

LEASE No. 1,008

between

TREASURE ISLAND DEVELOPMENT AUTHORITY

as Landlord

and

TREASURE ISLAND SAILING CENTER FOUNDATION, INC.
a California nonprofit corporation

as Tenant

For the Treasure Island Sailing Center Lease

Treasure Island Naval Station
San Francisco, California

_____, 2018

TREASURE ISLAND SAILING CENTER LEASE

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TREASURE ISLAND SAILING CENTER LEASE

THIS TREASURE ISLAND SAILING CENTER LEASE (this "Lease" or this "Agreement"), dated for reference purposes only as of _____, 2018, is by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit nonprofit corporation ("Landlord"), and TREASURE ISLAND SAILING CENTER FOUNDATION, INC., a California nonprofit public benefit corporation ("Tenant"). From time to time, Landlord and Tenant together shall be referred to herein as the "Parties".

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

A. Landlord owns portions of the property known as the Naval Station Treasure Island, including the Premises described in Recital B. Landlord acquired the property from the U.S. Navy in accordance with the deed attached hereto as **Exhibit A** (the "Navy Deed"). Landlord leases other portions of the Naval Station Treasure Island, but intends to acquire such portions from the Navy in accordance with Economic Development Conveyance Memorandum of Agreement Between the United States of America, acting through the Navy, and Treasure Island Development Authority, dated July 2, 2014 (the "EDC").

B. Under the Treasure Island Conversion Act of 1997 (AB 699), the California legislature, among other things, granted Landlord the right to lease that certain real property located on the eastside and southeast shore sides of Hanger Three, as well as unrestricted water access into and out of Clipper Cove more commonly known as the Treasure Island Sailing Center, as shown on the diagram attached hereto and incorporated herein as **Exhibit A-1** and described in **Exhibit A-2** (the "Premises"). The Premises shall also include, to the extent required, a license for the use of areas held by Landlord for required utility lines and individual and vehicular access to the Premises, including water, pedestrian and vehicular access into and out of Clipper Cove and a license over roadways and other public access areas as needed to provide nonexclusive landside access to the Premises (the "License").

C. The Premises is planned to be Community Services space and has been identified as the Treasure Island Sailing Center Parcel.

D. Tenant has subleased from Landlord a different premises since 1999 to conduct outreach and sailing education classes. Tenant's current sublease with Landlord is dated as of December 1, 2016, and is Lease No. 1,156 (the "Interim Sublease"). Tenant's mission is to (i) create opportunities for people to learn and grow through sailing by supplying facilities, instruction, and access to the water for people of all socio-economic backgrounds and skill levels from the novice to the Olympian; (ii) provide San Francisco with a first rate community sailing center that provides universal access to the San Francisco Bay; and (iii)

serve all children in the community, including those who live on Treasure Island and Yerba Buena Island giving them an opportunity to experience the San Francisco Bay first hand. As part of the consideration for this Lease, Tenant will implement a community benefits program delivering San Francisco Bay experiences and educational opportunities to disadvantaged community and youth in San Francisco, including those who live on Treasure Island.

E. Tenant's development of the new Sailing Center requires the need for a long term lease in order to attract donations for both operations and infrastructure improvements. Tenant's operations are funded through two primary revenue sources (A) donations, grants, sailing course tuition, water vessel rentals, and (B) land based rental from boat and dry storage on the Premises.

F. Landlord and Treasure Island Community Development, LLC, a California limited liability company ("TICD" or "Master Developer"), entered into that certain Disposition and Development Agreement dated as of June 28, 2011, as recorded in the Official Records of the City and County of San Francisco and as subsequently amended (as amended from time to time, the "DDA"). The DDA grants to Master Developer the right to acquire and develop portions of the property and, upon satisfaction of certain conditions, the obligation to develop Infrastructure and Stormwater Management Controls and the Required Improvements, as such terms are defined in the DDA (the "Master Developer Project"). The Master Developer Project site is adjacent to, but does not include, the Premises. Tenant has reviewed the DDA, including the Land Use Plan, the Transportation Plan, the Infrastructure Plan and the Schedule of Performance.

G. Tenant and Master Developer, Treasure Island Community Development ("TICD" or "Master Developer") intends to perform certain landside improvements, adjacent to the Premises, to be completed by TICD, as described in **Exhibit B** (the "Master Developer Improvements"). Nothing in this Lease, however, gives Tenant any rights against Landlord as a result of TICD's performance or nonperformance under any agreement between Tenant and TICD.

H. Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord upon the terms and conditions contained in this Lease.

NOW THEREFORE, Landlord and Tenant hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms of this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: _____, 2018

Landlord: TREASURE ISLAND DEVELOPMENT AUTHORITY, a California nonprofit public benefit corporation

Tenant: TREASURE ISLAND SAILING CENTER FOUNDATION, INC., a California nonprofit corporation

Premises (Section 2.1): Approximately 78,408 square feet of “Shore Side” space and approximately 46,150 square feet of “Water Side” space; license for nonexclusive use / access to the common water areas of Clipper Cove; and license for nonexclusive use and access to the adjacent landside areas, Treasure Island, San Francisco, California, all as more particularly shown on Exhibit A-1 and described in Exhibit A-2 attached hereto and made a part hereof.

Effective Date (Section 3.1): The Effective Date of this Agreement shall be the date that the Agreement is executed and delivered by the parties, following approval by the Authority’s Board of Directors and the City’s Board of Supervisors (the “Effective Date”). From the Effective Date to the Lease Commencement Date, this Agreement shall function as a lease disposition and development agreement, and Tenant shall use good faith efforts to cause all conditions to be satisfied to obtain a Notice of Proceed with the Initial Improvements, as set forth in Section 7.1.

Lease Commencement Date: The first day of the calendar month during which Tenant receives the Notice to Proceed with the Initial Improvements. Landlord shall confirm the Lease Commencement Date in writing.

Term (Section 3.1): The term of the Lease shall be for a period of Sixty Six (66) years following the Lease Commencement Date, as set forth in Section 3.1.

Expiration Date: Sixty Six (66) years following the Lease Commencement Date, but in no event later than December 31, 2086.

If Tenant has not started construction of the Initial Improvements within two (2) years following Lease

Commencement Date, then Landlord shall have the right to terminate this Agreement by delivery of sixty (60) days prior written notice to Tenant, and this Agreement shall automatically terminate six (6) month thereafter (the "Termination Date") unless Tenant fulfills all conditions needed to obtain the Notice to Proceed with the Initial Improvements and actually begins construction of the Initial Improvements before the Termination Date (subject to any extension that may be agreed to by Landlord in its sole discretion). On the Lease Commencement Date, the Interim Sublease shall automatically terminate without further action by either party. Nothing in this Lease impacts Landlord's rights under the Interim Lease before the Lease Commencement Date, including the right to terminate for default in accordance with its terms.

- Base Rent (Section 4.1): Minimum Base Rent from the Effective Date shall be Ten Thousand Dollars (\$10,000.00) per year (the "Minimum Base Rent"). Tenant shall make monthly payments of Minimum Base Rent, on or before the tenth (10th) day of each calendar month, initially in the amount of Eight Hundred Thirty Three Dollars and thirty-three cents (\$833.33) in consideration of the Tenant's obligation to assume all responsibility for development, maintenance, and repairs to the Premises, subject to the terms of this Lease, and provide a public benefit to the community as outlined and further described in Exhibit N attached hereto.
- Rent Adjustments (Section 4.2): Starting on the first January 1 following the Lease Commencement Date, and each January 1 thereafter, Minimum Base Rent will increase by percentage increases in CPI, but not less than two percent (2%) or more than four percent (4%), as set forth in Section 4.2. Until the new Minimum Base Rent is finally determined, Tenant shall continue to pay the previous amount, and pay any difference between what has been paid and what is owed within thirty (30) days following the final determination.
- Percentage Rent (Section 4.3): Starting on the first January 1 following the Lease Commencement Date, and each January 1 thereafter, Tenant shall pay to Landlord the higher of: (a) the then current Minimum Base Rent (as increased pursuant to the provisions of Section 4.2); or (b) the Percentage Rent (as set forth in

Section 4.3). Percentage Rent shall be paid in arrears at the end of each calendar year during the Term, and for the last year, at the time of expiration or termination.

Rent Credit (Section 4.5): None.

Use (Section 6.1): Tenant agrees that the Premises shall be used only for the fulfillment of its mission as follows: (1) to create and provide opportunities for people to learn and grow through sailing by providing facilities, instruction, and access to the water for people of all socio-economic backgrounds and skill levels, from the novice to the Olympian; (2) to provide San Francisco with a first rate community sailing center that provides universal access to the San Francisco Bay; and (3) to serve all children in our community interested in sailing, including those who live on Treasure Island and Yerba Buena Island.

Landlord approves the following uses:

- (a) General administrative staff offices, restrooms and public convenience facilities, classroom and gathering spaces (including clubhouse facility);
- (b) On-the-water sail training, classes, individual and team practice and related races including Fleet, Team, and Match Racing all as part of Treasure Island Sailing Center's regular curriculum;
- (c) Parking (subject to Planning and D4D restrictions);
- (d) Dry boat storage (boats stored are to be sea-worthy vessels and Tenant shall not engage in the sale of private party boats from the Premises except for Tenant's boats that are no longer needed for program use), and boat owner's storage of personal boating paraphernalia;
- (e) Boat and other light water craft launching including small craft boats and kayaks;
- (f) Small retail space (no larger than 400 square feet) for the sale of various sundries and other related items for sale to Sailing Center customers and patrons;
- (g) Minor marine services, defined as the installation of small boat parts and components, and minor boat services and labor, inclusive of minor boat repairs, maintenance, cleaning, renovation, and similar minor services (neither

Tenant nor any subtenant or licensee shall operate a boat repair business at the Premises without Landlord's prior written consent);

(h) food and beverage servicing camps and programs and vending machines; and

(i) community benefits program to provide San Francisco Bay experiences and educational opportunities to disadvantaged community and youth as outlined and further described in Exhibit N attached hereto.

