May Pay Sums Owed by Tenant Following Tenant’s Failure to Pay.**

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Tenant Event of Default, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition, mechanics’ lien or encumbrance with respect to which the provisions of *Article 6* apply), or any other sum required to be paid by Tenant which Tenant is contesting in good faith and with due diligence, and which would not become a lien on the Property). Port may, at its sole option, but will not be obligated to, upon ten (10) days prior notice to Tenant, pay such sum for and on behalf of Tenant.

**23.2. Tenant’s Obligation to Reimburse Port.** If pursuant to *Section 23.1*, Port pays any sum required to be paid by Tenant hereunder, Tenant will reimburse Port as Additional Rent, the sum so paid. All such sums paid by Port are due from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, will bear interest at the lesser of the Default 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 in full by Tenant. Port’s rights under this *Article 23* are in addition to its rights under any other provision of this Lease or under applicable Laws. The provisions of this *Section 23.2* will survive the expiration or earlier termination of this Lease.

## **24. EVENTS OF DEFAULT .**

**24.1. Events of Default.** Subject to the provisions of *Section 24.2*, the occurrence of any one or more of the following events which remain uncured after the passage of time set forth pursuant to this *Article 24* will constitute an “**Event of Default**” under the terms of this Lease:

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



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

(c) [Intentionally blank];

(d) Prior to the issuance of a Certificate of Completion, a Developer Event of Default (as such term is defined in the Vertical DDA) occurs under the Vertical DDA and remains uncured but such Tenant Event of Default under this Lease will be deemed cured if the Developer Event of Default is cured pursuant thereto;

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

(f) The Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion, and such Prohibited Use(s) continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such one (1) business day, Tenant will not be in default of this Lease if Tenant commences to cure the default within such one (1) business day and diligently and in good faith continues to cure the default;

(g) **[Note: Applicable for certain leases]** Tenant fails to use the Minimum Public Benefit Area for the Required Uses, except as otherwise set forth in *Section 3.7*.

(h) Tenant fails to comply with the provisions of *Section 10.1* within five (5) days following written notice from Port; provided, however, if such default cannot reasonably be cured within such five (5) day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such five (5) day period and diligently and in good faith continues to cure the default provided, however, without limitation of the foregoing, the Parties agree that Tenant's internal meetings to determine the path to cure such default will be deemed to be a commencement of cure;

(i) Tenant fails to restore the Improvements after an event of Casualty in accordance with and within the time frame set forth in *Section 14.2* and such failure continues for a period of fifteen (15) days following written notice from Port; provided, however, if such default cannot reasonably be cured within such fifteen (15) days period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such fifteen (15) day period and diligently and in good faith continues to cure the default;

(j) Tenant fails to comply with the provisions of *Sections 21.1—21.5* and such failure continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such one (1) business day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such one (1) business day period and diligently and in good faith continues to cure the default; provided, further that the Parties agree that Tenant's internal meetings to determine the path to cure such default will be deemed to be a commencement of cure;

(k) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred eighty (180) days;

(l) A writ of execution is levied on the Leasehold Estate which is not released within one hundred eighty (180) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred eighty (180) days; provided, however, that the exercise by a Lender of any of

its remedies under its Mortgage will not, in and of itself, constitute a default under this *Section 24.1(l)*;

(m) Tenant makes a general assignment for the benefit of its creditors; [or]

(n) **[Note: Applicable only where Deferred Infrastructure assigned to and assumed by Tenant in the VCA.]** Tenant fails to complete construction of the Deferred Infrastructure within the timeframe required in the VCA and remains uncured, but such default under this Lease will be deemed cured if such default is cured pursuant to the VCA; or

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

**24.2. Special Provisions Concerning Lenders and Events of Default.**

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

**25. REMEDIES. [NOTE: POTENTIALLY ADD BONDHOLDER RIGHTS PROVISIONS.]**

**25.1. Port's Remedies Generally.** Upon the occurrence and during the continuance of an Event of Default under this Lease, Port has all rights and remedies provided in this Lease or available at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate), including the right to self-help to the extent provided for herein; provided, however, notwithstanding anything to the contrary in this Lease, any right to cure and any remedy available to Port regarding any Event of Default under the Workforce Development Plan, is limited to those rights and remedies provided in the applicable Law for such applicable Special City and Port Provisions; provided, further, Port's right to terminate this Lease for an Event of Default will be limited to Events of Default described in *Sections 24.1(a) and 24.1(d)—24.1(m)*.

All of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

**25.2. Right to Keep Lease in Effect.**

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

Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port determines in its sole discretion.

(b) **No Termination Without Notice.** No act by Port allowed by this *Section 25.2*, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) **Application of Proceeds of Reletting.** If Port elects to relet the Premises as provided in *Section 25.2(a)*, the rent that Port receives from reletting will be applied to the payment of:

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

(ii) Second, the payments of any Imposition or any other indebtedness other than Rent due and unpaid hereunder from Tenant to Port;

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

(iv) After deducting the payments referred to in this *Section 25.2(c)*, any sum remaining from the rent Port receives from reletting will be held by Port and applied to monthly installments of future Rent as such amounts become due under this Lease. In no event will Tenant be entitled to any excess rent received by Port. If on a date Rent or other amount is due under the Lease, the rent received by Port as of such date from any reletting is less than the Rent or other amount due on that date, or if any costs incurred by Port in reletting, remain after applying the rent received from such reletting, Tenant will pay to Port such deficiency. Such deficiency will be calculated and paid monthly.

(d) **Payment of Rent.** Tenant will pay to Port Rent on the dates the Rent is due, less the rent Port has received from any reletting which exceeds all costs and expenses described in *Section 25.2(c)*.

**25.3. Port's Right to Cure Tenant's Default.** Port, at any time after Tenant commits an Event of Default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time following an Event of Default, 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 and Costs), all such sums, costs, damages or liabilities paid by Port will be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date will bear interest at the lesser of the Default 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.

**25.4. Termination of Tenant's Right to Possession.**

(a) Before exercising any right to terminate this Lease and Tenant's right to possession of the Premises for the following Events of Default, Port will provide Tenant with a second written notice ("**Second Default Notice**") and the additional cure period set forth below:

(i) For an Event of Default under *Section 24.1(a)*, Tenant will have five (5) business days following delivery of the Second Default Notice to cure;

(ii) For an Event of Default under *Sections 24.1(d), 24.1(e), 24.1(h), or 24.1(i)*, Tenant will have ten (10) days following delivery of the Second Default Notice to cure; provided, however, if such default cannot reasonably be cured within such ten (10) day

period, then Port will not exercise its termination right if Tenant is diligently and in good faith continues to cure the default to completion;

(iii) For an Event of Default under *Sections 24.1(f), 24.1(g), or 24.1(j)*, Tenant will have one (1) business day following delivery of the Second Default Notice to cure; provided, however, if such default cannot reasonably be cured within such one (1) business day period, then Port will not exercise its termination right if Tenant is diligently and in good faith continues to cure the default to completion;

(iv) For an Event of Default under *Sections 24.1(k), 24.1(l), or 24.1(m)*, Tenant will have thirty (30) days following delivery of the Second Default Notice to cure, which may include a dismissal or stay, as applicable;

(b) Port may terminate this Lease and Tenant's right to possession of the Premises for the Events of Default described in *Section 25.4(a)* at any time following expiration of the cure periods set forth in *Section 25.4(a)* for the applicable Event of Default by providing Tenant with a written notice of termination.

(c) 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 will not constitute a termination of Tenant's right to possession.

(d) 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:

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

(ii) 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

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

(iv) 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 therefrom. 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 25.4(d)(i) and 25.4(d)(ii) above* will 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 25.4 above* will 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%).

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

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

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

**25.8. Liquidated Damages for Repeat Prohibited Uses.** In addition to the other remedies available to Port under this Lease for an Event of Default under *Section 24.1(f)*, if Tenant uses the Premises for the same type of Prohibited Use more than two (2) times within a twenty-four (24) month period, then Tenant will pay Port the Prohibited Use Charge, as further described in *Section 3.3*.

**25.9. Horizontal Developer Right to Perform Deferred Infrastructure.** If Tenant fails to complete the Deferred Infrastructure within the time frame set forth in the VCA, then Tenant will grant Horizontal Developer access to the Premises to complete the same. **[Note: Provision applicable only in leases where Tenant has obligation to complete Deferred Infrastructure.]**

**25.10. Remedies Not Exclusive.** The remedies set forth in this *Article 25* are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by other terms and provisions of this Lease, Law or in equity. Tenant's obligations hereunder will survive any termination of this Lease.

## **26. EQUITABLE RELIEF.**

In addition to the other remedies provided in this Lease, either Party is entitled at any time after a default or threatened default by the other Party to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an event of default by the other Party, the non-defaulting Party is entitled to any other equitable relief which may be appropriate to the circumstances of such event of default.

## **27. NO WAIVER.**

**27.1. No Waiver by Port or Tenant.** No failure by Port or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, will be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach will affect or alter this Lease, which will continue in full force and effect, or the respective rights of Port or Tenant with respect to any other then existing or subsequent breach.

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

Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments will be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made “under protest” (or words of similar import).

## **28. DEFAULT BY PORT; TENANT’S REMEDIES.**

**28.1. *Default by Port*** . Port will be deemed to be in default hereunder only if Port fails to perform or comply with any obligation on its part hereunder, and (i) such failure continues for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than sixty (60) days after written notice thereof from Tenant (provided that, Port will use reasonable efforts to cure such default within a thirty (30) day period) after receipt of such written notice from Tenant, or, (iii) if such default cannot reasonably be cured within such sixty (60) day period, Port does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default.

**28.2. *Tenant’s Exclusive Remedies***. Upon the occurrence of default by Port described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder or materially obstructs the realization of the Project, Tenant has the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, or if no Rent is due hereunder, then the amount of the damage award will be amortized over a ten (10) year period and payable by Port on a monthly basis, but in either event only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; provided, however, (x) in no event will Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages (including, without limitation, any indirect or consequential, incidental, punitive or special damages proximately arising out of a default by Port hereunder) or Losses other than Tenant’s actual damages as described in the foregoing clause (a), (y) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant’s remedies hereunder constitutes Tenant’s sole and absolute right and remedy for a default by Port hereunder, and (z) Tenant has no remedy of self-help.

## **29. TENANT’S RECOURSE AGAINST PORT.**

**29.1. *No Recourse Beyond Value of Property Except as Specified***. Tenant agrees that notwithstanding any other term or provision of this Lease, (a) Tenant will have no recourse with respect to, and Port will 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) and (b) neither Port nor the Indemnified Parties will be liable under any circumstances for injury or damage to, or interference with Tenant’s business, including loss or profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring. By Tenant’s execution and delivery hereof and as part of the consideration for Port’s obligations hereunder Tenant expressly waives all such liability.

**29.2. *No Recourse Against Specified Persons***. No commissioner, officer or employee of Port or City will be personally liable to Tenant, or any successor in interest, for any Event of Default by Port, and Tenant agrees that it will have no recourse with respect to any obligation of Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

**29.3. *Nonliability of Tenant’s Members, Partners, Shareholders, Directors, Officers and Employees***. No member, officer, partner, shareholder, director, board member, agent, or

employee of Tenant will be personally liable to Port, and Port will have no recourse against any of the foregoing, in an Event of Default by Tenant or for any amount which may become due to Port or on any obligations under the terms of this Lease or any claim based upon this Lease.

### **30. LIMITATIONS ON LIABILITY.**

#### **30.1. Waiver of Indirect or Consequential, Incidental, Punitive or Special Damages.**

As a material part of the consideration for this Lease, neither Party (including the Indemnified Parties) will be liable for, and each Party hereby waives any claims against the other Party for any indirect or consequential, incidental, punitive, special damages.

**30.2. Limitation on Port's Liability Upon Transfer.** In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor) will automatically be 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 (or such transferor, as the case may be), 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; provided, however, that Port (or such subsequent transferor) has transferred to the transferee any funds in Port's (or in the possession of such subsequent transferor) in which Port (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Port (or such subsequent transferor).

### **31. ESTOPPEL CERTIFICATES BY TENANT AND SUBTENANT.**

(a) Tenant will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Premises), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as **Exhibit XX** stating to the best of Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. **[Note: May be expanded for assignments.]**

(b) Unless otherwise requested, Tenant will attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of Tenant's knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto.