Conditional Uses: The following uses are permitted, but only with the prior written consent of Landlord, following the submittals of plans, for the time period and subject to such conditions as Landlord may impose in its reasonable discretion (the "Conditional Uses"). Tenant shall follow the Authority's Special Events Notification Policy which is attached hereto as Exhibit O. Further, Tenant's proposed use must be an Approved Use for the Premises as a precedent to signing a Lease. Tenant shall not be obligated to conduct additional studies, EIR or, other Impact studies in order to continue its primary and existing use and operations. Some of the uses shall include but not be limited to the following:

(a) Special event activities (other than fundraising programs or activities for the primary and direct benefit of Tenant), displays and conferences (including catering, food, beverage and alcoholic beverage services) related to Tenant's sailing operations;

(b) Regattas and other team racing events utilizing Clipper Cove that not related Treasure Island Sailing Center's regular curriculum

Security Deposit
(Section 22.4):

Ten Thousand Dollars (\$10,000.00), as increased on each Adjustment Date to the then-applicable Minimum Base Rent.

Notice Address of
Landlord (Section 21.1):

Treasure Island Development Authority
Treasure Island Project Office
One Avenue of Palms
Building 1, 2nd Floor
Treasure Island
San Francisco, CA 94130

Attn: Robert P. Beck
Treasure Island Director
Fax No.: 415-274-0299
with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Charles Sullivan
Fax No.: (415) 554-4755

Notice Address of Tenant (Section 21.1): Treasure Island Sailing Center Foundation
698 California Street, #112
Treasure Island, San Francisco, CA. 94130

Attn: Carisa Harris- Adamson

Phone No. 415.421.2225
Fax No. 415.421.2208
Email. carisa.harris-adamson@tisailing.org

Definitions. Initially capitalized terms used in this Agreement shall have the meanings given to them in this Section (or elsewhere or in the referenced section of this Agreement):

Additional Rent means any and all sums that may become due or be payable by Tenant under this Lease including all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during the Term of, or in connection with, this Lease, whether foreseen or unforeseen.

Adjustment Date means the annual date for adjusting the Minimum Base Rent as specified in Basic Lease Information.

Adjustment Index is defined in Section 4.2(a).

Annual Statement is defined in Section 4.10.

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

Alterations is defined in Section 11.1.

Annual Percentage Rent Report is defined in Section 4.3.

Assign is defined in Section 17.1.

Assigned Rents is defined in Section 14.8.

Assignments mean any assignment, encumbrance, pledge or otherwise transfer of any part of Tenant's interest in or rights with respect to the Premises or its leasehold estate hereunder.

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.

Authority means the Treasure Island Development Authority, a California nonprofit public benefit corporation, or any successor entity.

Authority Director means the person designated by the Authority as the Authority Director or the TIDA Director, as may change from time to time.

Budget is defined in Section 9.1(a).

Certified Construction Costs is defined in Section 8.15(b).

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

Completed and Completion are defined in Section 8.20(c).

Construction Contract is defined in Section 9.1(f).

Construction Documents is defined in Section 8.5.

Construction Schedule is defined in Section 8.13.

DDA is defined in Recital F.

Default Rate is defined in Section 4.8.

Deferred Items is defined in Section 8.20(b).

Disabled Access Laws means the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities.

EDC MOA means that Economic Development Conveyance Memorandum of Agreement between the United States of America, acting through the Department of the Navy, and the Authority, dated as of July 2, 2014, as may be amended from time to time, governing the terms and conditions of the conveyance of Treasure Island and Yerba Buena Island to the Authority and certain retained rights of the Navy.

Effective Date is defined in Section 3.1(a).

Encumber means create any Mortgage.

Event of Default is defined in Section 18.1.

Expiration Date is defined in Section 3.1(b).

First Source Hiring Agreement is in the form attached to the Jobs EOP (**Exhibit C**), as may be updated from time to time consistent with applicable City requirements.

Force Majeure means the occurrence of an event that results in a delay in a party's performance of its obligations hereunder due to causes beyond that party's control and not caused by the acts or omissions of that party, such as acts of nature or of the public enemy, fires, floods, earthquakes, strikes, freight embargoes, and unusually severe weather; delays of contractors or subcontractors due to any of these causes; the presence of Hazardous Materials or other concealed conditions on the Premises that would substantially delay or materially and adversely impair the ability to construct on the Premises; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Premises; archeological finds on the Premises; strikes, delay in the granting of permits and other governmental approvals beyond reasonable time periods and substantial interruption of work because of labor disputes or economic infeasibility due to current market conditions; inability to obtain materials or reasonably acceptable substitute materials (provided that such materials were ordered on a timely basis and the party is not otherwise at fault for such inability to obtain materials). Force Majeure does not include any event that could have been avoided by exercising that standard of foresight and due diligence that any ordinary, prudent and competent person would exercise under the circumstances. In the event of the occurrence of any such delay, the time or times for performance of the obligations will be extended for the period of the delay; provided, however, (i) within thirty (30) days after the beginning of any such delay, the party shall have first notified the other party in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (ii) such party cannot, through commercially reasonable and diligent efforts (not including the incurring of overtime premiums or the like), make up for the delay. No Force Majeure delay in construction activities or otherwise shall extend the Term of this Lease.

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Sections 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be

constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids, and lead containing materials.

Hazardous Material Claims means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Materials Laws, together with any and all Losses made or threatened by any third party against City, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in the value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and Attorneys' Fees and Costs. Notwithstanding the foregoing, Hazardous Materials Claims exclude Losses relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials located in, on or under the Premises as of the Lease Commencement Date except to the extent that Tenant, its Agents, or Invitees (i) disturbs or exacerbates such pre-existing conditions, (ii) has caused or contributed to such pre-existing conditions, or (iii) the Handling or Remediation of such pre-existing Hazardous Materials is required by Regulatory Agencies having jurisdiction as a result of activities or uses of the Premises permitted or conducted by Tenant, its Subtenants, Agents or Invitees.

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code).

Impositions means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the improvements or personal property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder.

Improvements means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Premises, including, but not limited to, the Initial Improvements.

Indemnify means indemnify, defend, protect, reimburse, and hold harmless forever.

Indemnified Parties means Landlord, the City, and their respective employees, officers, commissioners, members and Landlord's and City's Agents.

Initial Improvements has the meaning set forth in Section 8.1(a).

Initial Improvements Requirements has the meaning set forth in Section 8.5(c).

Interim Sublease shall have the meaning given to it under Recital D.

Interim Premises shall mean the premises subleased to Tenant under the Interim Sublease.

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 shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

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.

Jobs EOP is the Jobs and Equal Opportunity Program attached as **Exhibit C**.

Law or Laws means any one or more present and future laws, ordinances, statutes, rules, ordinances, regulations, permits, authorizations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, to the extent applicable to the parties or to the Premises or to Tenant's use of the Premises, including the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises, whether or not in the present contemplation of the parties. Applicable Law includes all Regulatory Approvals, Planning Code section 249.52 (Treasure Island/Yerba Buena Island Special Use District), the June 28, 2011 Design for Development, and measures duly adopted by the Treasure Island Development Authority in its regulatory capacity such as the Master Signage Program, any approved mitigation measures, shoreline improvement plans, infrastructure plans, and stormwater control plans, each as may be amended from time to time.

Lease Commencement Date is defined in Section 3.1(b).

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, costs, damages (including foreseeable and unforeseeable 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.

Master Developer shall have the meaning given in Recital G; the Master Developer is not an "Agent" of the Landlord or City.

Minimum Base Rent is defined in Section 4.1.

Minor Alterations is defined in Section 11.2.

Mortgage means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

Operating Budget is defined in Section 9.1(c).

Percentage Rent is defined in Section 4.3.

Premises has the meaning set forth in Recital B, and is more particularly described in **Exhibit A-1**.

Proposed Transferee is defined in Section 17.9.

Public Trust is defined in Section 2.2(k).

Regulatory Approval means any zoning, authorization, approval or permit required by any governmental agency having jurisdiction over the Premises or construction on or use of the Premises, including, but not limited to, City commissions and departments, the Treasure Island Development Authority (acting in its regulatory capacity or as trustee of the Public Trust), the Board of Supervisors, and various federal and state agencies.

Release when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, transport, dispose, contain, treat, stabilize, monitor 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. 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.

Rent means the sum of Minimum Base Rent and any Percentage Rent and Additional Rent. “Rent” shall also include Additional Rent.

Rent Credit is defined in Section 4.5(a).

Reserve Account is defined in Section 12.2.

Reserve Maximum is defined in Section 12.2.

Restore and Restoration mean the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable (including code upgrades) to substantially the same condition they were in immediately before an event of damage or destruction, or in the case of a Taking, the restoration, replacement, or rebuilding of the Improvements to an architectural whole.

Significant Change means (i) Tenant files, or is the subject of, a petition for bankruptcy, or makes a general assignment for the benefit of its creditors, (ii) a receiver is appointed on

account of Tenant's insolvency, (iii) a writ of execution or attachment or any similar process is issued or levied against any bank accounts of Tenant, or against any property or assets of Tenant, or (iv) a final non-appealable judgment is entered against Tenant in an amount in excess of Five Million Dollars (\$5,000,000.00), and Tenant is unable to either satisfy or bond the judgment.

Sublease means any lease, sublease, license, concession or other agreement 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). "Sublease" shall not include a revocable, non-exclusive license to enter upon, use or operate within the Premises. Such license shall include, but not be limited to, tenant's staff, volunteers, trainers, coaches, students, visitors and contractors, or anyone participating in classes camps, programs, training sessions and races.

Subtenant means any person or entity leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

Tenant's Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property, 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, acquired by Tenant without expense to Landlord, and that can be removed without structural or other damage to the Premises.

Term is defined in Section 3.1(b).

Termination Date is defined in Section 3.1(c).

2. PREMISES

Premises. Subject to the terms, covenants and conditions of this Lease, Landlord leases to Tenant the Premises so long as this Lease remains in effect. Tenant shall also have a License to the extent required for utility lines and access, as set forth in the Recitals and the Basic Lease Information, for so long as this Lease remains in effect. Except under a valid lease or other use agreement, Tenant shall not use or occupy space outside the Premises without the prior written consent of the Authority Director. If Tenant uses or occupies space outside the Premises without the prior written consent of Landlord, then Tenant shall immediately vacate such space upon Landlord's request. Without waiving Landlord's additional remedies, Landlord shall have the right to charge Tenant for each day of any such unauthorized use in an amount equal to the higher of the (a) highest rental rate then approved by Landlord's Board of Directors for the applicable land area on a per square foot basis, or (b) then current fair market rent for such area as reasonably determined by Landlord. Landlord shall also impose an administrative penalty, in amount determined by the Authority Director, for any notice to vacate unauthorized space sent by Landlord to Tenant. In no event shall acceptance by Landlord of this charge or administrative penalty be deemed a consent by Landlord to the use

or occupancy by Tenant or be deemed a waiver of any and all other rights and remedies of Landlord under this Lease. Tenant's indemnity obligations under this Lease shall include any damage, loss or injury occurring in a space that Tenant uses or occupies without Landlord's consent. The provisions of this Section 2 shall not impair any of Tenant's rights to the use of the Existing Premises under the Interim Sublease.

2.1. As Is Condition of Premises.

(a) Inspection of Premises. Tenant represents and warrants that Tenant has, either independently or through its Agents, conducted a thorough and diligent inspection and investigation of the Premises and the suitability of the Premises for Tenant's intended use. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Tenant acknowledges its receipt and review of the DDA and all associated documents and the EDC MOA and all associated documents.

(b) As Is; Disclaimer of Representations. Tenant acknowledges and agrees that the Premises are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that Landlord, the City and their Agents have not made, and hereby disclaim, any and all representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, all of the matters described in DDA and all associated documents and EDC MOA and all associated documents, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any of the Initial Improvements on the Premises, (v) the safety of the Premises, whether for the use by Tenant or any other person, including Tenant's Agents or Invitees, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Except to the extent that Tenant, its Subtenants, Agents, or Invitees (i) disturbs or exacerbates pre-existing Hazardous Materials conditions, (ii) caused or contributed to pre-existing Hazardous Materials in, on, or about the Premises prior to the Lease Commencement Date, or (iii) the Handling or Remediation of pre-existing Hazardous Materials is required by Regulatory Agencies having jurisdiction as a result of activities or uses of the Premises permitted or conducted by Tenant, its Subtenants, Agents or Invitees, Tenant shall have no liability or obligations relating to any Hazardous Materials existing on the Premises as of the Lease Commencement Date.

(c) Seismic Report. Without limiting Section 2.2(b) above, Tenant expressly acknowledges for itself and Tenant's Agents that it has received and read seismic reports

prepared by and/or for TIDA and its Master Developer or that Tenant has had an adequate opportunity to review the relevant seismic reports with expert consultants of its own choosing.

(d) Navy Deed. Tenant understands that the Navy has transferred all of the Premises to Landlord pursuant to the Navy Deed and that this Lease will be subject to the certain disclosures and retained certain rights in and to the Premises, as set forth in the Navy Deed. Pursuant to the Navy Deed, the Navy has the obligation and right to perform remedial actions that may be necessary to protect human health and the environment with respect to any hazardous substance in or around the Premises in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. Section 9620(h)(3)(A)(ii)(I), and has the right to take some or all of the Premises as may be needed in connection therewith. This Lease is subject and subordinate to the Navy’s rights under the Navy Deed and the EDC MOA, and Tenant acknowledges that Landlord shall have the right to limit or suspend Tenant's use of the Premises to permit the Navy to perform its obligations, without payment to Tenant, if Navy requires use of the Premises as set forth in the Navy Deed, provided, however, that during any such time that the use of the Premises is suspended as to any material portion of the Premises, Tenant shall not be obligated to pay the Base Rent for such portion (as determined on a square foot basis) to the extent of the interference. Furthermore, nothing in this Lease shall extinguish or terminate any ongoing Navy obligations as set forth in the Navy Deed or pursuant to its obligations under CERCLA or any other applicable law or regulation.

(e) CRUP/Inspections and Monitoring. At the time of recordation of the Navy Deed, there was recorded against the Premises a Covenant To Restrict Use of Property (Environmental Restriction) (the “CRUP”), attached hereto as **Exhibit D** and incorporated into this Lease) that restricts uses of the Premises to protect human health, safety, and the environment. The CRUP addresses the remaining lead shot contamination at the Premises as documented in the Final Remedial Action Completion Report, Installation Restoration Site 21 / Building 3, Former Clipper Cove Skeet Range, Former Naval Station Treasure Island, San Francisco, California (Tetra Tech EC, Inc. December 2014). Under the Final Land Use Control Remedial Design, Installation Restoration Site 21 / Building 3, Naval station Treasure Island, San Francisco, California (Tetra Tech EM, Inc. May 2013) and the Final Land Use Control Remedial Design Addendum, Installation Restoration Site 21 / Building 3 for Former Naval Station Treasure Island, San Francisco, California (Multimedia Environmental Compliance Group April 2015) (the “LUC RD”), notice and restrictions are required to prevent the potential exposure of ecological receptors to lead shot remaining at the Premises and to maintain the integrity of the Navy’s remedy consistent with the restrictions set forth in Article IV of the CRUP. Tenant agrees to comply at all times with the CRUP and the LUC RD, and acknowledges and understands that a Site Management Plan acceptable to the Navy and DTSC will be required as set forth in the CRUP. Tenant further agrees to perform all maintenance, monitoring, inspection and reporting obligations required by the CRUP and the Navy Deed, and any regulator with jurisdiction over the Premises or Tenant’s use of the Premises. Tenant shall provide a copy to Landlord of all annual and other inspection and monitoring reports not

less than fifteen (15) days before the date it is required to be submitted to a regulator, for review and comment, and Landlord shall have the option of co-signing any report if Landlord chooses to do so. Tenant shall provide to Landlord, within five (5) business days following receipt, a copy of all correspondence from any federal, state or local regulator relating to the condition of the Premises or the use of or operations on the Premises. Tenant shall Indemnify Landlord against any breach or violation of the requirements of this subsection.

(f) No Subsurface Rights. Nothing in this Lease gives Tenant any right to any subsurface rights, including but not limited to any mineral, oil, gas, water, or other rights relative to the land.

(g) 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, but the law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

(h) Disability Access. Tenant acknowledges that before the execution of this Lease, City provided Tenant with, and Tenant signed, the Disability Access Obligations Notice described in Section 38.3 of the San Francisco Administrative Code. Landlord makes no representations regarding the current condition of the Premises as it relates to disability access, and Tenant agrees that the Initial Improvements will satisfy all disability access requirements.

(i) DDA. Tenant has reviewed the DDA, including the Land Use Plan, the Transportation Plan, the Infrastructure Plan and the Schedule of Performance. Tenant is aware of the potential impacts on the Premises of the proposed development under the DDA. Tenant understands and agrees that Landlord and Master Developer may amend the DDA and related transaction documents, each in their discretion, and that no such amendment shall require the approval of Tenant. Upon request, Landlord agrees to keep Tenant informed as to material matters relating to the development of the Project Site under the DDA. If the DDA Work is not completed as contemplated in the DDA, Tenant may terminate this Lease.

(j) Treasure Island Development. Tenant understands that Master Developer is performing significant work on and around the Premises as required under the DDA, including constructing, repairing, replacing, operating and maintaining storm drain and sewer improvements, site grading, and completing geotechnical work and other improvements (collectively, the “DDA Work”), and that the DDA Work may impact Tenant’s use of the Premises during construction. Tenant agrees to cooperate with Master Developer in the performance of the DDA Work, and shall not take any action to interfere with Master Developer’s ability to complete the DDA Work. Tenant agrees to provide access to the Premises as needed by Master Developer to complete the DDA Work and as approved by the Authority Director, as more particularly set forth in Section 21.1(d). Tenant’s refusal to

cooperate or to provide access as required in this section shall be deemed a material default, and Landlord shall have the right to take back such portion of the Premises as may be required from time to time to allow Master Developer to complete the DDA Work. Any costs incurred by Landlord in exercising its rights under this section shall become Additional Rent, payable within 30 days following Landlord's delivery of an invoice of such costs.

(k) Public Trust. Tenant understands that Landlord entered into a Compromise Title Settlement and Land Exchange Agreement for Treasure Island and Yerba Buena Island, recorded on January 14, 2015, with the State of California, acting by and through the State Lands Commission (the "Trust Exchange Agreement"), pursuant to the Treasure Island Public Trust Exchange Act, Chapter 543, Statutes of 2004 as amended by Chapter 660, Statutes of 2007, Chapter 208, Statutes of 2009, and Chapter 429, Statutes of 2011, and the Treasure Island Conversion Act of 1997, Chapter 898, Statutes of 1997, as amended. In accordance with the Trust Exchange Agreement, the Premises are subject to the public trust for purposes of commerce, navigation and fisheries (the "Public Trust"), as administered by the Treasure Island Development Authority as trustee. Tenant's use of the Property is at all times subject to and limited by the Public Trust, and any operation on the Premises must be consistent with the Public Trust, as determined by Landlord. Tenant shall not take or allow any act that violates the Public Trust. The Treasure Island Development Authority has determined that the use of the Premises as a sailing center is consistent with the Public Trust, although it reserves the right to limit or prohibit specific uses, in form or duration, that are not compliant with the Public Trust.

3 TERM

3.1 Term of Lease.

(a) Effective Date; LDDA Period. The Lease shall be effective on the date that it is signed and delivered by the parties, following approval by the Authority's Board and the City's Board of Supervisors (the "Effective Date"). From the Effective Date until the Lease Commencement Date, Tenant shall take all actions as needed to prepare plans and specifications for the Initial Improvements and following Authority Board approval of the plans, Construction Documents consistent with the approved plans, obtain financing for the Initial Improvements, obtain all Regulatory Approvals for the Initial Improvements, and take such actions as needed to satisfy all conditions for Landlord to issue the Notice to Proceed with the Initial Improvements, as set forth in Section 7.1. In other words, from and after the Effective Date but before the Lease Commencement Date, this Agreement shall function as a lease disposition and development agreement and Tenant shall continue to occupy the Premises under the Interim Sublease. On the Lease Commencement Date, the Interim Sublease shall automatically terminate and the Term of the Lease shall commence. Nothing in this Lease shall limit Landlord's or Tenant's rights under the Interim Sublease, including Landlord's right

to take any enforcement action and to terminate the Interim Sublease in accordance with its terms.

(b) Term; Commencement and Expiration Dates. The initial term of this Lease (the “Term”) shall be for a period of sixty six (66) years commencing on the first day of the calendar month during which Landlord delivers the Notice to Proceed with Initial Improvements as set forth in Section 7.1 (the “Lease Commencement Date”) and, unless sooner terminated as herein provided, shall expire on the last day of the sixtieth (66th) year thereafter at 11:59 p.m., but in no event later than December 31, 2086 (the “Expiration Date”). For example, if the Lease Commencement Date is December 1, 2017, then the Expiration Date will be November 30, 2083. On or after the Lease Commencement Date, Landlord shall deliver to Tenant a written statement confirming the actual Lease Commencement Date, but Landlord’s failure to do so shall not affect the date.