(c) Any such certificate may be relied upon by any Port, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein.

(d) Tenant will insert a provision similar to this Section into each Sublease, requiring Subtenants under Subleases to execute, acknowledge and deliver to Port, within twenty (20) business days after request, an estoppel certificate substantially in the form attached hereto as **Exhibit XX**, covering, among other things, the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease, along with a true and correct copy of the applicable Sublease and all amendments thereto.

### **32. ESTOPPEL CERTIFICATES BY PORT.**

Port will execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Subtenant that is entitled to obtain a Non-Disturbance Agreement from Port in

accordance with *Section 18.4(b)*, prospective Lender meeting the requirements of *Article 40*, prospective purchaser, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as *Exhibit XX* stating to Port's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Port will attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any prospective Subtenant, Lender, prospective Lender, prospective purchaser, or other prospective transferee of Tenant's interest under this Lease.

### **33. APPROVALS BY PORT; STANDARD OF REVIEW; FEES FOR REVIEW .**

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

**33.2. *Standard of Review.*** Except as expressly provided otherwise or when Port is acting in its regulatory capacity, the following standards will apply to the Parties' conduct under this Lease.

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

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

**33.3. *Fees for Review.*** Unless a different time period is required in this Lease, within thirty (30) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including, without limitation, Attorneys' Fees and Costs and costs for Port staff time incurred in connection with the review, investigation, processing, documentation and/or



approval of any proposed Transfer, Sale, Mortgage, estoppel certificate, Non-Disturbance Agreement, Refinancing, other certificate, or Subsequent Construction (excluding any such costs incurred by Port's regulatory capacity, which costs will be paid separately by Tenant to the extent required in connection with the review or processing of such regulatory request). Tenant will pay such costs regardless of whether or not Port consents to such proposal.

#### **34. NO MERGER OF TITLE.**

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

#### **35. QUIET ENJOYMENT.**

Subject to the Permitted Title Exceptions, the terms and conditions of this Lease, the Vertical DDA (while in effect), and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, will lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by Port. Notwithstanding the foregoing, Port has no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to City's willful misconduct). Tenant's sole remedy with respect to any such existing title defect is to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

#### **36. SURRENDER OF PREMISES.**

**36.1. Condition of Premises.** Except as set forth in *Section 36.2*, upon the expiration or earlier termination of this Lease, Tenant will quit and surrender to Port the Premises (i) in good order and condition consistent with the requirements of *Section 10.1*, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder [**Add if applicable: and the requirements hereunder with respect to Historic Preservation standards**]; (ii) clean, free of debris, waste, and Hazardous Materials (other than any Pre-Existing Hazardous Materials that have not been Handled, Released, or Exacerbated), and (iii) free and clear of all liens and encumbrances other than the Permitted Title Exceptions and other licenses, easements or access rights approved or consented to by Port in accordance with *Section 3.5*. If it is determined by Port that the condition of all or any portion of the Premises is not in compliance with the provisions of this Lease with respect to Hazardous Materials at the expiration or earlier termination of this Lease, then at Port's sole option, Port may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Port in the condition required herein. Except as set forth in *Section 36.2*, the Premises will be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto. Tenant hereby agrees to execute all documents as Port may deem necessary to evidence or confirm any such other termination.

#### **36.2. Demolition of Improvements.**

(a) **Notice.** At the expiration or earlier termination of this Lease, at Port's sole election ("**Demolition Option**"), Port may require Tenant, at Tenant's sole cost, to Demolish and Remove the Improvements and surrender the Premises as a vacant parcel of unimproved real property. Port will notify Tenant of Port's election to exercise the Demolition Option (i) no later than twenty-four (24) months prior to the expiration of this Lease, (ii) within ninety (90) days following Tenant's election to terminate this Lease in accordance with *Section 7.3* (Termination for Cost Associated with Change in Laws), *Section 14.3(a)* (Termination for Major Casualty), or

*Article 15* (Condemnation), or (iii) upon termination of this Lease due to an Event of Default described in *Section 25.4*.

(b) **Access After Termination.** If Port exercises the Demolition Option in accordance with *Section 36.2(a)*, then if Port agrees that Tenant will complete the Demolition and Removal after the expiration or earlier termination of this Lease (or promptly thereafter if the Lease is terminated due to an Event of Default described in *Section 25.4*), Port and Tenant will enter into Port's standard license granting Tenant non-possessory access to the Premises in order for Tenant to perform the Demolition and Repair following the expiration or earlier termination of this Lease; provided, however, Tenant will perform the Demolition and Removal in compliance with *Article 12* (Construction) and Port may require insurance, bond, guaranty, Indemnification, and other requirements that exceed the coverage amounts or licensee obligations set forth in Port's standard license, that Port determines are reasonably appropriate to protect its interest in light of the risks and liabilities associated with the Demolition and Removal.

(c) **Period to Complete.** Tenant must commence and complete the Demolition and Removal in a timely manner, with due diligence and care, and complete the same within the time period agreed to between the Parties, but in no event longer than six (6) months following the expiration of earlier termination of this Lease. The provisions of this *Section 36.2* will survive the expiration or earlier termination of this Lease.

**36.3. Personal Property.** On or before expiration or earlier termination of this Lease, Tenant will remove, and will cause all Subtenants to remove (other than any Subtenants that are permitted to remain on the Premises beyond the termination of this Lease in accordance with a Non-Disturbance Agreement previously entered into between the applicable Subtenant and Port), all of their respective Personal Property and Signs within the Premises. If the removal of such Personal Property causes damage to the Premises, Tenant must promptly repair such damage, at no cost to Port. Any items not removed by Tenant as required herein will be deemed abandoned and may be stored, removed, and disposed of by Port at Tenant's sole cost and expense, and Tenant waives all claims against Port for any Losses resulting from Port's retention, removal or disposition of such Personal Property; provided, however, that Tenant will be liable to Port for all costs incurred in storing, removing and disposing of such abandoned property or repairing any damage to the Premises resulting from such removal.

**36.4. Quitclaim.** Upon the expiration or earlier termination of this Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and will 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 will promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effectuate the termination of the Leasehold Estate and to effectuate such transfer or vesting of title to the Premises, the Improvements and Personal Property that Port agrees are to remain within the Premises.

### **37. HOLD OVER.**

Any holding over by Tenant after the expiration or termination of this Lease will not constitute a renewal hereof but will be deemed a month-to-month tenancy and will be upon each and every one of the other terms, conditions and covenants of this Lease, except that Minimum Rent payable for the applicable month will be equal to the higher of: (i) twenty percent (20%) of the average Modified Gross Income for the three (3) Lease Years immediately prior to the Expiration Date, or (ii) eight hundred percent (800%) of the monthly Minimum Rent payable for the month immediately preceding the Expiration Date. Either Party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other party.

**38. NOTICES.**

**38.1. Notices.** All notices, demands, consents, and requests which may or are to be given by any Party to the other must be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder will be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is two (2) days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

<b>To Port:</b>	Port of San Francisco Pier 1 San Francisco, CA 94111 Attention: Deputy Director of Real Estate and Development (Reference: [Insert Address of Premises/Pier 70])  Telephone: (415) 274-0400
<b>With a copy to:</b>	Port of San Francisco Pier 1 San Francisco, CA 94111 Attention: Port General Counsel (Reference: [Insert Address of Premises/Pier 70])  Telephone: (415) 274-0400
<b>To Tenant:</b>	
<b>With a copy to:</b>	

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by electronic-mail to the electronic-mail address set forth above (or such other number or address as may be provided from time to time by notice given in the manner required hereunder); however, neither Party may give official or binding notice by electronic-mail.

**38.2. Form and Effect of Notice.** Every notice given to a Party or other Person under this Section must state (or accompanied by a cover letter that states):

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any; and
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto.

In no event will a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this **Section 38.2**.

### **39. ACCESS TO THE PREMISES BY PORT.**

**39.1. Entry by Port.** Port and its authorized Agents 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.

**39.2. General Entry.** In addition to its rights pursuant to *Section 39.3*, subject to the rights of any Subtenants, Port and its authorized Agents will have the right to enter the Premises at all reasonable times and upon reasonable notice as stated below for any of the following purposes:

- (1) 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 in accordance with *Section 10.1* or *25.2*;
- (2) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (3) 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 an Event of Default is continuing;
- (4) 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 during the last eighteen (18) months of the Term; and
- (5) To obtain environmental samples and perform equipment and facility testing.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency for the purposes set forth above. Such notice will be not less than three (3) business days' prior notice. Tenant will have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice will be required for Port's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in *Section 39.2*.

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

**39.4. No Liability.** Port will not be liable in any manner, and Tenant hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in *Article 41* 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.

**39.5. Non-Disturbance.** Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in this *Article 39* in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

**39.6. Subtenant Agreement.** Tenant will require each Subtenant to permit Port to enter its premises for the purposes specified in *Section 39.1* through *Section 39.3*.

#### 40. MORTGAGES. [UNDER CONTINUED DISCUSSION BY PARTIES]

##### 40.1. *Mortgages.*

(a) **Right to Grant Mortgages.** Tenant has the right during the Term, to grant a mortgage, deed of trust or other security instrument (each a “**Mortgage**”) encumbering (i) all or a portion of the Leasehold Estate in all or a portion of the Premises, (ii) Borrower’s interest in any permitted Subleases thereon, (iii) any Personal Property of Borrower, (iv) products and proceeds of the foregoing, and (v) any other rights and interests of Borrower arising under this Lease for the benefit of a Bona Fide Institutional Lender (together with its successors in interest, a “**Lender**”) as security for one or more loans related solely to the Project or the Property, the proceeds from which are used to pay or reimburse costs incurred in connection with the Project and/or the Property, subject to the terms and conditions contained in this *Article 40*.

“**Bona Fide Institutional Lender**” means any one or more of the following, whether acting in its own interest and capacity or in an agency or a fiduciary capacity for one or more Persons none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a licensed California finance lender, any agency or instrumentality of the United States government or any state or City governmental authority, a pension fund, an investment banking or merchant banking firm, or any entity directly or indirectly sponsored or managed by any of the foregoing, or other lender, all of which, at the time a Mortgage is recorded in favor of such entity, owns or manages assets of at least Five Hundred Million Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency), or (ii) an Historic Preservation Tax Credit or Low Income Housing Credit investor or Affiliate thereof that has given a loan to Tenant to optimize or utilize effectively the Historic Preservation Tax Credits or Low Income Housing Tax Credits, as applicable.

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

(c) **Leasehold Mortgages Subject to this Lease.** With the exception of the rights expressly granted to Lenders in this *Article 40*, the execution and delivery of a Mortgage will not give or be deemed to give a Lender any greater rights than those granted to Tenant hereunder.

(d) **Transfer by Lenders.** A Lender may transfer or assign all or any part of or interest in any Mortgage to a Bona Fide Institutional Lender without the consent of or notice to any Party; provided, however, that Port will have no obligations under this Agreement to a Lender unless Port is notified of such Lender. Furthermore, Port’s receipt of notice of a Lender following Port’s delivery of a notice or demand to Tenant or to one or more Lenders under *Section 40.4* will not result in an extension of any of the time periods in this *Article 40*, including the cure periods specified in *Section 40.5*.

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

(f) **Violation of Covenant.** Any Mortgage not permitted by this *Article 40* will be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

#### 40.2. *Copy of Notice of Default to Lender.*

(a) **Copy to Lender.** Whenever Port delivers any notice or demand to Tenant for any breach or default by Tenant in its obligations or covenants under this Lease, Port will at the same time forward a copy of such notice or demand to each Lender that has previously made a written request to Port for a copy of any such notices in accordance with *Section 40.2(b)*. A delay or failure by Port to provide such notice or demand to any Mortgagee that has previously made a written request therefor will extend, by the number of days until notice is given, the time allowed to such Mortgagee to cure.

(b) **Notice From Lender to Port.** Each Lender is entitled to receive notices in accordance with *Section 40.2(a)* provided such Lender has delivered a notice to Port in substantially the following form:

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

\_\_\_\_\_.”

If Lender desires to have Port acknowledge receipt of Lender’s name and address delivered to Port pursuant to this *Section 40.2(b)*, then such request must be made in bold, underlined and in capitalized letters.