(c) Landlord Termination Right. Subject to Force Majeure events, if Tenant has not started construction of the Initial Improvements within two (2) years following Lease Commencement Date, then Landlord shall have the right to terminate this Agreement by delivery of sixty (60) days prior written notice to Tenant, and this Agreement shall automatically terminate six (6) month thereafter (the “Termination Date”) unless Tenant fulfills all conditions needed to obtain the Notice to Proceed with the Initial Improvements and actually begins construction of the Initial Improvements before the Termination Date (subject to any extension that may be agreed to by Landlord in its sole discretion). On the Lease Commencement Date, the Interim Sublease shall automatically terminate without further action by either party. Nothing in this Lease impacts Landlord’s rights under the Interim Lease before the Lease Commencement Date, including the right to terminate for default in accordance with its terms.

4. RENT

4.1 Rent. Throughout the Term, Tenant shall pay to Landlord Rent as set forth in this Section and in the Basic Lease Information. For each Extension Term, Rent shall be determined as set forth in Section 3.2. Rent shall be paid to Landlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Minimum Base Rent shall be payable on or before the tenth (10th) day of each calendar month, in advance, at the Notice Address of Landlord provided in Section 24.1 or such other place as Landlord may designate in writing, and Percentage Rent shall be paid as set forth below in this Article 4. Beginning on the Lease Commencement Date, Tenant shall pay Landlord minimum annual rent in the amount of Ten Thousand Dollars (\$10,000) (the “Minimum Base Rent”), with said Minimum Base Rent paid monthly in the amount of Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$833.33) per month. If this Lease terminates on a day other than the last day of a calendar month, then the monthly payment of Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2 Minimum Rent Adjustments. Starting on the first January 1 following the Lease Commencement Date, and each January 1 thereafter (each, an “Adjustment Date”), the Minimum Base Rent payable under this Lease shall be increased as follows:

(a) **Index.** The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics (“Index”) published most immediately preceding the Adjustment Date (“Adjustment Index”), shall be compared with the Index published most immediately preceding the Commencement Date (“Beginning Index”).

(b) **Adjustment Amount.** If the Adjustment Index has increased over the Beginning Index, the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no event shall the monthly Base Rent on or after the Adjustment Date be less than one hundred two percent (102%) or more than one hundred four percent (104%) of the monthly Base Rent in effect immediately prior to the Adjustment Date.

(c) **Potential Conversion.** If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.3 Percentage Rent. Starting on the first January 1 following the Lease Commencement Date, and each January 1 thereafter, Tenant shall pay to Landlord the higher of: (a) the then current Minimum Base Rent; or (b) the Percentage Rent. The term “Percentage Rent” shall be the percent of total Gross Income and Net Income for the expiring Lease year for each of the categories, as set forth in **Exhibit E**. Percentage Rent shall be calculated on an annual basis. The accounting year shall be twelve (12) calendar months commencing January 1 and ending December 31. Percentage Rent shall be calculated in accordance with generally accepted accounting principles, and shall be reported by Tenant in an annual report (the “Annual Percentage Rent Report”), certified as true and correct and complete by Tenant under penalty of perjury, and certified by an independent third party accountant, which shall include the following:

a. The total gross income for the accounting year (or portion thereof), itemized as to each of the business categories for which a separate Percentage Rent rate is established.

b. The related itemized amounts of Percentage Rent computed, as herein provided, and the total thereof.

c. The total Minimum Base Rent previously paid by Tenant for the accounting year within which the preceding month falls.

d. The amount of Percentage Rent above the Minimum Base Rent, if any, that is due and payable to Landlord. Starting on the March 1, 2020 and thereafter on or before March 1st of each calendar year, Tenant shall deliver to Landlord the Annual Percentage Rent Report as set forth above. Percentage Rent shall be paid annually, in arrears, not later than sixty (60) days after the end of the calendar year, but only to the extent Percentage Rent exceeds the Minimum Base Rent previously paid by Tenant for that year and no rent credit is owed to Tenant. Concurrently with the delivery of the Annual Percentage Rent Report, Tenant shall pay the amount of Percentage Rent due and owing for the previous calendar year. If the Term ends before the end of a calendar year, Tenant shall deliver the Annual Percentage Rent Report for the final year within sixty (60) days following the end of the Term, and pay the amount due and owing at the time of delivery of the Annual Percentage Rent Report. Landlord shall have the right to review and audit such final payment consistent with the terms of this Lease.

4.4 Gross Income. The term “Gross Income” upon which the Percentage Rent is based shall include all income received by Tenant resulting from occupancy or use of the Premises in any manner, whether by Tenant, or from its subtenants or concessionaires, or parties operating through Tenant, its subtenants, or concessionaires, from whatever source derived, and whether for cash or credit. Gross Income shall include any manufacturer’s or importer’s excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge. Gross Income, however, shall not include any of the following: (1) sales of United States postage; (2) any sales or excise taxes payable by Tenant to any governmental agency as a direct result of operations under this Lease, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained; (3) gratuities paid directly to on-site employees or individuals, and not paid to Tenant, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that the Tenant has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer; (4) security deposits held in trust by Tenant (provided, however, in the event any security deposit is applied by the Landlord towards any rent due the Landlord, such security deposit shall, upon any such application, be treated as gross income subject to percentage rent); (5) any income, savings or receipts derived from Tenant’s investments that are not in accounts held for the operation or maintenance of the Premises; (6) proceeds of loans to the Tenant (provided, Tenant shall not borrow any funds for any purpose other than to invest in the Premises, and shall use any such loan proceeds for improvements to the Premises or expenses relating to the Premises); (7) funds invested in the Tenant by Tenant’s members; (8) amounts paid by slip licensees or renters for utilities supplied to such licensee’s boat slip or boat to the extent such amounts are charged to the boater in accordance with rates charged by the utility provider and there is no markup to Tenant; (9) grant funding; (10) investment income; (11) donations of any kind from any source; (12) Tenant’s sailing program revenues; and (13)

fundraising programs or activities conducted for the primary and direct benefit of Tenant. Further, refunds for goods returned, credit chargebacks, or like events that nullify the receipt of revenue shall be deducted from current gross income upon their return or adjustment.

4.5 Rent Credits. No Rent Credits.

4.6 Participation Rent. No participation Rent.

4.7 Payments to Landlord.

(a) Payments. All payments and statements required under this Article 4 shall be made by Tenant to Landlord in lawful money of the United States of America at the address for notices to Landlord specified in this Lease, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant. Checks shall be made payable to the Treasure Island Development Authority. Landlord may change the designated place of payment and filing at any time upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibility for late charges, as hereinafter described, if payments are made by mail. Rent shall be 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 Rent shall be due twenty (20) days following the giving by City of such written demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

(b) Net Lease. It is the purpose of this Lease and intent of Landlord and Tenant that, except as expressly stated to the contrary in this Lease, all Rent shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Landlord be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any improvements, except for Rent Credits as provided in this Article 4.

4.8 Late Payments. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease. Accordingly, in the event Tenant is delinquent in rendering to Landlord an accounting of Percentage Rent due or in remitting the Rent due in accordance with the provisions of this Lease, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the delinquent amount. The parties hereby agree that said late charge is appropriate to compensate Landlord for loss resulting from payment delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In addition to the late charge, any Rent, if not paid within ten (10) days following the due date, shall bear interest from the due date until paid. If any Rent is not paid within twenty (20) days following written demand for payment of such Rent, such unpaid amount shall bear

interest from the date due until paid at an annual interest rate (the "Default Rate") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act; provided, in no event shall the Default Rate exceed any applicable usury or similar Law. Payment of late charges or interest shall not excuse any default by Tenant, and acceptance of any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies. Landlord shall have the right to waive for good cause any late charges or interest upon written application of Tenant for any such delinquency period.

4.9 Landlord Acceptance Not a Waiver. All payments by Tenant to Landlord shall be by a good and sufficient check in U.S. Dollars. No payment made by Tenant or receipt or acceptance by Landlord of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest Rent or other amounts due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other available remedy.

4.10 Books and Records. Tenant shall, at all times during the term of this Lease, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein, in accordance with generally accepted accounting principles. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoice or other pertinent supporting documents. Reviewed financial statements (a balance sheet, income/expense statement and cash flow statement) based upon the double entry books of account, shall be prepared not less than annually and copies thereof delivered to Landlord within ninety (90) days following the end of each calendar year during the Term of this Lease and ninety (90) days following the end of the Term. The annual records sent to Landlord shall include, at a minimum, an itemized statement of income and expenditures by Tenant for such year, which statement shall set forth income and expenditures for the year just concluded broken down by category and a cash flow table that itemizes expenditures on staff and consultant salaries, utilities and maintenance, capital improvements, and the like (the "Annual Statement"), certified as correct by an officer of Tenant and in form delivered to Tenant's members or board of directors, or if no such form which such detail was delivered to Tenant's members or board of directors, in a form satisfactory to Landlord. In addition, Tenant shall promptly provide to City a copy of its annual tax return.

4.11 Registers.

(a) Tenant shall install on the Premises at least one cash register. Tenant shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals. Such cash register(s) used on the Premises shall be of a type approved by the Authority Director in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Income, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the Authority Director or his/her agent, provided that such inspection shall be conducted in a manner reasonably designed to minimize interference with the conduct of Tenant's business at the Premises, and Landlord shall not perform such inspection unless a manager of Tenant's business is present. Tenant shall make a manager available to Landlord for such inspection during business hours upon request (which may be oral) by Landlord.

(b) Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or greater, as determined by the Authority Director based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s).

(c) Each sale or other transaction on the Premises must be recorded at the time of such sale or other transaction, in the presence of the customer, and Tenant shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. All cash receipts must include Tenant's identification thereon. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by Authority Director. At Authority Director's request, Tenant must furnish to Landlord a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by Authority Director.

(d) Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, Tenant must immediately furnish to Authority Director notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to Landlord or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). Landlord shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash

registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this section.