#### 40.3. *Lender’s Option to Cure Defaults.*

(a) Before or after receiving any notice of failure to cure referred to in *Section 40.2*, each Lender will have the right (but not the obligation), at its option, to commence to cure or cause to be cured any Event of Default, within the same period afforded to Tenant hereunder plus an additional period of (a) fifteen (15) days with respect to a monetary Event of Default and (b) forty-five (45) days with respect to a non-monetary Event of Default that is susceptible of cure by such Lender without obtaining title to the applicable property subject to the applicable Mortgage or acquiring the ownership interests in Tenant, as applicable.

(b) If a non-monetary Event of Default cannot be cured by Lender without obtaining title to the Leasehold Estate, or applicable portion thereof, Port will refrain from exercising its right to terminate this Lease and will permit the cure by a Lender of such Event of Default if, within the cure period set forth in *Section 40.3(a)*: (i) such Lender notifies Port in writing that such Lender intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property or ownership interests, as applicable; (ii) such Lender commences foreclosure proceedings whether by non-judicial foreclosure, judicial foreclosure, by appointment of a receiver, or deed (or assignment) in lieu of foreclosure, within sixty (60) days after giving such notice, and diligently pursues such proceedings to completion; and (iii) after obtaining title, such Lender, subject to *Section 40.4*, diligently proceeds to cure those Events of Default that are susceptible of cure by such Lender. The period from the date Lender so notifies Port until a Lender acquires and succeeds to the interest of Tenant under this Lease or some other party acquires such interest through Foreclosure is herein called the “Foreclosure Period.”

(c) Nothing in this *Article 40* will preclude Port from exercising any rights or remedies under this Lease against Tenant (other than a termination of this Lease) with respect to any other Events of Default during the Foreclosure Period.

(d) Notwithstanding the foregoing, no Lender will be required to cure any non-monetary Event of Default that is specific or personal to Tenant which cannot be cured by

Lender (by way of example and not limitation, Tenant bankruptcy, or the failure to submit required information in the possession of Tenant). Lender's acquisition of title to the Leasehold Estate, or the completion of a foreclosure (or assignment in lieu thereof), as applicable, will be deemed to be a cure of such Events of Default specific or personal to Tenant. The foregoing will not excuse a Lender's failure to cure any continuing default that is curable by Lender.

**40.4. Lender's Obligations with Respect to the Property.**

(a) **Rights and Obligations upon Lender Acquisition.** Except as set forth in this *Article 40*, no Lender will have any obligations or other liabilities under this Lease unless and until it acquires title by any method to the Leasehold Estate (referred to as "**Foreclosed Property**"). Except as otherwise provided herein (including, without limitation, *Sections 40.4(b)–(d)*), a Lender (or its designee, successor or assign) or other winning bidder at a foreclosure sale (collectively, a "**Successor Owner**") that acquires title to any Foreclosed Property (a "**Lender Acquisition**") will take title subject to all of the terms and conditions of this Lease to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations that are due as a condition to enjoying the benefits under this Lease from and after the Lender Acquisition. Upon completion of a Lender Acquisition, Port will recognize the Successor Owner as Tenant under this Agreement. Such recognition will be effective and self-operative without the execution of any further instruments; provided, upon request, at no cost to Port, Port will execute a written agreement recognizing Successor Owner. A Successor Owner, upon a Lender Acquisition, will be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Lender to the extent not cured prior to completion of the Lender Acquisition. The foregoing obligation includes any obligation to Restore, except as set forth in *Section 40.4(c)*.

(b) **Obligations by Lender Prior to Lender Acquisition.** Prior to a Lender Acquisition, Port will have no right to enforce any obligation under this Lease against any Lender unless such Lender expressly assumes and agrees to be bound by this Lease in a form reasonably approved in writing by Lender and Port, which form will be consistent with the terms of this Lease (for the avoidance of doubt, the foregoing will not limit Port's rights and remedies against Tenant notwithstanding any interest Lender may have in Tenant or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this *Article 40*). However, Lender agrees to comply during a Foreclosure Period with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by Lender, including the payment of all Impositions and any other sums due and owing hereunder.

(c) **No Obligation to Restore.** Subject to *Sections 40.4(d)* and *(e)*, Lender, including any Lender who obtains title to Foreclosed Property through a Lender Acquisition will not be obligated by the provisions of this Lease to Restore any damage or destruction to the Improvements beyond the extent necessary to preserve or protect the Improvements already made, to remove any debris and to perform other reasonable measures to protect the public; provided, however, any other Person who thereafter obtains title to the Leasehold Estate, or any interest therein from or through such Lender (or its designee), or any other Successor Owner (other than such Lender ) will be obligated to Restore any damage or destruction to the Improvements in accordance with this Lease, except that any time period for such Restoration shall be reset as if the applicable casualty or condemnation occurred as of the date of the Mortgage Acquisition.

(d) **Obligation to Sell If Not Restore.** In the event that Lender acquires the Foreclosed Property through a Lender Acquisition and chooses not to complete or Restore the Improvements, it will notify Port in writing of its election within [XX] days following the Lender Acquisition and will sell its interest with reasonable diligence to a purchaser that will be obligated to Restore the Improvements, but in any event Lender will use good faith efforts to

cause such sale to occur within [XX] months following Lender's written notice to Port of its election not to Restore (the "Sale Period").

(e) **Lender Agreement to Complete or Restore.** If Lender fails to sell its interest in the Leasehold Estate within the Sale Period, such failure will not constitute a default hereunder but Lender will be obligated to Restore the Improvements to the extent this Lease obligates Tenant to so Restore. In the event Lender agrees, or is deemed to have agreed, to Restore the Improvements, all such work will be performed in accordance with all the requirements set forth in this Lease, and Lender must submit evidence reasonably satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligations.

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

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

**40.7. Multiple Mortgages.**

(a) If at any time there is more than one Mortgage constituting a lien on a single portion of the Property or any interest therein, the lien of Lender prior in time to all others (the "Senior Lender") will be vested with the rights under *Sections 40.3, 40.10, 40.13, and 40.14* to the exclusion of the holder of any other Mortgage except if the Senior Lender fails to exercise the rights set forth in *Sections 40.3 and 40.10*, as applicable, then the holder of a junior Mortgage that has provided notice to Port in accordance with *Section 40.2* will succeed to the rights set forth in *Sections 40.3 and 40.10*, as applicable, only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in *Sections 40.3 and 40.10*, as applicable.

(b) A Senior Lender's failure to exercise its rights under *Sections 40.3, 40.10, 40.13, or 40.14*, as applicable, or any delay in the response of any Lender to any notice by Port will not extend (i) any cure period, (ii) period to enter into a New Lease, or (iii) Tenant's or any Lender's rights under this *Article 40*. For purposes of this *Section 40.7*, in the absence of an order of a court of competent jurisdiction that is served on Port, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priorities of the liens of Mortgages on real property, may be relied upon by Port as conclusive evidence of priority.

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

**40.9. Limitation on Liability of Lender.** No Lender will become liable under the provisions of this Lease unless and until such time as it becomes the owner of the Leasehold Estate and then only for so long as it remains the owner of the Leasehold Estate and only with respect to the obligations arising during such period of ownership.

If a Lender becomes the owner of the Leasehold Estate under this Lease or under a New Lease, (i) except as set forth in *Sections 40.4(c) and 40.4(d)*, such Lender will be liable to Port for the obligations of Tenant hereunder only to the extent such obligations arise during the period that such Lender remains the owner of the Leasehold Estate, and (ii) in no event will Lender



have personal liability under this Lease or New Lease, as applicable, greater than Lender's interest in this Lease or such New Lease, and Port will have no recourse against Lender's assets other than its interest herein or therein.

**40.10. New Lease.** In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the rejection of this Lease by a trustee of Tenant in bankruptcy or by Tenant as a debtor-in-possession, except (i) by Total Condemnation, (ii) as the result of damage or destruction as provided in **Article 14**, or (iii) as a result of Tenant exercising its option to terminate this Lease due to change in Laws as provided in **Section 7.3**, Port will serve upon Lender written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. The Senior Lender will thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions ("**New Lease**"):

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

(ii) Such New Lease will be entered into at the Lender's cost, will be effective as of the date of termination of this Lease, and will be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (except for any requirements or conditions which Tenant has satisfied prior to the termination). The New Lease will have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. The New Lease will require Lender to perform any unfulfilled monetary obligation of Tenant under this Lease that would, at the time of the execution of the New Lease, be due under this Lease if this Lease had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is continuing and is reasonably susceptible of being performed by such Lender, including any obligation to Restore. If Lender elects not to Restore, then it will follow the procedures set forth in **Sections 40.4(d)** and **(e)**. Upon the execution of the New Lease, Lender will pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and will pay all expenses, including reasonable Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such New Lease. The provisions of this **Section 40.10(ii)** will survive any termination of this Lease (except as otherwise expressly set out in the first sentence of **40.10**), and will constitute a separate agreement by Port for the benefit of and enforceable by Lender.

**40.11. Nominee.** Any rights of a Lender under this **Article 40**, as amended hereby, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Lender; provided, however, no Lender will acquire title to the Lease through a nominee or designee which is not a Person otherwise permitted to become Tenant hereunder; provided, further that a Lender may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of Lender.

**40.12. Subleases and Other Property Agreements.** Effective upon the commencement of the term of any New Lease executed pursuant to **Subsection 40.10**, any Sublease then in effect will be assigned and transferred without recourse by Port to Lender. Between the date of termination of this Lease and expiration of the New Lease Execution Period, Port will not (1) enter into any new management agreements or agreements for the maintenance of the Premises or the supplies therefor (collectively, "**Other Property Agreements**") or Subleases which would be binding upon Lender if Lender enters into a New Lease, (2) cancel or materially

modify any of the existing Subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor or any other agreements affecting the Premises, or (3) accept any cancellation, termination or surrender of any Subleases which were not automatically terminated upon termination of the Lease as a result of the absence of a Non-Disturbance Agreement with the Subtenant of such Sublease (unless all the conditions to Port's recognition of the Sublease under the Non-Disturbance Agreement have not been met) or Other Property Agreement without the written consent of Lender, which consent will not be unreasonably withheld or delayed; provided, however Lender's prior approval will not be required for any Other Property Agreement entered into, cancelled, or modified by Port due to an emergency. Effective upon the commencement of the term of the New Lease, Port will also quitclaim to Lender, its designee or nominee (other than Tenant), without recourse, all of Tenant's Personal Property remaining on the Premises.

**40.13. Consent of Lender.** Port will not (i) modify this Lease in a manner that increases base rent or percentage rent owed to Port, decreases the Term or otherwise amends the terms of this Lease in a manner that creates a material adverse effect upon Senior Lender, or (ii) terminate or cancel this Lease without Senior Lender's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any such modification, termination or cancellation of this Lease without Senior Lender's consent will be effective against Senior Lender.

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

**40.14. Cooperation.** Port, through its Executive Director, and Tenant will cooperate in including in this Lease by suitable written amendment or agreement from time to time any provision which may be reasonably requested by the Senior Lender and customarily included in such amendment or agreement to implement the provisions and intent of this *Article 40*, provided, however, that any such amendment or agreement will not adversely affect in any material respect any of Port's rights and remedies under this Lease. Port's execution of any such amendment or agreement is conditioned on Port's receipt of its share of Net Refinancing Proceeds (if any), and Attorneys' Fees and Costs incurred in connection with the review and negotiation of such document.

#### **41. NO JOINT VENTURE.**

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

#### **42. ECONOMIC ACCESS.**

Tenant will comply with the Workforce Development Plan attached hereto as *Exhibit XX* (collectively, the "**Workforce Development Plan**"). The Workforce Development Plan is designed to afford opportunities for San Francisco residents to participate in the construction and operation of the Initial Improvements. Tenant will comply with the Workforce Development Plan with respect to the operation and leasing of the Premises, and will include in its Subleases, applicable provisions of the Workforce Development Plan in accordance with the same.

#### **43. REPRESENTATIONS AND WARRANTIES.**

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

(a) **Valid Existence; Good Standing.** Tenant is a

[REDACTED] duly organized and validly existing under the laws of the

State of [REDACTED]. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

(c) **No Limitation on Ability to Perform.** Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other Person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to Port in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

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

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

(f) **Financial Matters.** Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein will survive any termination of this Lease to the extent specified in this Lease.

#### 44. MITIGATION AND IMPROVEMENTS MEASURES.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project will be in accordance with the Mitigation and Improvement Measures attached to this Lease as *Exhibit XX*, which are those Mitigation and Improvement Measures applicable to the Premises. As appropriate, Tenant will incorporate such Mitigation and Improvement Measures into any contract for the operation of the Improvements.