4.12 Audit Rights. All Tenant's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Premises, shall be kept either at the Premises or at such other locations as are reasonably acceptable to Landlord, which alternate locations shall include Tenant's principal place of business within San Francisco so long as Tenant has provided Landlord with written notice thereof. Landlord shall have the right at any and all times to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the annual statements of gross income submitted, and the accuracy of the Rent paid to the Landlord. Tenant agrees to make its books and records available to Landlord, or any auditor or representative designated by Landlord, for the purpose of examining such books and records to determine the accuracy of Tenant's earnings and expenses and statements. Such books and records shall be kept for four (4) years following the end of each calendar year and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing. In the event that the Tenant's business operations conducted within or from the Premises are part of a larger business operation of the Tenant, and any part of the books, records, financial statements and documentation required herein is prepared only for the larger operation, and not solely for the business operations of the Premises, then the Landlord shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation that relate to the business operations of the Premises. Tenant's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by Landlord is a material breach of this Lease. Landlord shall have the discretion to require the installation of any additional, commercially reasonable accounting methods or controls Landlord may deem reasonably necessary, subject to prior written notice.

4.13. Audit Discrepancies. Additionally, if an audit reveals a discrepancy of more than five percent (5%) between the amounts due as reported by Tenant and the amounts due as determined by the audit, or Tenant has failed to maintain complete and accurate books of account, records, financial statements, and documentation in accordance with this Lease, then Tenant shall pay the cost of the audit, as reasonably determined by Landlord, plus the amounts determined to have been underpaid. In addition, should Tenant fail to pay the amounts due within thirty (30) days after written notice from Landlord, then Tenant shall pay an additional fee of ten percent (10%) of the unpaid amounts as compensation to Landlord for administrative costs and lost interest, along with the amount determined to have been underpaid. Furthermore, if the audit reveals that amounts due to Landlord is less than five percent (5%) of the amount reported and previously paid by Tenant, and should Tenant fail to pay such amount due within thirty (30) days after written notice from Landlord, then Tenant shall pay an additional fee of ten percent (10%) of the unpaid amount as compensation to Landlord for administrative costs as set forth above, along with the amount determined to have been underpaid. Tenant agrees to pay such amounts and further agrees that the specific late charges

represent a fair and reasonable estimate of the costs that Landlord will incur from Tenant's late payment. Acceptance of late charges and any portion of the late payment by Landlord without receipt of the applicable overdue amount shall in no event constitute a waiver of Tenant default with respect to late payment, nor prevent Landlord from exercising any of the other rights and remedies granted in this Lease. Landlord shall have the right to waive for good cause any late charges upon written application of Tenant for any such delinquency period.

5. TAXES, ASSESSMENTS AND OTHER EXPENSES

5.1 Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Payment Responsibility. Tenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of any kind whatsoever, general or special, ordinary or extraordinary, foreseen or unforeseen, levied on or assessed against the Premises, the Initial Improvements, any Alterations, Tenant's Personal Property, or Tenant's use of the Premises during the Term. Tenant shall make all such payments directly to the charging authority when due and payable. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Landlord receives the tax bill directly from the taxing authority, Tenant shall reimburse Landlord for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Tenant recognizes and agrees that this Lease will create a possessory interest subject to property taxation and that Tenant will be subject to the payment of Possessory Interest taxes levied on such interest. Tenant shall pay any and all possessory interest taxes lawfully levied upon Tenant's interest pursuant to an assessment lawfully made by City's Assessor; provided, that Tenant shall have the right to contest the validity, applicability or amount of any such taxes as set forth below. San Francisco Administrative Code Sections 23.38 and 23.39 require that Landlord report certain information relating to this Lease, and any renewals thereof, to the Tax Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to any assignment of or sublease under this Lease to the Tax Assessor within thirty (30) days after such assignment or sublease transaction. Tenant agrees to comply with these requirements

(c) Other Impositions. Tenant shall 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 legally assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any of the improvements or personal property now or hereafter located thereon, the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, or any subtenant or any other person may have acquired pursuant to this Lease. Tenant shall 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 which event only those installments that are due and

payable prior to the expiration or earlier termination of the Lease shall be payable by Tenant. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any such Imposition. Impositions shall include all such taxes, assessments, fees and other charges 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. The foregoing or subsequent provisions notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, the Authority's interest as landlord under this Lease.

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

(e) No Liens. Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(f) Reporting Information. Tenant agrees to provide such information as Landlord may request to enable Landlord to comply with any possessory interest tax or other reporting requirements applicable to this Lease.

5.2 Evidence of Payment. Tenant shall, upon Landlord's request, furnish to Landlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Landlord, evidencing payment thereof.

5.3 Right of Tenant to Contest Impositions and Liens. Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any possessory interest tax, property tax, or other Imposition or other lien, charge or encumbrance, against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or other person to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence. Tenant shall give notice to Landlord within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition or Law in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition or Law to be forfeited to the entity levying such Imposition 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 shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and Tenant shall

provide a statutory lien release bond or other security reasonably satisfactory to Landlord in connection with any such contest. Tenant shall Indemnify Landlord for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, resulting from Tenant's failure to pay any Imposition or Tenant's contest of an Imposition.

6. USE; COVENANTS

6.1 Tenant's Permitted Use.

(a) Permitted Uses: Tenant agrees that the Premises shall be used only for the fulfillment of its mission as follows: (1) to create and provide opportunities for people to learn and grow through sailing by providing facilities, instruction, and access to the water for people of all socio-economic backgrounds and skill levels, from the novice to the Olympian; (2) to provide San Francisco with a first rate community sailing center that provides universal access to the San Francisco Bay; and (3) to serve all children in our community interested in sailing, including those who live on Treasure Island and Yerba Buena Island.

Landlord approves the following uses:

- (a) General administrative staff offices, restrooms and public convenience facilities, classroom and gathering spaces (including clubhouse facility);
- (b) On-the-water sail training, classes, individual and team practice and related races including Fleet, Team, and Match Racing all as part of Treasure Island Sailing Center's regular curriculum;
- (c) Parking (subject to Planning and D4D restrictions);
- (d) Dry boat storage (boats stored are to be sea-worthy vessels and Tenant shall not engage in the sale of private party boats from the Premises except for Tenant's boats that are no longer needed for program use), and boat owner's storage of personal boating paraphernalia;
- (e) Boat and other light water craft launching including small craft boats and kayaks;
- (f) Small retail space (no larger than 400 square feet) for the sale of various sundries and other related items for sale to Sailing Center customers and patrons;
- (g) Minor marine services, defined as the installation of small boat parts and components, and minor boat services and labor, inclusive of minor boat repairs, maintenance, cleaning, renovation, and similar minor services (neither Tenant nor any subtenant or licensee shall operate a boat repair business at the Premises without Landlord's prior written consent);
- (h) food and beverage servicing camps and programs and vending machines; and
- (i) community benefits program to provide San Francisco Bay experiences and educational opportunities to disadvantaged community and youth as outlined and further described in **Exhibit N** attached hereto.

Conditional Uses: The following uses are permitted, but only with the prior written consent of Landlord, following the submittals of plans, for the time period and subject to such conditions as Landlord may impose in its reasonable discretion (the “Conditional Uses”). Tenant shall follow the Authority’s Special Events Notification Policy which is attached hereto as Exhibit _____. Further, Tenant’s proposed use must be an Approved Use for the Premises as a precedent to signing a Lease. Tenant shall not be obligated to conduct additional studies, EIR or, other Impact studies in order to continue its primary and existing use and operations. Some of the uses shall include but not be limited to the following:

(a) Special event activities (other than fundraising programs or activities for the primary and direct benefit of Tenant), displays and conferences (including catering, food, beverage and alcoholic beverage services) related to Tenant’s sailing operations;

(b) Regattas and other team racing events utilizing Clipper Cove that not related Treasure Island Sailing Center’s regular curriculum

(c) No Cell Site Use; Payments for Unauthorized Uses. Tenant may not install a cellular antenna or other similar equipment for transmission and reception of communication signals except as directly necessary to support Tenant’s security, safety and operational needs, and may not generate revenue from any such equipment. In addition to any rights and remedies available to Landlord under this Lease, if Tenant uses the Premises for any use or service that is not permitted, Tenant shall pay Landlord One Hundred (100%) of the gross receipts from such use or service. This payment is subject to the due date for Rent and the provisions for delinquent rent provided in Article 4. The existence of the One Hundred (100%) charge in this Section 6.1 and the payment of this charge does not constitute an authorization for a particular service or use, and does not waive any Landlord rights or remedies following any unauthorized use of the Premises.

6.2 Tenant's Access to the Premises. Subject to Section 2.2(j) and Section 22.1, Landlord shall not interfere with Tenant’s access to the Premises, which is intended to be available to Tenant on a twenty four (24) hours per day, seven (7) days per week basis; provided, there shall be no rent abatement if access is temporarily interrupted for short periods of time for any reason. If DDA Work prevents access to the Premises or renders the Premises unusable by Tenant for a period of thirty (30) days or more, then Tenant shall have the right to abatement of Rent for the period during which Tenant is denied access or the Premises remain unusable.

6.3 Rules and Regulations. Tenant agrees to adhere to all rules and regulations regarding the Premises attached as **Exhibit F**, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or Treasure Island, as such rules and regulations may be reasonably prescribed by Landlord from time to time. Tenant agrees that no advertising banners, pennants, flags, spinners, or other advertising devices, nor any

temporary advertising signs, shall be flown, installed, placed, or erected on the Premises without Landlord's prior written approval, which approval shall not be unreasonably withheld. This shall not impair Tenant's rights to install directional signs or other signage within the Premises that does not require any regulatory approvals and that are in compliance with the rules and regulations relating to the Premises.

6.5 No Interference with Navy or Master Developer Operations. Tenant shall not conduct operations, nor make any Alterations, that would interfere with or otherwise restrict (1) Navy's operations or environmental clean-up or restoration actions by the Navy, Landlord, the Environmental Protection Agency, the State of California or their contractors, or (2) the DDA Work performed by Master Developer. Environmental clean-up, restoration or testing activities and DDA Work by these parties shall take priority over Tenant's use of the Premises in the event of any conflict; provided, however, in such event, Navy, Landlord and Master Developer, as applicable, shall use their best efforts to minimize any disruption of Tenant's operation.

6.6 No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Treasure Island property outside of the Premises.

6.7 Use Obligation, Use Interruption and Force Majeure. Tenant shall actively and continuously seek to entitle, construct, use and operate the Premises for the particular Uses provided for herein, subject to Force Majeure.