#### 45. PORT AND CITY SPECIAL PROVISIONS.

Tenant will comply with the Port and City Special Provisions attached hereto as *Exhibit XX*.

## 46. GENERAL

### 46.1. *Time of Performance.*

- (a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.
- (b) **Weekend or Holiday.** A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.
- (c) **Days for Performance.** All periods for performance or notices specified herein in terms of days will be calendar days, and not business days, unless otherwise provided herein.
- (d) **Time of the Essence.** Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to the provisions of *Article 21* relating to Force Majeure.

### 46.2. *Interpretation of Agreement.*

- (a) **Exhibits and Schedule.** Whenever an “Exhibit” or “Schedule” is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such exhibits and schedules are incorporated herein by reference.
- (b) **Captions.** Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Lease.
- (c) **Words of Inclusion.** The use of the term “include”, “including”, “such as”, or words of similar import, when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.
- (d) **No Presumption Against Drafter.** This Lease has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Lease will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including California Civil Code Section 1654).
- (e) **Fees and Costs.** The Party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.
- (f) **Lease References.** Wherever reference is made to any provision, term or matter “in this Lease,” “herein” or “hereof,” or words of similar import, the reference will be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section or paragraph of this Lease or any specific subdivision thereof.
- (g) **Approvals.** Unless otherwise specifically stated in this Lease, wherever a Party hereto has a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned or delayed and such approval or consent will be given in writing.

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

**46.3. Successors and Assigns.** This Lease is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant, and any Lender. Where the term “Tenant,” “Port,” “Lender” is used in this Lease, it means and includes their respective successors and assigns, including, as to any Lender, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or a the entity which has succeeded to Port’s rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Lease.

**46.4. No Third-Party Beneficiaries.** This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in *Article 40* with regard to Lenders and *Section 25.8* with regard to Horizontal Developer’s ability to complete the Deferred Infrastructure under certain limited circumstances. .

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

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

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

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

**46.9. Governing Law; Selection of Forum.** This Lease will be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Port’s entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Port, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

**46.10. Recordation.** This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as *Exhibit XX*. Promptly upon Port’s request following the expiration of the Term or any other termination of this Lease, Tenant will deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Port and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant’s interest under this Lease. Port may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

**46.11. Attorneys’ Fees.** 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, will be entitled to recover from the other party its costs and expenses of suit, including but not limited to Attorneys' Fees and Costs, which will be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section includes, 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. Attorneys' Fees and Costs under this Section includes attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney will 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.

**46.12. Effective Date.** This Lease will become effective on the date (the "**Effective Date**") the Parties duly execute and deliver this Lease. The Effective Date will be inserted by Port on the cover page and on page 1 hereof, provided, however, that either Party's failure to insert the Effective Date will not invalidate this Lease. Where used in this Lease or in any of its exhibits, references to "the date of this Lease," the "reference date of this Lease," "Lease Date" or "Effective Date" will mean the Effective Date determined as set forth above and shown on the first page hereof.

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

#### **47. DEFINITIONS OF CERTAIN TERMS.**

For purposes of this Lease, initially capitalized terms will have the meanings ascribed to them in this Section [to be cross-checked and finalized with final lease drafts]:

"**Additional Rent**" means any and all sums (other than Base Rent and Percentage Rent) that may become due or be payable by Tenant under this Lease.

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

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

"**Annual Development Cost Statement**" means

"**As Is With All Faults**" is defined in *Section 1.1(g)*.

"**Assessor's Office**" means the Office of the Assessor-Recorder in the City and County of San Francisco, or any successor agency responsible for assessing real property in the City and County of San Francisco.

"**Assignment**" is defined in *Section 18.1(a)*.

"**Assignment and Assumption Agreement**" is defined in *Section 18.1(b)(i)*.

“**Attorneys’ Fees and Costs**” means reasonable attorneys’ fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

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

“**Bona Fide Institutional Lender**” is defined in *Section 40.1(a)*.

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

“**Books and Records**” is defined in [*Section XX of Exhibit XX*].

“**Capital Items**” is defined in *Section 10.2(a)*.

“**Capital Reserves**” is defined in *Section 10.2(a)*.

“**Capital Reserve Deposits**” is defined in *Section 10.2(a)*.

“**CASp**” is defined in *Section 1.1(c)*.

“**Casualty**” is defined in *Section 14.1*.

“**Casualty Notice**” is defined in *Section 14.1(a)*.

“**Certificate of Completion**” is defined in the Vertical DDA”

“**CFD Assessment**” means the special taxes to be levied on the Land (and other property in the Pier 70 area) in accordance with the terms and conditions of the “Rate and Method of Apportionment of Special Tax” applicable to the Infrastructure CFD. **[add reference to any other CFDs that might be in place]**

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

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

“**Common Control**” means that two Persons are both Controlled by the same other Person.

“**Completion**” means completion of construction of all or any applicable portion of the Initial Improvements **[Note: Use if Deferred Infrastructure included in VCA]**: [including the Deferred Infrastructure, in accordance with the terms hereof, as conclusively evidenced by the issuance of a temporary certificate of occupancy. “**Complete**” has a correlative meaning.

“**Condemnation**” means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any Person having the power of eminent domain (or to a designee of any such Person), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

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

“**Condemned Land Value**” is defined in *Section 15.4(iii)*.

“**Construction**” is defined in *Section 12.1(a)*.

“**Construction Impacts**” is defined in *Section 4.1*.

“Control” is defined in *Section 18.1(a)*. “Controlled” and “Controlling” have correlative meanings.

“DDA” is defined in *Recital C*.

“Default Rate” is defined in *Section XXX*.

“Deferred Infrastructure” means those items of Public Improvements assigned to and assumed by Tenant to be completed in conjunction with the Initial Improvements, as more particularly described in *Exhibit XX* attached hereto and as further described in the VCA.

“Demolish and Remove” means the demolition of the Improvements and the removal and disposal of all debris in accordance with all Laws. “Demolition and Removal” has a correlative meaning.

“Demolition Option” is defined in *Section 36.2(a)*.

“Design for Development” means the Pier 70 Design for Development that the Port Commission and the Planning Commission approved.

“Development Agreement” means that certain Development Agreement between [\_\_\_\_\_] and [\_\_\_\_\_], dated as of \_\_\_\_\_, 20xx, as may be amended from time to time.

“Development Documents” means (i) the SUD; (ii) the Design for Development (including the Green Building Specifications); (iii) the Port Plans and Policies; and (iv) the Development Agreement. **[TBC]**

“Development Projects” is defined in *Section 4.1*.

“Disabled Access Laws” means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Section 12101 et seq. and disabled access laws under the Port’s building code.

“Economically Infeasible Termination Notice” is defined in *Section 7.3*.

“Effective Date” is defined in *Section 46.12*.

“Encroachment Area” is defined in *Section 1.1(e)(i)*.

“Encroachment Area Charge” is defined in *Section 1.1(e)(i)*.

“Environmental Financial Performance Deposit” is defined in *Section 17.2*.

“Environmental Laws” is defined in *Section 21.6*.

“Environmental Notice” is defined in *Section 17.3(b)*.

“Environmental Oversight Deposit” is defined in *Section 17.3(a)*.

“Environmental Regulatory Action” is defined in *Section 21.6*.

“Environmental Regulatory Agency” is defined in *Section 21.6*.

“Event of Default” is defined in *Section 24.1*.

“Exacerbate” or “Exacerbating” is defined in *Section 21.6*.

“Excepted Hazardous Materials” is defined in *Section 21.1*.

“Excluded Transfer” is defined in *Section 18.1(a)*.

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

“Facilities Condition Report” is defined in *Section 10.2(b)*.

“FCR Date” is defined in *Section 10.2(a)*.



“**Final Construction Documents**” means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws.

“**Flagpoles**” is defined in *Section 9.5*.

“**FOG Ordinance**” means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City’s sewer system by food service establishments.

“**Force Majeure**” means events which result in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s control and not caused by the acts or omissions of such Party, including, but not restricted to, acts of nature or of the public enemy, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and unusually severe weather. Force Majeure does not include (i) failure to obtain financing or failure to have adequate funds, (ii) sea level rise, or (iii) any event that does not cause an actual delay. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make additional repairs or obtain additional Regulatory Approvals that would not have otherwise been required but for the Force Majeure Event.

“**Foreclosed Property**” is defined in *Section 40.4(a)*.

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

“**Foreclosure Period**” is defined in *Section 40.3(b)*.

“**Forest City Agreements**” is defined in *Section 4.2(a)(vii)*.

“**Generator**” is described in *Section 21.2(d)*

“**graffiti**” is defined in *Section 9.6*.

“**Gross Income**” is defined in [*Section XX in Exhibit XX*].

“**Handle**” is defined in *Section 21.6*.

“**Hard costs**” is defined in *Section 10.5*.

“**Hazardous Material**” is defined in *Section 21.6*.

“**Hazardous Material Claim**” is defined in *Section 21.6*.

“**Hazardous Material Condition**” is defined in *Section 21.6*.

“**Historic Core**” is described in *Section 4.2(a)(viii)*.

“**Horizontal Developer**” is defined in *Recital C*.

“**Impositions**” is defined in *Section 5.1(b)*.

“**Improvements**” means all buildings, structures, fixtures and other improvements erected, built, placed, installed, constructed, renovated, Restored, or Rehabilitated, located upon or within the Premises on or after the Commencement Date, including, but not limited to, the Initial Improvements and any Subsequent Construction.

“**Indemnified Parties**” means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port; all of the Agents of the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

“**Indemnify**” means indemnify, protect and hold harmless.

“**Index**” is defined in **Section XX [of Exhibit D]**.

“**Infrastructure CFD**” means the City and County of San Francisco Community Facilities District No. [\_\_\_] (Pier 70 Public Improvements).

“**Initial Improvements**” means all Improvements to be built on the Premises or portion(s) thereof **[Note: add if included in VCA]** [including the Deferred Infrastructure] in accordance with the Vertical DDA, Scope of Development, and SUD, **[Note: include for historic buildings:** including, without limitation, all renovation and Rehabilitation work on the existing building(s)].

“**Investigate**” or “**Investigation**” is defined in **Section 21.6**.

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

“**Land**” is defined in Basic Lease Information.

“**Late Charge**” is defined in **Section XX**.

“**Law**” or “**Laws**” means any one or more present and future laws, (including Environmental Laws) ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon.

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

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

“**Leasing Activity Report**” is defined in **Section 9.3**.

“**Leasing Agent**” is defined in **Section 9.2**.

“**Lease Year**” means each calendar year during the Term.

“**Lender Acquisition**” is defined in **Section 40.4(a)**.

“**Lender**” means the holder or holders of a Mortgage in compliance with **Article 40** and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage will be deemed a single Lender for purposes of this Lease.

“**Loss**” or “**Losses**” when used with reference to any Indemnity means any and all claims, demands, losses, liabilities (including direct or vicarious liabilities), damages (including foreseeable and unforeseeable, incidental and consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys’ Fees and Costs and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

“**Low Income Housing Tax Credit**” means a tax credit obtained in accordance with 26 U.S. Code §42 (as amended from time to time), or an equivalent federal or state tax credit program for affordable housing.

“**Maintenance Notice**” is defined in *Section 10.5*.

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

“**Managing Party**” is defined in *Section 18.1(a)*.

“**Master Lease**” is defined in *Recital C*.

“**Material Systems**” is defined in *Section 10.5*.

“**Memorandum of Lease**” means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records, in the form of *Exhibit XX* attached hereto.

“**Minimum Net Worth Amount**” is defined in *Section 18.1(a)*.

“**Minimum Public Benefit Area**” is defined in the Basic Lease Information.

“**Mitigation and Improvement Measures**” means the Mitigation and Monitoring Program described in *Exhibit XX*.

“**Mortgage**” means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of the Leasehold Estate recorded in the Official Records.

“**Net Awards and Payments**” is defined in *Section 15.4*.

“**Net Worth Guarantor**” is defined in *Section 18.1(a)*.

“**Net Worth Guaranty**” is defined in *Section 18.1(a)*.

“**Net Worth Requirement**” is defined in *Section 18.1(a)*.

“**New Hazardous Material**” is defined in *Section 21.6*.

“**New Lease**” is defined in *Section 40.10*.