6.8 Operating Covenants.

(a) **Continuous Use; Full Program.** Tenant shall continuously use, repair, maintain and operate the entire Premises, or cause the entire Premises to be continuously used, repaired, maintained and operated, for the Permitted Uses, and shall not allow the Premises or major areas within the Premises to remain unoccupied or unused without Landlord's prior written consent, which Landlord may give or withhold in its reasonable discretion. Tenant shall use the Premises in a professional manner, commensurate with the standard of use and operation of other sailing center facilities in the San Francisco Bay Area, and shall use diligent and good faith steps to provide a full program of boating operations, including programs that serve youth

and other members of the public and promote strong use by the public of Tenant's programs and facilities.

(b) Approved Operating Standards. All Tenant's operations on the Premises shall be conducted in accordance with the Approved Operating Standards set forth in **Exhibit G**, as the same may be modified from time to time by the TIDA Director.

(c) Management, Staffing and Funding. Tenant shall provide appropriate management and development staff for the operation of the Premises, shall adequately fund the use, maintenance and operation of the Premises consistent with Tenant's obligations under this Lease, including maintaining a reasonable annual repair and capital plan and budget and sufficient reserves to fund such plan in accordance with the budget.

(d) Management and Operational Plans. Prior to the Effective Date Tenant submitted to Landlord a management and operation plan for the Premises. Not less frequently than once every five (5) years Tenant shall provide to Landlord an updated management and operation plan or a management agreement. If the TIDA Director has reasonable concerns that the updated management and operation plan or management agreement is not consistent with the requirements of this Lease or will not realistically allow Tenant to comply with the maintenance and operational requirements of this Lease, Landlord shall provide Tenant with written notice of such concerns, and Tenant will meet and confer with the TIDA Director as needed to address such concerns.

(e) Security Matters. Tenant at all times shall be responsible for on-site security in and about the Premises. Tenant shall have an affirmative obligation to use and operate the Premises in a safe and secure manner for all patrons and staff.

(f) Disabled Access. Tenant acknowledges that the Disabled Access Laws require that the programs, services and other activities provided at the Premises must be accessible to the disabled public. Without limiting Tenant's obligations under this Lease to comply with applicable Laws, Tenant warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease.

6.9 Management Contracts. Tenant shall not, without the prior written consent of Landlord, which consent may be given or withheld in Landlord's reasonable discretion, contract for the management or operation of the whole or any part of the Premises.

6.10 Signage. At any time and from time to time during the Term, Tenant shall have the right to submit for the Authority Director's written approval, not to be unreasonably withheld, a proposed signage program for the Premises (upon approval, the "Approved Signage Program"). Any signage program must comply with the Master Signage Program prepared by Master Developer and approved by Landlord, as the same may be amended. Tenant may not

place any advertisements or advertising signs on the Premises except in compliance with applicable Law and an Approved Signage Program. Nothing in this Section shall prohibit installation or maintenance of the signage included in the Initial Improvements or in approved Alterations.

7. CONDITIONS TO START OF INITIAL IMPROVEMENTS

7.1 Conditions to Start of Initial Improvements. As set forth in Section 3.1, this Agreement is first a lease disposition and development agreement. Accordingly, from and after the Effective Date, Tenant agrees to use good faith efforts to cause the following conditions to be satisfied as soon as reasonably possible, and these conditions must be satisfied by Tenant before it may begin to construct the Initial Improvements (as the construction will proceed in phases, these requirements apply to each of the relevant phases):

(i) No uncured default exists on Tenant's part under this Lease, and all of Tenant's representations and warranties made in this Lease shall remain true and correct;

(ii) The Authority Board shall have approved the plans and specifications for the Initial Improvements, following any required environmental review (if any), and the Authority Director shall thereafter have approved the Construction Documents and the construction contractor for the Initial Improvements as set forth in Article 8, and Tenant's construction contractor shall have provided evidence of compliance with City contracting requirements set forth in this Lease, including a certification of compliance with San Francisco Administrative Code Chapters 12B and 12C (Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-1O1)) and a first source hiring agreement in the form attached to the Jobs EOP (**Exhibit C**) (the "First Source Hiring Agreement");

(iii) Tenant shall have provided, and Landlord shall have approved, the Budget and evidence of sufficient financing to complete the Initial Improvements, as set forth in Section 9.1;

(iv) Tenant shall have provided, and Landlord shall have approved, evidence of all required Regulatory Approvals needed to begin the work;

(v) Tenant shall have provided, and Landlord shall have approved, the Master Developer Improvements agreement as set forth in Recital G;

(vi) Tenant and/or its contractors shall have in place all insurance required under this Lease and shall have provided evidence of same to Landlord;

(vii) Tenant or its contractor shall have provided payment and performance bonds for the work, or other security approved by Landlord, from an issuer approved by Landlord, as required under the Treasure Island Subdivision Code;

(viii) Tenant has provided, and Landlord approves the community benefits program to provide sailing opportunities to disadvantaged community and youth at Treasure Island attached hereto as **Exhibit N**. The community benefits program will be reviewed and updated, subject to TIDA Director approval, each 5 years during the Term.

On the date that Tenant has satisfied all of the foregoing conditions, Landlord shall issue to Tenant a notice to proceed with the Initial Improvements (the ‘Notice to Proceed with the Initial Improvements’). The Notice to Proceed with the Initial Improvements may include conditions relative to the DDA Work, if needed to ensure the non-interference with the DDA Work. If Tenant has not received the Notice to Proceed with the Initial Improvements and started construction of the Initial Improvements on or before December 31, 2020, Landlord shall have the right to terminate this Agreement by delivery of a sixty (60) day notice of termination, and this Agreement will automatically terminate six months thereafter if Tenant has not satisfied the conditions for the start of construction and actually commenced construction within the sixty (60) day period, unless extended by Landlord. On the Termination date, Landlord shall also have the right to terminate the Interim Sublease.

7.2 Regulatory Approvals.

(a) Landlord Acting in its Proprietary Capacity. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency with certain police powers. Tenant understands and agrees that neither entry by Landlord into this Lease nor any approvals given by Landlord under this Lease shall be deemed to imply that Tenant has obtained or will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises or the work, or by Treasure Island Development Authority acting in its regulatory capacity or in its capacity as trustee of the Public Trust. By entering into this Lease, Landlord is in no way modifying or limiting the obligations of Tenant to develop the Initial Improvements in accordance with all Laws following the completion of any required environmental review, as provided in this Lease.

(b) Tenant Sole Responsibility for Obtaining Regulatory Approvals. Tenant understands that construction of the Initial Improvements will require approvals, authorizations and permits from governmental agencies with jurisdiction, which may include, without limitation, the Treasure Island Development Authority, the City’s Planning Commission, BCDC, State Lands Commission, Army Corps of Engineers, and others. Tenant shall use good faith efforts to obtain and shall be solely responsible for obtaining any Regulatory Approvals as required. Tenant shall not seek any Regulatory Approval without first notifying Landlord. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with Landlord in Tenant’s efforts to obtain such permits. Landlord shall cooperate reasonably with Tenant in its efforts to obtain such permits, including executing any letters of authorization as owner of the Premises. However, Tenant shall not agree to the imposition of

conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if Landlord is required to be a co-permittee under such permit and the conditions or restrictions could create any obligations on the part of Landlord, or the conditions or restrictions could otherwise encumber, restrict or change the use of the Premises, unless in each instance Landlord has previously approved such conditions in writing and in Landlord's sole and absolute discretion. No such approval by Landlord shall limit Tenant's obligation to pay its share of the costs of complying with such conditions under this Section.

(c) Tenant to Pay All Costs. Tenant shall bear all costs associated with applying for and obtaining any necessary Regulatory Approval. Tenant shall comply with any and all conditions or restrictions imposed by regulatory agencies as part of a Regulatory Approval, whether such conditions are on-site or require off-site improvements. Tenant shall have the right to reasonably appeal or contest any adverse decision and/or imposition of any condition in any manner permitted by Law imposed upon any such Regulatory Approval. Tenant shall 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. Without limiting any other indemnification provisions of this Lease, Tenant shall Indemnify Landlord and the other City Indemnified Parties from and against any and all Losses which may arise in connection with Tenant's failure to seek to obtain in good faith, or to comply with, the terms and conditions of any Regulatory Approval or to pursue in good faith the appeal or contest of any conditions of any Regulatory Approval initiated in connection with the construction of the Initial Improvements or any subsequent improvements or alterations, except to the extent such Losses are caused by the gross negligence or willful misconduct of Landlord acting in its proprietary capacity. The provisions of this Section shall survive any termination of this Lease.

8. INITIAL IMPROVEMENTS

8.1 Tenant's Construction Obligations.

(a) Final Development Concept; Schedule of Performance. Once approved, Tenant shall construct or cause to be constructed improvements on the Premises within the times and in the manner set forth in this Article 8 and as more particularly set forth in the Final Development Concept attached hereto as **Exhibit H**, the Schedule of Performance attached hereto as **Exhibit I**, and the Schematic Drawings attached as **Exhibit J** ("Schematic Drawings") and the approved Construction Documents, collectively, the "Initial Improvements". The Initial Improvements shall be consistent with the SUD and the Design for Development, to the extent applicable, and the plans approved by the Authority Board. Tenant may install antenna, lighting and loudspeakers to support security, safety and operational needs as necessary for Tenant's Uses. All plans for such equipment will be submitted in writing to the Landlord and installed after written consent of Landlord in Landlord's sole discretion is received. Tenant may not install a cellular antenna or other similar equipment for transmission

and reception of communication signals except as directly necessary to support Tenant's security, safety and operational needs, and may not generate revenue from any such equipment.

(b) Timing and Extensions. The satisfaction of the matters set forth in the Schedule of Performance by the required completion dates is an essential part of this Lease, time being of the essence, subject to Force Majeure delays. Tenant shall use commercially reasonable efforts to complete the milestone tasks, including, without limitation, commencing and completing construction of each part or phase of the Initial Improvements by the respective dates specified in the Schedule of Performance or within such extension of time, if any, as Landlord may grant in writing or as otherwise permitted by this Lease.

(c) Force Majeure. The Schedule of Performance shall be extended for delay caused by Force Majeure.

(i) If Tenant determines that Force Majeure has prevented or will or may prevent Tenant from commencing or completing construction in accordance with the Schedule of Performance or performing any other act in accordance with the Schedule of Performance, then Tenant shall notify Landlord in writing of the event or condition constituting Force Majeure and shall propose equitable adjustments to the Schedule of Performance, together with a written explanation of how the proposed adjustments were calculated.