“**New Lease Execution Period**” is defined in *Section 40.10(i)*.

“**Non-Disturbance Agreements**” is defined in *Section 18.4(a)*.

“**Notice of Special Tax**” is defined in *Section 5.2(a)*.

“**Notice to Vacate**” is defined in *Section 1.1(e)(i)*.

“**Official Records**” means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

“**Other Property Agreements**” is defined in *Section 40.12*.

“**Partial Condemnation**” is defined in *Section 15.3(b)*.

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

“**PCBs**” is defined in *Section 21.6*.

“**Percentage Rent**” is defined in *Exhibit D*.

“**Permitted Title Exceptions**” is defined in *Section 1.1(b)*.

“**Permitted Uses**” is defined in *Section 3.1*.

“**Person**” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

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

“**Pesticide Ordinance**” is described in *Section 21.5*.

“**Pier 70 Master Signage Program**” means [\_\_\_\_\_]

“**Pier 70 Parties**” is defined in *Section 4.2(b)*.

“**Pier 70 Risk Management Plan**” is defined in *Section 21.6*

“**Port**” means the San Francisco Port Commission.

“**Port Environmental Risk Policy**” is defined in *Section 17.2*.

“**Port’s Repair Notice**” is defined in *Section 10.5*.

“**Pre-Existing Hazardous Materials**” means any Hazardous Material existing on the Premises as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

“**Premises**” is defined in *Section 1.1(a)*

“**Prevailing party**” is defined in *Section 46.11*.

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

“**Prohibited Use**” is defined in *Section 3.2*.

“**Prohibited Use Charge**” is defined in *Section 3.3*.

“**Project**” means the project described in the Scope of Development attached hereto as *Exhibit C*, including all Improvements.

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

“**Property**” is defined in Basic Lease Information.

“**public work**” is defined in *Section 12.4(g)*.

“**Qualified Transferee**” is defined in *Section 18.1(a)*.

“**reasonable wear and tear**” is defined in *Section 10.1*.

“**Record Drawings**” is defined in *Section 12.6(a)*.

“**Refinancing Proceeds**” is defined in XXX.

“**Refinancings**” is defined in XXX.

“**Regulatory Approval**” means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, RWQCB, SFPW, the Army Corps of Engineers, and any Environmental Regulatory Agency.

[“**Rehabilitation**” means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building’s historic character.] [**Note: Applicable for leases with historic buildings**]

“**Reimbursable Subtenant Costs**” is defined in *Section 18.4(b)(vi)(3)*.

“**Release**” is defined in *Section 21.6*.

“**Remediate**” or “**Remediation**” is defined in *Section 21.6*.

“**Rent**” means the sum of Base Rent (including all adjustments), Percentage Rent, Sale Proceeds, Refinancing Proceeds, Additional Rent and all other sums payable by Tenant to Port hereunder, including any Late Charges and interest assessed at the Default Rate.

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

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

“**Restoration**” means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. All Restoration will be conducted in accordance with the provisions of *Section 12*. “**Restore**” and “**Restored**” have correlative meanings.

“**RWQCB**” will mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

“**Sale**” is defined in XXX.

“**Sale period**” is defined in *Section 40.4(d)*.

“**Sales Proceeds**” is defined in XXX.

“**Second NDA Notice**” is defined in *Section 18.4(e)(ii)*.

“**Security Deposit**” is defined in *Section 17.4(a)*.

“**Senior Lender**” is defined in *Section 40.7(a)*.

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

“**SFPW**” means San Francisco Public Works.

“**Sign**” is defined in *Section 3.4*.

“**Significant Change**” is defined in *Section 18.1(a)*.

“**Significant Change Certificate**” is defined in *Section 18.1(b)(ii)*.

“**Special City and Port Provisions**” is defined in *Section 25.1*.

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

“**State Lands Indemnified Parties**” means the State of California, the California State Lands Commission, all of its heirs, legal representatives, successors and assigns, and all other Persons acting on its behalf.

“**Sublease**” means any lease, sublease, license, concession or other agreement (including, without limitation, a Sublease to Port) by which Tenant leases, subleases, demises, licenses or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons), and any amendment, modification or supplement thereto.

“**Subleased Space**” means the portion of the Premises subject to a Sublease.

“**Subsequent Construction**” means all repairs to and reconstruction, replacement, addition, expansion, Restoration, [Rehabilitation,] alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Improvements.

“**Substantial Condemnation**” is defined in *Section 15.3(a)*.

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

“**SUD**” means Planning Code Section 249.XX establishing the Pier 70 Special Use District, as it may be amended from time to time.

“**Tenant**” is defined in the Basic Lease Information, and its permitted successors and assigns.

“**Term**” is defined in *Section 1.2*.

“**Termination Notice for Change in Laws**” is defined in *Section 7.3*.

“**Termination Option**” is defined in *Section 7.3*.

“**Total Condemnation**” is defined in *Section 15.2*.

“**Transportation Demand Management Plan**” means the Transportation Demand Management Plan attached hereto as *Exhibit XX*.

“**Transfer**” is defined in *Section 18.1(a)*.

“**Uninsured Casualty**” is defined in *Section 14.3*.

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

“**VCA**” means the Vertical Cooperation Agreement dated [\_\_\_\_\_] between Tenant and Horizontal Developer that is attached as *Exhibit [XX] to the Vertical DDA*.

“**Vertical DDA**” means the Vertical Disposition and Development Agreement between Port and [Tenant, as developer,] dated as of [\_\_\_\_\_].

“**Waterfront site**” is defined in *Section XXX*.

“**Work**” is defined in *Section 12.5*.

“**Workforce Development Plan**” is defined in *Article 42*.

“**worth at the time of award**” is defined in *Section 25.4*.

[Signature Page Follows]

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

TENANT:

By: \_\_\_\_\_  
Name:  
Title:

r

PORT:

By: \_\_\_\_\_  
Name:  
Title:

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_

Port Commission Resolution No. [\_\_\_\_\_] adopted on [\_\_\_\_\_]

Board of Supervisors Resolution No. [\_\_\_\_\_] adopted on [\_\_\_\_\_]

DRAFT



## EXHIBIT D

### ARTICLE 3

#### RENT

##### 3.1 Prepaid Rent.

The Parties acknowledge that this Lease is a [Fully Pre-paid][Hybrid] Lease, as that term is defined in the Financing Plan attached as Exhibit XX to the DDA. On or before the Commencement Date, Tenant will pay to Port the [Pre-Paid Amount][Third Party Hybrid Amount] or [the VDDA Hybrid Amount], as set forth in the Basic Lease Information.

##### 3.2 Tenant's Covenant to Pay Rent.

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in this Article 3.

##### 3.3 [Note: include this section for Hybrid Ground Leases only] Base Rent.

From and after the Commencement Date and continuing thereafter throughout the Term, Tenant will pay to Port, in advance on the first day of each calendar month during the Term, without further notice or demand and, except as expressly set forth in *Section 28.2* without abatement, offset, rebate, credit or deduction for any reason whatsoever, monthly installments of rent equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) (the “**Base Rent**”). Base Rent will be further adjusted after the Commencement Date in accordance with Section 3.4.

##### 3.4 [Note: include this section for Hybrid Ground Leases only] Adjustments to Base Rent.

###### (a) Definitions

(i) “**Adjustment Date**” means the fifth (5<sup>th</sup>) anniversary date of the Commencement Date and each five-year anniversary date thereafter; provided, however, that if the Commencement Date is other than the first day of a month, then the first Adjustment Date will be the first day of the sixty-first (65<sup>th</sup>) month thereafter.

(ii) “**Adjustment Period**” means each five-year period during the Term commencing on each Adjustment Date.

(iii) “**Current Index**” means the Index for the calendar month immediately preceding the applicable Adjustment Date.

(iv) “**Index**” means the [Note: Use following for commercial leases] [Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area] [Note: Use the following for residential leases] [Consumer Price Index for All Urban Consumers: Housing (base years 1982-1984=100) for the San

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

(v) **“Initial Published Index”** means the Index published October 2012.

(vi) **“Prior Index”** means the Index published closest (but prior) to the month five (5) years prior to the applicable Adjustment Date, provided however, for the first Adjustment Date, the Index used will be the Initial Published Index.

(b) Adjustment to Base Rent. On each Adjustment Date, the Base Rent payable under this Lease will be adjusted to equal the greater of (i) one hundred ten percent (110%) of the Base Rent in effect immediately prior to such Adjustment Date, or (ii) one hundred percent (100%) of the amount determined by multiplying the Base Rent in effect immediately prior to such Adjustment Date by a fraction, the numerator of which is the Current Index and the denominator of which is the Prior Index as shown below:

$$\text{Current Index/Prior Index} \quad \times \quad \text{Base Rent} = \text{Adjusted Base Rent}$$

In no event will any adjustments to Base Rent in accordance with this Section 3.4(b) (being the increase from the amount of the Base Rent payable for the Adjustment Period immediately prior to such Adjustment Date) exceed twenty percent (20%) of the Base Rent payable for the immediately preceding Adjustment Period.

### **3.5 Participation of Gross Rent from and after Year 30. [Note: does not apply to any residential condominium building; Buildings 12 and 21, and Parcel E-4]**

(a) Definitions.

(i) **“Adjustments”** means the following items (without duplication):

(1) all Impositions paid by Tenant and allocated on a straight-line basis during the Lease Year in which the applicable Imposition was paid;

(2) all taxes, assessments, charges, and bills for utilities, including, without limitation, charges for water, gas, oil, sanitary and storm sewer, and electricity paid by Tenant;

(3) insurance premiums for insuring the Improvements in compliance with **Section 20** and allocated on a straight-line basis during the Lease Year in which the applicable insurance premium was paid; and

(4) all costs (not including cost of capital, debt service or other financing costs) paid by Tenant for Capital Items and allocated on a straight-line basis during the Lease Years in which the applicable Capital Item was paid; provided however, in any year, the amount of cost for Capital Items will be limited to the portion of the amortized costs of the Capital Items attributable to such Lease Year. For purposes hereof, the amortized costs of the Capital Items will be determined by dividing the original direct costs of such Capital Items by the number of years of useful life of the applicable Capital Items, based on general accounting principles consistently applied, irrespective of Tenant's actual method of accounting. The minimum amortization period will be five (5) years. Capital Items must have been unanticipated on the Commencement Date of this Lease and specifically exclude any costs related to the development and construction of the Initial Improvements.

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

(iii) **“Gross Income”** means for any reporting period or portion thereof during the Term, the following: all payments, revenues, fees or amounts received by Tenant or by any other party for the account of Tenant from any Person for any Person's use or occupancy of any portion of the Premises (excluding security or other deposits to be returned to such Person upon the termination of such use or occupancy), or from any other sales, advertising, concessions, licensing or programming generated from the Premises, including, without limitation, all base rent, percentage rent, payments made to Tenant from any Subtenant to reimburse Tenant for operating expenses, common area maintenance expenses, insurance expenses, Impositions, or, in the case of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by such Subtenant, license fees, parking charges, advertising revenues, event or promotional fees, charges and permit fees. Without limiting the foregoing, “Gross Income” also includes any and all payments made to Tenant from the Business Interruption or delayed opening insurance proceeds.

(iv) **“Modified Gross Income”** means Gross Income less Adjustments.

(b) Payment of Percentage Rent.

(i) Tenant will pay to Port percentage rent (**“Percentage Rent”**) in accordance with this Section 3.5. From and after the thirtieth (30<sup>th</sup>) Anniversary Date (**“Percentage Rent Commencement Date”**) and continuing thereafter throughout the Term until the sixtieth (60<sup>th</sup>) Anniversary Date, Tenant will pay to Port Percentage Rent on a monthly basis equal to one and one-half percent (1.5%) of Modified Gross Income generated at or from the Premises for the applicable month. From and after the sixtieth (60<sup>th</sup>) Anniversary Date and continuing thereafter throughout the remainder of the Term, Tenant will pay to Port Percentage Rent on a monthly basis equal to two and one-half percent (2.5%) of Modified Gross Income generated at or from the Premises for the applicable month;

(ii) From and after the Percentage Rent Commencement Date, Tenant will determine the actual Percentage Rent payable for each calendar month in each calendar quarter

during the Term by the twentieth (20th) day of the immediately following calendar quarter. The monthly payments of Percentage Rent will be Tenant's good faith estimate of the Percentage Rent owed to Port. In the event this Lease expires or terminates on a day other than the last day of a calendar quarter, Percentage Rent for such fractional part of the calendar quarter preceding such expiration or termination date will be prorated to account for the partial calendar quarter and paid within twenty (20) days after such expiration or termination date, but if this Lease terminates as a result of a Tenant Event of Default, any amounts due hereunder will be payable immediately upon termination.

(c) Reporting of Percentage Rent.

(i) Tenant will deliver to Port a complete statement setting forth in reasonable detail its Modified Gross Income for each calendar month in each calendar quarter, including an itemized list of all Adjustments from Gross Income that Tenant claims and which are expressly permitted under this Lease, and a computation of the Percentage Rent for each calendar month in a calendar quarter (the "**Percentage Rent Statement**") by the twentieth (20th) day of the immediately following calendar quarter. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Percentage Rent Statement must certify each Percentage Rent Statement as accurate, complete and current.

(ii) If Port receives the Percentage Rent payment but does not receive the applicable Percentage Rent Statement by the twentieth (20th) day of the immediately following calendar quarter, such failure, until cured, will be treated as a late payment of Percentage Rent, subject to a Late Charge.

(iii) If Tenant fails to deliver any Percentage Rent Statement within the time period set forth in this Section 3.5(c) (irrespective of whether any Percentage Rent is actually paid or payable by Tenant to Port) and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port will have the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's Books and Records (and, to the extent permitted by the applicable Sublease, the Books and Records of any other occupant of the Premises) as may be necessary to determine the amount of Percentage Rent due to Port for the period in question. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant will promptly pay to Port the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge and interest at the Default Rate.

(iv) If the Percentage Rent Statement reflects that the estimated monthly Percentage Rent paid by Tenant during the applicable calendar quarter is greater or less than the Percentage Rent actually due for such period, the same shall be reconciled through an adjustment to the Percentage Rent amount that is due for the final month of the applicable calendar quarter.

**[Note: Further discussions on mechanics of reconciliation.]**

### 3.6 Port Participation in Sale Proceeds.

(a) **[Note: Applicable only for Horizontal Developer Affiliates]** Distribution of, and Port's Participation in, Sale Proceeds of Qualifying Early Sale. One Hundred Percent (100%) of

the Qualifying Early Sale Proceeds from a Qualifying Early Sale by Initial Tenant occurring at any time prior to the Early Transfer Date, less the following deductions in this **Section 3.6(a)**, will be [deposited into the Pier 70 Special Facility Revenue Account or, if not required to be so deposited, in the Pier 70 Project Account and thereafter distributed in accordance with Section \_\_\_ of the Financing Plan (Exhibit XX to the DDA):] **[Note: Parties discussing whether payment will be through accounting.]**

- (i) Tenant's Purchase Price;
- (ii) Port's Attorneys' Fees and Costs associated with Port's review of the Qualifying Early Sale;
- (iii) Costs of Sale;
- (iv) Outstanding Tenant's Certified Entitlement Costs; and
- (v) A 12% annual return on the Certified Entitlement Costs.

(b) **Distribution of, and Port's Participation in, Recapitalization Proceeds Prior to Early Transfer Date.** Unless a Recapitalization is a Qualifying Early Sale subject to the terms of **Section 3.6(a)**, Tenant will pay Port from each Recapitalization occurring before the Early Transfer Date, one and one-half percent (1.5%) of the Recapitalization Proceeds less the following deductions: (i) Tenant's Purchase Price multiplied by the ownership interests in Tenant transferred in connection with the Recapitalization (expressed as a percentage of total ownership interests in Tenant); and (ii) Costs of Sale.

(c) **Distribution of, and Port's Participation in, Net Sale Proceeds.***Generally.* Tenant will pay Port one and one-half percent (1.5%) of the "Net Sale Proceeds" (as defined below) from each Sale occurring on or after the Early Transfer Date.

(ii) *Prior to Early Transfer Date.* If (A) a Reappraisal Event occurs prior to the Early Transfer Date and (B) the Reappraisal Event does not qualify as a Qualifying Early Sale subject to the terms of **Section 3.6(a)**, then Tenant will pay Port one and one-half percent (1.5%) of the Net Sales Proceeds from the Reappraisal Event.

(iii) *Special Rules for Calculating Sale Proceeds for a Reappraisal Event.* For purposes of calculating Net Sale Proceeds on a Reappraisal Event, Tenant's Sale Proceeds from such Reappraisal Event will be deemed to be an amount equal to (1) the total ownership interests in Tenant after the Reappraisal Event held by the Person causing the Reappraisal Event (expressed as a percentage of total ownership interests in Tenant), multiplied by (2) the value assigned to the Leasehold Estate, as evidenced by (A) the estimated fair market value of the Leasehold Estate provided to the Assessor's Office in connection with the Reappraisal Event, or (B) if no such estimate is provided to the Assessor's Office, the appraised value of the Leasehold Estate established in an Appraisal Report reasonably approved by Port and Tenant.

(d) **Manner of Payment.** The estimated closing statement will be updated as of the date of closing of the Qualifying Early Sale, Sale, or Recapitalization prior to the Early Transfer Date, as applicable (each a "Triggering Event"), to show the actual (i) proceeds from such event,

and (ii) line item description of the deductions and exclusions from such proceeds to arrive at Port's share of such proceeds. If escrow is opened for a Triggering Event, then Port's share of the proceeds from such Triggering Event must be distributed through escrow. If no escrow is opened for a Triggering Event, Port's share of proceeds from such Triggering Event must be paid upon the closing of any such Triggering Event.

This provision constitutes notice to Tenant that Port is to be paid in full its share of proceeds through the close of escrow or the closing of the applicable Triggering Event. If Port is not paid full by such closing date, the amount due Port will be subject to a Late Charge and will accrue interest at the Default Rate from and after the closing until paid in full to Port. Port may reference in any estoppel certificate or other representation requested from Port that payment to Port of Port's share of proceeds from a Triggering Event is a material obligation under the Lease, due and owing upon the closing of any Triggering Event, provided, however, failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's share of such proceeds.

Within forty-five (45) days after any Triggering Event, transferor Tenant will submit to Port a statement prepared in accordance with sound accounting principles consistently applied, and certified by transferor Tenant's chief executive officer or chief financial officer (or equivalent position), as current, complete and correct, confirming the actual amount of proceeds received; line item description of the deductions and exclusions from proceeds to arrive at Port's share of such proceeds. At Port's option, any overpayments may be either refunded to transferor Tenant or applied to any other amount then due and unpaid under the Lease. Tenant will accompany the statement of Triggering Event proceeds with the amount of any underpayments. The statements delivered to Port under this Section are subject to the audit provisions of Section 3.9 for determination of the accuracy of Tenant's reporting of Port's share of proceeds from a Triggering Event.

(e) Survival. The provisions of this Section 3.6 will survive the earlier termination or expiration of this Lease. Additionally, any release by Port of Tenant's obligations under this Lease in connection with any Sale is conditioned on Port's receipt of Port's share of Sale Proceeds.

(f) Additional Definitions. The following definitions apply for purposes of this Section 3.6:

**"Appraisal Report"** means a third-party appraisal report prepared by a Qualified Appraiser in compliance with the then current version of the Uniform Standards of Professional Appraisal Practice and based on joint appraisal instructions provided by Port and Tenant, and Port and Tenant will have reasonable review and approval rights over the final appraisal report.

**"Building Permit Date"** means the date Tenant obtains all entitlements necessary to pull the building permit to commence construction of the Initial Improvements.

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

**"Certified Entitlement Costs"** means Entitlement Costs, as certified in accordance with *Attachment 1 to this Exhibit XX*.

**"Certified Total Development Costs"** means the Total Development Costs, as certified in accordance with *Attachment 1 to this Exhibit XX*.

**"CofO Issuance Date"** means the date Port, in its regulatory capacity, issues a certificate of occupancy for the Initial Improvements.

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

“**Early Transfer Date**” means the earlier of: (1) three years after the Commencement Date of this Lease; or (2) the date that Port issues a site permit and first building permit addendum to allow commencement of construction of the Initial Improvements.

“**Entitlement Costs**” means Tenant’s reasonable out-of-pocket costs actually incurred from and after the effective date of the Vertical DDA until the Building Permit Date and attributable to the following only: designing the Initial Improvements; costs related to all land use approvals and entitlements, including preparation and processing of design review applications under the SUD and the Design for Development, subdivision maps, and costs of compliance with all conditions of approval and CEQA mitigation measures legally required by the City, Port or any other Regulatory Authority as a condition to obtaining the entitlements; architectural, engineering, consultants, community outreach, attorney and other professional fees reasonably necessary to obtain the entitlements.

“**Hard Costs**” means reasonable out-of-pocket costs actually incurred by Tenant attributable solely to the cost of labor, materials and construction of the Initial Improvements described in the Scope of Development. “**Hard Costs**” do not include the cost of any improvements for any specific or speculative Subtenant or any costs incurred after the CofO Issuance Date.

“**Initial Tenant**” means **[insert name of initial tenant entity]**.

“**Net Sales Proceeds**” means Sale Proceeds less:

- (i) Costs of Sale; and
- (ii) for the transferor Tenant that constructed the Initial Improvements and each subsequent Tenant, Capital Items, except to the extent previously deducted from Modified Gross Income pursuant to **Section 3.5**; and either
  - (iii) if the transferor Tenant constructed the Initial Improvements, the greater of:
    - (1) Tenant’s Purchase Price (but only if such amount is not included in Certified Total Development Costs) plus the Certified Total Development Costs, or
    - (2) the indebtedness secured by a Mortgage on the Premises in accordance with **Article 40**; or
  - (iv) if transferor Tenant did not construct the Initial Improvements, the greater of:
    - (1) Tenant’s Purchase Price, or
    - (2) the indebtedness secured by a Mortgage on the Premises in accordance with **Article 40**.

“**Non-Cash Consideration**” means consideration received by Tenant in connection with a Sale that is not Cash Consideration.

“**Qualified Appraiser**” means an appraiser that meets the following qualifications:

- (i) is licensed in the State of California as a Certified General Appraiser;

- (ii) is a member of the Appraisal Institute;
- (iii) has at least 10 years' experience in the San Francisco Bay Area valuing commercial-office or multiple occupancy residential properties or both, depending on the Permitted Uses of the Leasehold Estate being appraised; and
- (iv) is a principal in either a national or regional firm based in California that: (1) is not a Tenant Affiliate; (2) does not have an equity investment in Tenant, any Tenant Affiliate, or any Person Controlling Tenant; and (3) does not have a conflict of interest by virtue of a contractual relationship with Tenant either existing or in the 24 months immediately preceding the engagement, unless the Port in its sole discretion waives the conflict.

**“Qualifying Early Sale”** means (i) an Assignment of the Leasehold Estate to any Person that is not an Affiliate of Tenant, or (ii) a Recapitalization that results in a change in the Managing Party of Tenant or of the Managing Party having ten percent (10%) or less of the profits or capital of Tenant.

**“Qualifying Early Sale Proceeds”** means the Sale Proceeds from a Qualifying Early Sale.

**“Reappraisal Event”** means a change in ownership of real property as described in [Cal. Revenue and Taxation Code, [Chapter 2 (Change in Ownership and Purchase), Section 64], as that law is in effect as of [\_\_\_\_\_, 2017] and attached hereto as Exhibit [XX]]. For the avoidance of doubt, neither an Assignment nor a Recapitalization will be deemed to be a Reappraisal Event.

**“Recapitalization”** means a transfer, in a single transaction or a related series of transactions that results in a change in the Person that had more than fifty percent (50%) of the ownership interest in Tenant (whether shares, partnership interests, membership interest or other equity, and whether one or more classes thereof, and whether direct or indirect).

**“Sale”** means either (i) an Assignment of the entirety of the Leasehold Estate, other than an Assignment of the Leasehold Estate to a Tenant Affiliate, or (ii) a Reappraisal Event, or (iii) a Recapitalization.

**“Sale Proceeds”** means all consideration received by or for the account of Tenant in connection with a Sale, including Cash Consideration, the principal amount of any loan made by Tenant to a purchaser as part of the purchase price, or any other Non-Cash Consideration representing a portion of the purchase price. **“Sale Proceeds”** do not include a commitment by an owner (whether direct or indirect) of Tenant to fund its share of future capital calls to construct the Initial Improvements or Capital Items, in and of itself, will not be considered or deemed to be Recapitalization Proceeds.