(ii) Within thirty (30) days after receipt of Tenant's written notice, Landlord shall provide a written response to Tenant either (1) requesting additional information as reasonably required to analyze Tenant's request, or (2) agreeing with or disputing Tenant's determination of the occurrence of Force Majeure, and, in the event Landlord agrees with Tenant's determination of Force Majeure, either approving Tenant's requested adjustments to the Schedule of Performance or proposing alternative adjustments to the Schedule of Performance. To the extent of a Force Majeure event creates a delay, the Parties shall approve a reasonable, equitable adjustment to the Schedule of Performance. If Landlord fails or declines to respond to Tenant within thirty (30) day period described above, then Tenant may at Tenant's election provide written notice to Landlord that no notice was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "REQUEST TO EXTEND SCHEDULE OF PERFORMANCE FOR SAILING CENTER IMPROVEMENTS; IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the requested adjustment to the Schedule of Performance shall be deemed approved if Landlord does not respond in writing within twenty (20) days after such notice.

(iii) If Landlord requests additional information, Tenant shall promptly provide such information, together with a renewed request for an adjustment to the Schedule of Performance, and the provisions of the foregoing subsection shall apply to such renewed request. If Tenant and Landlord disagree on the occurrence, duration or impact of Force

Majeure or on the proposed adjustments to the Schedule of Performance, then Tenant and Landlord shall attempt in good faith to meet no less than two (2) times during the thirty (30) day period following Landlord's written response to Tenant, at a mutually agreed upon time and place, to attempt to resolve any such disagreement. During any such period, each Party shall promptly provide the other with additional information on request.

(iv) If Tenant and Landlord are unable to resolve any disagreement over the occurrence or duration of Force Majeure or the reasonable adjustments to the Schedule of Performance required in connection therewith, then Tenant and Landlord, by mutual agreement, may submit such dispute to non-binding arbitration, mediation or other alternate dispute resolution mechanism ("ADR") of non-judicial dispute resolution. The Party requesting ADR shall give written notice of its request, specifying the requested ADR procedure, to the other Party, who shall notify the requesting Party of its agreement or refusal to proceed within a reasonable time after receipt of the requesting notice. If the parties agree to proceed, they shall select a mutually acceptable individual, with qualifications appropriate to the subject matter of the dispute, to conduct the designated ADR, or, if the parties cannot agree on such individual, they shall submit the dispute for the applicable ADR to a commercial ADR service. In all events, the proceedings shall be conducted only in a manner acceptable to both Parties. The parties may enter into operating memoranda from time to time to establish procedures for the initiation and conduct of such ADR mechanisms. Within thirty (30) days after selection of the individual conducting the ADR, such individual shall determine the resolution of the matter. In making this determination, such individual's review shall be confined to (a) the applicable terms and conditions of this Lease; (b) the parties' written notices to each other, as required by this Section, and (c) any additional written information and correspondence exchanged between the parties during consultation period following Landlord's decision to propose alternative adjustments to the Schedule of Performance.

(v) Amendments and extensions to the Schedule of Performance contemplated under this Section may be processed and approved administratively by the TIDA Director, and shall not require the approval of the Authority Board or other legislative body, provided that the TIDA Director shall not have the right to extend the commencement date or completion date by more than twelve (12) months without approval of the Authority Board. The granting of an extension of any date therein shall not be deemed to be a waiver of any other rights under this Lease or imply the extension of any other dates.

8.2 Construction Standards.

(a) Good Construction Practices. All construction with respect to the Initial Improvements shall be accomplished expeditiously, diligently within the time frames set forth in the Schedule of Performance and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and

other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant, while performing any construction with respect to the Initial Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to the Premises and the Initial Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(b) Asbestos-Containing Materials. Without limiting Section 23.1 (No Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without Landlord's prior written consent in each instance.

(c) Tenant's Alterations that Disturb or Remove Lead Based Paint. Tenant shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when an Alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant shall give Landlord three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to Landlord under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

8.3 Costs. Tenant shall bear any and all costs of the Initial Improvements, including any and all cost overruns in relation to the Budget. Without limiting the foregoing, other than the DDA work to be completed by the Master Developer, and the obligation of Landlord to provide access and utility connections to the Premises as provided for in this Lease, and other than any obligation of the Navy to complete remediation on the Premises, Tenant shall be responsible for performing all site preparation work necessary for the construction of the Initial Improvements. Such preparation shall include, among other things, any required investigation and remediation of Hazardous Materials required for development or operation of the Initial Improvements (as limited by the Lease provisions under Sections 2.1 and 6.5), and all structure and substructure work.

8.4 Utilities. Tenant, at its sole expense, shall arrange for the provision and construction of all on-site and off-site utilities necessary to construct the Initial Improvements, and the cost thereof shall be included in the Budget.

8.5 Construction Documents.

(a) Preparation of Documents. Tenant shall prepare all Construction Documents for Landlord's review and approval. The Construction Documents shall consist of the following:

(i) Conceptual Design - Plans and specifications for the improvements described on **Exhibit J**, which generally include, without limitation (a) perspective drawings sufficient to illustrate the Initial Improvements, and (b) a site plan at appropriate scale showing relationships of the Initial Improvements with their respective uses, and designating public access areas, open space areas, walkways, loading areas and adjacent uses, sufficient to describe the development proposal for the Initial Improvements, and the location and size of uses, of the Initial Improvements, all subject to the review and approval of the Authority Board in its sole discretion. Landlord has approved the Schematic Drawings.

(ii) Preliminary Construction Documents in sufficient detail and completeness to show the Initial Improvements and the construction thereof in compliance with the Initial Improvements Requirements (as defined below), and which shall generally include, without limitation, (a) site plans at appropriate scale showing the piers, slips, improvements and open spaces, with all land uses designated and all site development details and bounding streets, and points of vehicular and pedestrian access shown, (b) all building plans and elevations at appropriate scale, (c) building sections showing all typical cross sections at appropriate scale, (e) public access areas, (f) outline specifications for materials, finishes and methods of construction, (g) exterior signage and exterior lighting plans, (h) material and color samples, and (i) mechanical and other equipment, if any. The Preliminary Construction Documents shall be in conformance with the Conceptual Design and

Schematic Drawings, and shall incorporate conditions, modifications and changes specified by Landlord or required as a condition of Regulatory Approvals.

(iii) Final Construction Documents, which shall include all plans and specifications required under applicable Laws to be submitted with an application for a Building Permit. The Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The Final Construction Documents shall incorporate conditions, modifications and changes required by Landlord for approval. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Initial Improvements to be constructed and completed in accordance with this Lease.

(b) Licensed Architect or Engineer. The Construction Documents shall be prepared by or signed by an architect or engineer duly licensed to practice in and by the State of California. A California licensed architect or engineer shall coordinate the work of any associated design professionals, including engineers and landscape architects, and shall inspect all construction and shall provide a certificate in the form of the Certificate attached hereto as **Exhibit K** when required by Landlord. A California licensed structural engineer shall review and certify all final structural plans and the sufficiency of structural support elements to support the Initial Improvements under applicable Laws.

(c) Requirements. The Construction Documents shall conform to and be in compliance with applicable requirements of (i) this Lease, including the Final Development Concept, the Schematic Drawings and the Special Provisions in Article 25, and the plans and specifications approved by the Authority Board, (ii) any mitigation measures identified through environmental review, (iii) the City's Building Code, the SUD and the Design for Development, (iv) any required Regulatory Approvals, and (v) the Preliminary Construction Documents (collectively, the "Initial Improvements Requirements").

8.6 Submission of Construction Documents.

(a) Construction Documents. Construction Documents shall be prepared as provided in accordance with the Final Development Concept and at the time or times established in the Schedule of Performance for each phase of the proposed construction. As to all stages of the Construction Documents, each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. Thus, the Preliminary Construction Documents shall be in substantial conformance with the Schematic Drawings and the Final Development Concept, and shall incorporate conditions, modifications and changes specified by City or required as a condition of Regulatory Approvals as approved by Landlord. The Design Development Drawings and the Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Initial Improvements will be in compliance with the Initial Improvements Requirements and matters previously approved. The Final Construction Documents shall be a final development of, and be based

upon and conform to, the approved Preliminary Construction Documents. The Final Construction Documents shall incorporate conditions, modifications and changes required by City or Tenant for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Initial Improvements to be constructed and completed in accordance with this Lease.

(b) Updated Budgets and Financing Plans. Budgets and financing plans for each phase are to be prepared and provided to Landlord prior to the start of the construction of that phase of such Initial Improvements. Within thirty (30) days of Tenant's receipt of the Preliminary Construction Documents and of the Final Construction Documents for such phase, Tenant shall submit to Landlord for Landlord's review and approval an updated estimated Budget of total development costs for the Initial Improvements, prepared at a level of detail commensurate with the stage of design expressed in the drawings then under review, and to the extent the Budget differs from the Budget previously submitted, shall also submit to Landlord, for Landlord's information, an updated Financing Plan setting forth anticipated sources and uses of funds within of the updated Budget.

8.7 Document Review Procedures.

(a) Role of Staff. Landlord's review and approval of Construction Documents means and requires review and approval of required Construction Documents by City staff or consultants designated to review the Construction Documents by the TIDA Director ("Staff"), provided, Tenant shall not prepare Preliminary Construction Documents until after the Authority Board has approved Tenant's Conceptual Design plans and specifications for the Initial Improvements, following any required environmental review, as set forth above. Notwithstanding any other provision of this Lease or the Lease to the contrary, approval of the Schematic Drawings and the site plan is in no manner intended to, and shall not, evidence or be deemed to evidence approval of the Preliminary Construction Documents or the Final Construction Documents by Landlord or any other entity. TIDA staff will reasonably cooperate with Tenant in processing such Construction Documents and related details.

(b) Method of Tenant Action/Prior Approvals for Construction Documents. Landlord shall use good faith efforts to review and reasonably approve, disapprove or approve conditionally Construction Documents in writing within forty five (45) days after submittal, so long as the applicable documents are properly submitted, complete and satisfy the requirements of this Lease.

(c) Timing of Tenant Disapproval/Conditional Approval and Resubmissions. If Landlord disapproves of any of the Construction Documents in whole or in part, Landlord in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If Landlord conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a reasonable time shall be stated for satisfying the conditions. Tenant shall make a resubmittal as expeditiously as

possible. Tenant may continue making resubmissions until the approval of the submissions or the later of (i) the time specified in any conditional approval or (ii) the date specified in the Schedule of Performance, as either may be extended under the terms hereof.