**“Soft Costs”** means reasonable out-of-pocket costs actually incurred by the Tenant that actually constructs the Initial Improvements and attributable solely to architectural, engineering, consultant, attorney, and other professional fees, regulatory fees, CEQA mitigation measures, community benefits, Impact Fees (as defined in the Horizontal DDA), Port Costs and Other City Costs (as defined in the Vertical DDA), builder's risk insurance, performance and payment bonds, safety and security measures, and thirty party costs to prepare Certified Total Development Costs, in each case in connection with the Initial Improvements described in the Scope of Development. **“Soft Costs”** do not include costs already included in Certified Entitlement Costs, costs associated with the design or construction any specific or speculative Subtenant improvements or any costs incurred after the CofO Issuance Date.

**“Tenant's Purchase Price”** means (i) in the case of the Initial Tenant, the **“Acquisition Price”** under the Vertical DDA and (ii) in the case of each subsequent tenant following the Initial Tenant, the Sale Proceeds paid by such Tenant to the immediately prior tenant for the Leasehold Estate.



“**Total Development Costs**” means Certified Entitlement Costs, Soft Costs, and Hard Costs. “**Total Development Costs**” do not include the cost of any improvements for any specific or speculative Subtenant.

### **3.7 Port Participation in Refinancing Proceeds.**

(a) Port’s Participation. In connection with any Qualifying Refinancing, Tenant will pay to Port an amount equal to one and ½ percent (1.5%) of Net Refinancing Proceeds.

(b) Reporting of Refinancing Proceeds. No less than fifteen (15) days prior to the close of escrow for each Refinancing, Tenant will deliver to Port, an estimated closing statement that includes the best estimate of the following items:

(i) Gross proceeds from Refinancing;

(ii) The estimated Net Refinancing Proceeds including a separate line item for each of the costs permitted to be deducted from the gross proceeds from the Refinancing, as applicable to arrive at Net Refinancing Proceeds; and

(iii) The estimated Net Refinancing Proceeds allocated to Port and Tenant.

(c) Manner of Payment. The estimated closing statement will be updated as of the date for close of escrow under the Refinancing to show the actual (i) gross Refinancing Proceeds, (ii) Net Refinancing Proceeds and Port’s share thereof, as applicable, and (iii) with respect to any Refinancing, line item description of the deductions and exclusions from Refinancing Proceeds to arrive at Net Refinancing Proceeds. Tenant must pay Port from the close of escrow of any Refinancing, Port’s share of the Net Refinancing Proceeds. Port may reference in any estoppel certificate or other representation requested from Port by a Mortgage lender, that payment to Port of Port’s share of Net Refinancing Proceeds is a material obligation under the Lease, due and owing at close of escrow of any Refinancing hereunder, provided, however, failure to reference such obligation will in no way negate Tenant’s obligation to pay, and Port’s right to receive, Port’s share of Net Refinancing Proceeds. This provision constitutes notice to Tenant that Port is to be paid in full its share of Refinancing Proceeds through the close of escrow. If Port is not paid full by such closing date, the amount due Port will be subject to a Late Charge and will accrue interest at the Default Rate from and after the closing until paid in full to Port. Within forty-five days (45) after any Refinancing, Tenant will submit to Port a statement, prepared in accordance with sound accounting principles consistently applied, and certified by Tenant’s chief executive officer or chief financial officer (or equivalent position) as current, complete and correct, confirming the actual amount of Refinancing Proceeds, disbursed, permitted deductions made from such proceeds, and the amount of Net Refinancing Proceeds due to Port and actually paid to Port. At Port’s option, any overpayments will be either refunded to Tenant, applied to any other amount then due and unpaid, or credited against Rent due. Tenant will accompany the statement of Net Refinancing Proceeds with the amount of any underpayments. The statements delivered to Port under this Section 3.7(d) will be subject to the audit provisions of Section 3.9 for determination of the accuracy of Tenant’s reporting of Net Refinancing Proceeds.

(d) Survival. The provisions of this Section 3.7 will survive the earlier termination or expiration of this Lease.

(e) Additional Definitions. The following additional definitions will apply for purposes of this Section.

A **“Net Refinancing Proceeds”** means all gross principal amounts of any Refinancing occurring after the Effective Date hereof [(plus, in the event of secondary financing, the original principal balance of any existing financing that is not repaid as a part of such secondary financing)], after subtracting the following:

(1) (x) in the case of the first (1st) Refinancing following the First Permanent Loan, the greater of (i) the outstanding indebtedness secured by a Mortgage to be paid off by the Refinancing and (ii) 65% of the appraised, as-built value as of the date of the First Permanent Loan and (y) in the case of any subsequent Refinancing, the outstanding indebtedness secured by a Mortgage to be paid off by the Refinancing;

(2) amounts needed to pay the lenders’ actual costs of such Refinancing paid by Tenant including application fees, closing costs, points and other customary lenders’ fees such as lenders’ Attorneys’ Fees and Costs and title insurance costs paid at close of escrow for such Refinancing;

(3) amounts needed to pay Port’s Attorneys’ Fees and Costs associated with Port’s review of the Refinancing; and

(4) amounts needed to pay Tenant’s Attorneys’ Fees and Costs associated with the Refinancing; and

(5) any portion of the Refinancing Proceeds that will be used for Capital Items approved in accordance with *Sections 10.2(d) and 12.1*.

B **“Qualifying Refinancing”** means a Refinancing if (i) the Refinancing is not the first permanent financing following Completion of the Initial Improvements (the “First Permanent Loan”) and (ii) there has been an increase in the as-built value of the Premises since the date on which the named Tenant acquired the Leasehold Estate. The as-built value of the Premises as of such date and as of the date of the Refinancing will be based upon an appraisal prepared by a third-party appraiser for the benefit of the Lender providing the Refinancing or if there is no Lender requirement for an appraisal or if Tenant is not in possession of such appraisal, Port will have reasonably approved the appraisal instructions for such appraisal.

C **“Refinancing”** means any secured debt financing or refinancing incurred by Tenant and secured by any Mortgage, which may include secured financing from an Affiliate of Tenant and any refinancing or replacement of existing debt secured by a Mortgage (including any permanent take-out financing for financing the construction of the Initial Improvements), other than (1) Mortgages placed upon the Premises prior to Completion of the Initial Improvements; or (2) Mortgages placed upon the Premises concurrently with any Sale.

D **“Refinancing Proceeds”** means all sums actually disbursed by a lender in connection with a Refinancing.

**3.8 Books and Records.** Tenant will keep books and records according to generally accepted accounting principles consistently applied or such other method as is reasonably acceptable to Port. “**Books and Records**” means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Property, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises or in connection with any Sale or Refinancing. Tenant will maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises, including proceeds and costs incurred from any Sales and Refinancings. If Tenant operates all or any portion of the Premises through a Subtenant or Agent (other than Port), Tenant will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

**3.9 Audit.** Tenant agrees to make its Books and Records (and, to the extent within Tenant's control, the Books and Records of any other person relating to the matters identified in Section 3.6(b)) available in the City and County of San Francisco to Port, or to any accountant employed or retained by Port or the City who is competent to examine and audit the Books and Records (hereinafter collectively referred to as "Port Representative"), for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Gross Income, Modified Gross Income, Recapitalization Proceeds, Qualifying Early Sale Proceeds, Sale Proceeds, Refinancing Proceeds and Port's share of the foregoing, for a period of five (5) years after the applicable Percentage Rent Statement (or closing statement with respect to a Sale or Refinancing) was delivered to Port. Tenant will reasonably cooperate with Port Representative during the course of any audit; provided however, once commenced, such audit will be diligently pursued to completion by Port within a reasonable time after its commencement. If an audit has commenced and Port claims that errors or omissions have occurred, Tenant will retain the Books and Records and make them available until those matters are resolved.

If an audit reveals that Tenant has understated its Gross Income, Modified Gross Income, Recapitalization Proceeds, Qualifying Early Sale Proceeds, Sale Proceeds, Net Sale Proceeds, Refinancing Proceeds, or Net Refinancing Proceeds for said audit period, Tenant will pay Port, within fifteen (15) days after receipt of such audit results, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Default Rate. If Tenant understates its Gross Income, Recapitalization Proceeds, Qualifying Early Sale Proceeds, Sale Proceeds, Refinancing Proceeds, or Port's share of the foregoing proceeds for any audit period by five percent (5%) or more of Tenant's understated amount, Tenant will pay Port's cost of the audit. Any overpayments revealed by an audit will be credited towards Rent payments due subsequent to the audit until credited in full.

**3.10 Manner of Payment.** Tenant will pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by notice to Tenant. Minimum Rent, Participation Rent, and Port's share of Sale Proceeds and Refinancing Proceeds are payable without prior notice or demand. Rent is due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due “upon demand,” “promptly following notice,” “upon receipt of invoice,” or the like, then such Additional Rent is due thirty (30) days following the giving by Port and the receipt by

Tenant of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

**3.11 Interest on Delinquent Rent.** Rent not paid when due will bear interest from the date due until paid at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due (the “**Default Rate**”). However, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Tenant.

**3.12 Late Charge.** Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant’s failure to provide the Percentage Rent Statement to Port, will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port’s rights or remedies hereunder and regardless of whether such late payment results in a Tenant Event of Default, Tenant will pay a late charge (the “**Late Charge**”) equal to the higher of (a) five percent (5%) of all Rent or any portion thereof which remains unpaid more than five (5) days following the date it is due (or with respect to a failure by Tenant to deliver the Percentage Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Participation Rent due for the subject period of the Percentage Rent Statement), or (b) [**Note: Increase following amount by \$500 every 5 years after execution of the DDA:** One Thousand Dollars (\$1,000)], which amount will be increased by an additional One Thousand Dollars (\$1,000) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter; provided, however, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Monthly Statement to Port, as applicable, within five (5) days of written notice from Port of such failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant.

**3.13 No Abatement or Setoff.** Tenant will pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, credit, deduction, or counterclaim.

**3.14 Net Lease.** It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties is Port expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant’s use or occupancy of the Premises. Without limiting the foregoing, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port’s estate or interests in the Premises, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or except as set forth in this Lease, gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any

rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

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

DRAFT

## ATTACHMENT 1 TO EXHIBIT D

### PROCEDURES TO CERTIFY ENTITLEMENT COSTS AND DEVELOPMENT COSTS

#### 1. PORT REPRESENTATIVE.

If Tenant fails to deliver either the Certified Entitlement Cost Statement or Certified Total Development Cost Statement, as applicable, within the time periods set forth herein, and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port has the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's books and records as may be necessary to determine all the information required in the Certified Entitlement Cost Statement or Certified Total Development Cost Statement, as applicable. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant must promptly pay to Port the total cost of the examination.

#### 2. CERTIFIED COST STATEMENT.

**(a) Certified Entitlement Cost Statement.** Within thirty (30) days prior to a Qualifying Early Sale (for the Initial Tenant only) or sixty (60) days following the Building Permit Date for the Tenant that constructs the Initial Improvements, as applicable, Tenant will furnish Port with an itemized statement setting forth in detail the Entitlement Cost incurred by Tenant to the Building Permit Date or thirty (30) days prior to a Qualifying Early Sale, as applicable, certified as true, accurate and complete by an independent certified public accountant (the "Certified Entitlement Cost Statement").

**(b) Certified Total Development Cost Statement.** Within the earlier of one hundred twenty (120) days following the CofO Issuance Date and thirty (30) days prior to a Sale, the Tenant that constructed the Initial Improvements will furnish Port with an itemized statement setting forth in detail the Total Development Cost incurred by such Tenant to the CofO Issuance Date, certified as true, accurate and complete by an independent certified public accountant (the "Certified Total Development Cost Statement").

**(c) Port Review.** Port will notify the Tenant within sixty (60) days following Port's receipt of the Certified Entitlement Cost Statement or the Certified Total Development Cost Statement, as applicable, of Port's agreement or disagreement with such statement. If Port disagrees with any such statement, the Parties will meet to resolve the disagreement. If the Parties are unable to resolve their disagreement, either may Party exercise its rights under Section 3 (Audit Rights) of this Attachment 1 to Exhibit D.

#### 3. AUDIT RIGHTS.

If Port disagrees with either the Certified Entitlement Cost Statement or the Certified Total Development Cost Statement, Port may request that such records be audited by an independent certified public accounting firm mutually acceptable to Port and Tenant, or if the Parties are unable to agree, either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent auditor. Such audit will be binding on the Parties, except in the case of fraud, corruption or undue influence. Port will pay the entire cost of the audit unless the audit discovers that Tenant has overstated the Entitlement Cost or the Total Development Cost, as applicable, by more than three percent (3%) of the lower amount, in which case Tenant will pay the entire cost of the audit.

#### 4. BOOKS AND RECORDS RELATED TO TOTAL DEVELOPMENT COSTS.

Tenant must keep accurate books and records of the Entitlement Costs and Total Development Costs incurred to date, funds expended by Tenant, outstanding Tenant capital, Tenant capital return accrued, and debt or other third-party proceeds received by or on behalf of Initial Tenant in connection with the development of the Initial Improvements, all in accordance with accounting principles generally accepted in the construction industry. Port, including its Agents, has the right to inspect Tenant's books and records regarding the development of the Initial Improvements, the costs incurred in connection therewith, and all other Entitlement Costs and Total Development Costs, including funds expended by Tenant, return accrued on such funds, and debt or other third party proceeds received by or on behalf of Tenant in connection with the development of the Initial Improvements in a location within San Francisco during regular business hours and upon reasonable advance notice.

DRAFT

**EXHIBIT XX**  
**CFD MATTERS**

**[Note: To Be Attached.]**

DRAFT



## EXHIBIT XX

### INSURANCE REQUIREMENTS

**[Note: Insurance requirements for Form of Parcel Lease to reviewed by City's Risk Manager for adequacy every 5 years from approval of DDA.]**

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

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

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

(ii) Property Insurance; Earthquake and Flood Insurance.

(1) Property Insurance. Upon Completion of the Initial Improvements, and upon completion of Subsequent Construction of any additional Improvements, Tenant will maintain, or require to be maintained, property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss Special Form" (or its replacement)), in an amount not less than 100% of the then-current full replacement cost of the Improvements including any foundations, pilings, excavations and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed not to exceed One Hundred Thousand Dollars (\$100,000) (except as to earthquake and flood insurance). If available at commercially reasonable rates, such insurance will extend to cover the peril of terrorism. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port will have no interest in the proceeds of such Personal Property insurance.

(2) Earthquake Insurance.

(A) During Construction of the Initial Improvements, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable

Maximum Loss to the Initial Improvements or, (ii) the maximum amount that is available at commercially reasonable rates from recognized insurance carriers (with a deductible of up to but not to exceed ten percent (10%)) of the then-current, full replacement cost of the Initial Improvements without sublimits for excavations and footings; provided that earthquake coverage is available at commercially reasonable rates), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates). "Probable Maximum Loss" means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined prior to Completion of the Initial Improvements and thereafter not less frequently than every ten (10) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port; and

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

(3) Flood Insurance.

(A) If the Premises is in a designated flood zone as depicted on current Flood Insurance Rate Maps ("FIRMs") issued by the U.S. Department of Homeland Security's Federal Emergency Management Agency ("FEMA") or its successor, then Tenant will, during construction of the Initial Improvements or any Subsequent Construction, obtain flood insurance from recognized insurance carriers (or through the National Flood Insurance Program ("NFIP")) equal to the maximum amount of the then current, full replacement cost of the Initial Improvements or Subsequent Construction, as applicable, (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible of up to but not to exceed ten percent (10%). Such insurance will remain in full force and effect from and after the Completion of the Initial Improvements in amount equal to the maximum amount of the then-current, full replacement cost of the Improvements (including the value of any and all Subsequent Construction).

(B) If the subject parcel is not in a designated flood zone as depicted on current FIRMs issued by the FEMA or its successor, Tenant will, during construction of the Initial Improvements, obtain flood insurance, to the extent available at commercially reasonable rates from recognized insurance carriers (or through the NFIP), in an amount equal to the maximum amount of the then-current, full replacement cost of the Initial Improvements (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible of up to but not to exceed ten percent (10%), except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized insurance carriers (or through the NFIP) at commercially reasonable rates; and

From and after Completion of the Initial Improvements, flood insurance will be in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers or through the NFIP, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) Exceptions for Earthquake and Flood Insurance. If Tenant determines that earthquake or flood insurance should not be carried on the Improvements because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance) or, in Tenant's reasonable business judgment, is imprudent, then Tenant will request in writing Port's consent to the absence or deletion thereof. However, with respect to earthquake or flood insurance during the construction of the Initial Improvements, a request

for Port's consent to such determination by Tenant need not be submitted and Tenant may make such determination in its sole discretion. Any request for Port's consent required hereunder will include with such request evidence supporting Tenant's determination of commercial unreasonableness or imprudence as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco. Port will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Tenant's request. If Tenant elects not to carry or to discontinue such coverage with Port's approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Tenant thereof, and Tenant will add such coverage to its policy as soon as reasonably practicable thereafter.

(iii) Commercial General Liability Insurance. Tenant will maintain, or require to be maintained "Commercial General Liability" insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) which includes coverage extending to the Indemnity in Section 19, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Fifteen Million Dollars (\$15,000,000) per occurrence and annual aggregate, and Fifteen Million Dollars (\$15,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. Such policy will have a self-insured retention not to exceed \$500,000 per occurrence with Tenant solely responsible for such self-insured retention. Within thirty (30) days after the Substantial Completion of the Initial Improvements, or completion of any Subsequent Construction requiring Port's approval under Article \_\_ and annually for ten years thereafter, Tenant, or its successors and assigns, will provide Port with evidence that Tenant's Commercial General Liability insurance includes completed operations coverage for the Initial Improvements or Subsequent Construction, as applicable.

In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant will maintain or require to be maintained liquor liability coverage with limits not less than Three Million Dollars (\$3,000,000) and Tenant will require any Subtenant or operator who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage. All liability insurance may be provided under a combination of primary and umbrella excess policies (including blanket policies) and may be provided under policies with a "claims made" trigger as provided in Section 20.1 (b)(viii).

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees, as defined in the California Labor Code, Tenant will maintain, or require to be maintained, policies of workers' compensation insurance providing statutory limits, including employer's liability coverage with limits not less than One Million Dollars (\$1,000,000) each accident and policy limit by disease (except that such insurance in excess of One Hundred Thousand (\$100,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy) covering liability for all persons directly employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

(v) Boiler and Machinery Insurance. If any of the following exposures are not covered by the insurance required by Section 20.1(a)(ii)(1), Tenant will maintain, or require to be maintained, boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located in, on, under, around, or about the Premises that is used by

Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

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

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

(viii) Contractor's Pollution Legal Liability Insurance. Tenant will cause to be maintained during the period of construction of the Initial Improvements [and Deferred Infrastructure] and during any periods of Subsequent Construction that could reasonably be anticipated to involve a Release of Hazardous Materials on or about the Premises, Contractor's Pollution Legal Liability Insurance for any and all Losses caused by pollution conditions, that are sudden, accidental or gradual, resulting from the Contractor's operations, or for which Contractor is legally liable, in connection with the construction of the Initial Improvements [or Deferred Infrastructure] or Subsequent Construction, whether such operations be by the Contractor or subcontractors, consultants or suppliers of the Contractor. The foregoing policy will contain minimum liability limits of 5 Million Dollars (\$5,000,000) per occurrence and 5 Million Dollars (\$5,000,000) in the aggregate with a deductible not to exceed One Hundred Thousand Dollars (\$100,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Initial Improvements [and Deferred Infrastructure]; or any Subsequent Construction; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Initial Improvements [and Deferred Infrastructure], or any Subsequent Construction, including transportation of any Hazardous Materials to or from the project site, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Improvements under the VDDA (if in effect) or any Subsequent Construction under this Lease or in connection with any remediation obligation of Tenant pursuant to Section 21 is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a claims-made form. If the foregoing policy is written on a claims made form, then the foregoing policy will be maintained for, or contain an extended reporting period of, at least five (5) years. The foregoing policy definition of "Covered Operations" or any other such designation of services or operations performed by the Contractor must include all work or services performed by such Contractor and its subcontractors, consultants, or suppliers.

(ix) Professional Liability. Tenant will maintain or require to be maintained, project-specific professional liability (errors and omissions) insurance, with limits not less than 2 Million Dollars (\$2,000,000) [5 Million Dollars (\$5,000,000 for Historic Building Parcels and Parcel E4] each claim and annual aggregate, with respect to all professional services, including

architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to the construction of the Initial Improvements, [and Deferred Infrastructure] and any Subsequent Construction with any deductible not to exceed One Hundred Thousand Dollars (\$100,000) each claim (the “lead policy”). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this Section 20.1(a)(ix), to require that any architects, contractors and sub-contractors performing professional services in connection with the Initial Improvements or any Subsequent Construction carry professional liability insurance (errors and omissions) in an amount not less than 2 Million Dollars (\$2,000,000) [5 Million Dollars (\$5,000,000 for Historic Building Parcels and Parcel E4] each claim and annual aggregate with any deductible not to exceed Fifty Thousand Dollars (\$50,000), and any operators carry professional liability insurance as required by contract. Such coverage may be provided with a lower limit upon the prior written approval of Port, if requested by Tenant to accommodate the needs and limitations of LBE contractors used by Tenant. Such insurance will provide coverage during the period when such professional services are performed and for a period of (a) three (3) years after Completion of the Initial Improvements [and Deferred Infrastructure], and (b) three (3) years for any Subsequent Construction. With respect to Subsequent Construction, Tenant will require that any architect, contractor or subcontractor performing professional services in connection with such Subsequent Construction, carry professional liability insurance (errors and omissions) in an amount not less than One Million Dollars (\$1,000,000) each claim and annual aggregate with any deductible not to exceed Twenty Five Thousand Dollars (\$25,000).

(x) Other Insurance. If Tenant permits activities on Tenant’s premises after construction is completed that are not covered by any of the policies listed in this agreement, or, alternatively not adequately covered given the insurance limits in place, the amount and type of insurance required for these activities will be evaluated the Port and the Tenant. Following consultation with Tenant, the Port may require that Tenant secure such other insurance or increase the insurance limits for any of Tenant’s policies than in effect, if in the reasonable judgement of the City’s Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the Premises, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carries at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant’s determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(b) General Requirements.

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

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

(iii) As to all insurance required hereunder, such insurance will be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the date of Completion of Improvements. Following consultation with Tenant, Port may require, upon not less than ninety (90) days prior written notice, that Tenant increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco to carry insurance for facilities of comparable size and use to the Premises in amounts substantially greater than the amounts being carried by Tenant with respect to risks comparable to those associated with the uses of the Premises. If the City's Risk Manager determines that the insurance limits required under this Section 20.1 may be decreased in light of such commercial practice and the risks associated with the uses of the Premises, Port will notify Tenant of such determination, and Tenant will have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant will promptly deliver to Port a certificate evidencing such new insurance amounts and additional insured endorsements in form satisfactory to Port. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carriers at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

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

(v) As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. An ISO endorsement CG20 10 11 85 or its equivalent must be added naming the CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AS ADDITIONAL INSURED;

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

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

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant will furnish Port certificates and additional insured endorsements in form satisfactory to Port with respect to the policies required under this Section within thirty (30) days, (i) on or prior to the Commencement Date (to the extent such policy is required to be carried as of the Commencement Date), (ii) for such policies required to be carried after the Commencement Date, on or prior to the date such policies are required, and (iii) with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy. Within thirty (30) days after Port's request, Tenant also will provide Port with copies of each such policy, or will otherwise make such policy available to Port for its review. If Tenant has determined that obtaining earthquake or flood insurance prior to commencement of construction of the Initial Improvements pursuant to Section 20.1(a)(ii)(4) is not commercially reasonable, then Tenant will provide Port with such documents evidencing such determination. If at any time Tenant fails to maintain the insurance required pursuant to this Section 20.1, or fails to deliver

certificates and/or endorsements as required pursuant to this Section 20.1(c) then, upon thirty (30) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Tenant will reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) **Insurance of Others.** To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the Premises, Tenant will require that such policies be endorsed to include the CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS as additional insureds. Notwithstanding the foregoing, Tenant will require all contractors and sub-contractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars (\$1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than \$1,000,000 combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the Premises.

(e) **Excess Coverage.** All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

## **20.2 Release and Waiver.**

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

## **20.3 No Limitation.**

The Indemnification requirements under this Lease will not be limited by the insurance requirements of this agreement.