(d) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any approved Construction Documents without the express written approval of Landlord. Prior to making any changes that Tenant considers to be nonmaterial, Tenant shall notify Landlord in writing or verbally at the progress meetings of the proposed changes. If Landlord in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Landlord's prior written approval.

(e) Approval by Landlord or Tenant. Landlord shall not withhold its approval, where otherwise required under this Lease, of elements of the Construction Documents or changes in Construction Documents required by any governmental body with jurisdiction over the Initial Improvements if all of the following have occurred: (i) Landlord receives written notice of the required change; and (ii) Landlord is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction over the Initial Improvements and requiring such element or change; and (iii) Tenant's modifications are limited as may be required to obtain the approval of the governmental body with jurisdiction; and (iv) the changes do not require additional environmental review, as determined by Planning, or any required environmental review has been completed.

8.11 Selection of Contractor. Tenant's general contractor for the Initial Improvements shall (1) have substantial recent experience in the construction of similar improvements, (2) be licensed by the State of California (as evidenced by Tenant's submission to Landlord of Tenant's contractor's state license number), and (3) have the capacity to be bonded by a recognized surety company to assure full performance of the construction contract for the work shown on the Final Construction Documents (as evidenced by Tenant's submission to Landlord of a commitment or other writing satisfactory to Landlord issued by a recognized surety company confirming that Tenant's contractor is bondable for construction projects having a contract price not less than the contract price under the construction contract for the Initial Improvements).

8.12 Progress Meetings/Consultation. During the preparation of Construction Documents and during the construction of the Initial Improvements, Staff and Tenant shall hold periodic progress meetings to consider Tenant's progress, and to coordinate the preparation of, submission to, and review of Construction Documents by Tenant. Staff and Tenant will communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Landlord and any matters regarding Construction can receive prompt and speedy consideration subject to the terms of this Lease. Tenant shall keep Landlord reasonably informed of all meetings taking place in connection with construction and shall give Landlord the opportunity to attend and participate in such meetings. Landlord may at its own cost, but is not obligated to, have one or more individuals

present on the Premises at any time and from time to time during construction, to observe the progress of construction and to monitor Tenant's compliance with this Lease and any other approved submittals.

8.13 Construction of the Initial Improvements. Upon receipt of the Notice to Proceed with the Initial Improvements, Tenant shall construct all of the Initial Improvements, and demolish and remove existing improvements on the Premises, in compliance with the Construction Documents and the construction schedule approved by Landlord (the "Construction Schedule").

8.14 Construction Schedule. Tenant shall use commercially reasonable efforts to commence, prosecute and complete all construction within the times specified in the Construction Schedule or within such extension of time as Landlord may reasonably grant in writing or as otherwise permitted by the Lease, subject to Force Majeure. During periods of construction Tenant shall submit written progress reports to Landlord, and if requested by Landlord, related or supporting information, in form and detail as may be required reasonably by Landlord, but at least on a quarterly basis. The satisfaction of the matters set forth in the Schedule of Performance by the required completion dates is an essential part of this Agreement, time being of the essence. If the Authority grants an extension of any such date, the Authority shall not be deemed to be waiving any other rights under this Agreement or implying the extension of any other dates.

8.15 Submittals After Completion.

(a) **As Built Documents.** Tenant shall furnish Landlord as-built plans and specifications with respect to the Premises within ninety (90) days after completion of the Initial Improvements. As used in this Section "as-built plans and specifications" means as-built field plans prepared during the course of construction. If Tenant fails to provide as-built plans and specifications to Landlord within such period of time, Landlord after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Landlord's choice of final as-built plans and specifications, at Tenant's sole cost, to be paid by Tenant to Landlord within thirty (30) days after Landlord's request therefor.

(b) **Certified Construction Costs.** Within ninety (90) days after completion of the Initial Improvements, Tenant shall furnish Landlord with an itemized statement of all Construction Costs incurred by Tenant in connection with the construction of the Initial Improvements in accordance with the final construction drawings, certified as true and accurate by a certified public accountant (the "Certified Construction Costs"). Tenant shall keep accurate books and records of all Construction Costs incurred in accordance with accounting principles generally accepted in the construction industry. Landlord shall have the right to inspect Tenant's records regarding the construction of the Initial Improvements and the costs incurred in connection therewith. If Landlord disagrees with the statement of Certified Construction Costs, Landlord may request that such records may be audited by an independent

certified public accounting firm. Such audit shall be binding on the Parties, except in the case of fraud, corruption or undue influence. The entire cost of the audit shall be paid by Landlord unless the audit discovers that Tenant has overstated the Construction Costs by more than five percent (5%), in which case Tenant shall pay the entire cost of the audit.

8.16 Insurance Requirements. During construction of the Initial Improvements, Tenant shall maintain or cause to be maintained the insurance set forth in **Exhibit L**. After five (5) days' written notice to Tenant, Landlord has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Lease that Tenant fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Tenant; provided, however, if Tenant reimburses Landlord for any premiums and subsequently provides such insurance satisfactory to Landlord, then Landlord agrees to cancel the insurance it obtained and to credit Tenant with any premium refund.

8.17 Landlord Right of Access. Landlord and its agents will have the right of access to the Premises to the extent necessary to carry out the purposes of this Lease, including, but not limited to, the inspection of Tenant's maintenance of the Premises and inspection of the work being performed by Tenant in constructing the Initial Improvements. To the extent reasonably practicable, Landlord shall take reasonable action to minimize any interference with Tenant's construction activities. Landlord will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Initial Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

8.18 Prevailing Wages and Working Conditions; Local Hire.

(a) Any undefined, initially-capitalized term used in this subsection shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with Landlord and the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in Landlord or City enforcement actions in any Construction Contract

with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the Landlord, the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current rates, see www.sfgov.org/olse/prevailingwages or call the City's Office of Labor Standard Enforcement.

(b) Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Storage Automobile Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11). If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, Landlord shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. Landlord may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Tenant shall provide to Landlord (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

(c) In connection with any Construction, Tenant shall comply with the local hire requirements set forth in Section 22.25.

8.19 Construction Signs and Barriers. Tenant shall provide appropriate construction barriers and construction signs and post the signs on the Premises during the period of construction. The size, design and location of such signs and the composition and appearance of any non-moveable construction barriers must be submitted to Landlord for approval before installation, which approval may not be withheld, conditioned or delayed unreasonably.

8.20 Certificate of Completion.

(a) Tenant Request for Certificate. After Tenant has completed the construction of the Initial Improvements in accordance with this Lease, Tenant may request a Certificate of Completion in writing. Landlord shall act on Tenant's request within forty-five (45) days of receipt. Landlord's issuance of any Certificate of Completion does not relieve Tenant or any other person from any obligations to secure or comply with any Regulatory Approval of any agency (including Landlord) that may be required for the occupancy or operation of the Improvements of the Initial Improvements. Tenant shall comply with all such requirements or conditions separately.

(b) Deferred Items; Issuance. If there remain uncompleted (i) customary punch list items, (ii) landscaping, or (iii) any other item that Landlord approves in writing that has not yet been completed (collectively "Deferred Items"), Landlord may reasonably condition approval of a Certificate of Completion upon provision of security or other assurances in form, substance and amount satisfactory to Landlord that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to Landlord) or funds in an escrow account acceptable to Landlord (with joint escrow instructions acceptable to both Parties) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by Landlord. The obligations set forth in this subsection shall survive a termination of this Lease.

(c) Definition of Completion. For purposes of this Lease, "Completed" and "Completion" mean completion of construction by Tenant of all aspects of the Initial Improvements in accordance with the approved Construction Documents, and in compliance with all Regulatory Approvals, or provision of security satisfactory to Landlord for Deferred Items, and final building permit sign off. Completion shall be evidenced by Landlord's issuance of a Certificate of Completion.

(d) Certification of Completion. The Certificate of Completion will be in the form of **Exhibit M** attached hereto. For purposes of this Lease, the Certificate of Completion will be a conclusive determination of Completion of the Initial Improvements (except for completion of Deferred Items) and of the right of Tenant to occupy all of the Initial Improvements in accordance with the terms of the Lease. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

(e) Failure to Issue. If Landlord refuses or fails to furnish a Certificate of Completion, Landlord shall, within forty-five (45) days, provide Tenant with a written statement specifying the reasons Landlord refused or failed to furnish the Certificate of Completion and identifying the items Tenant shall complete or requirements it shall satisfy to obtain a Certificate of Completion.

8.21 Termination of Agreement Before Completion.

(a) Delivery of Reports and Information. Upon any termination of this Lease before Completion of the Initial Improvements, Tenant shall assign and deliver to Landlord any and all copies of reports and studies in its possession of Tenant or Tenant's agents, employees, contractors, architects, engineers or consultants or reasonably obtainable by Tenant or reports and studies prepared by or for Tenant regarding the Premises and all Construction Documents in the of Tenant or Tenant's agents, employees, contractors, architects, engineers or consultants or possession reasonably obtainable by Tenant, or prepared for Tenant, for the development of the Premises within thirty (30) days after written demand from Landlord, in each case if and to the extent assignable. Landlord may use said reports, studies and Construction Documents for any purpose whatsoever relating to the Premises, without cost or liability therefor to Tenant or any other person or entity; provided, however, Landlord shall release Tenant and Tenant's contractor, architect, engineer, agents, employees and other consultants from any Losses arising out of Landlord's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Landlord to complete construction. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Improvements an express agreement by the contractor performing such services that the Landlord may use such reports, studies or Construction Documents as provided in this Section without compensation or payment from the Landlord in the event such reports, studies or Construction Documents are delivered to the Landlord under the provisions of this Section, provided that the Landlord agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission and (ii) to remove it at their written request.

(b) Property Condition. If this Agreement terminates due to an Event of Default by Tenant before completion of the Initial Improvements, Tenant shall, at its sole expense, return the Premises to Landlord in a condition not less safe than the condition of the Premises on the Effective Date, and unless otherwise requested by Landlord, shall remove all loose building materials and debris present at the Premises resulting from Tenant's Construction activities. In the event that Tenant is required to return the Premises as provided above in this Section, Tenant shall obtain those permits customary and necessary to enter upon the Premises in order to complete such work and shall otherwise comply with applicable Law. In such event, Landlord shall cooperate with Tenant in Tenant's efforts to obtain such permits, provided that Landlord will not be required to expend any money or undertake any obligations in connection therewith. The provisions of this Section shall survive any termination of this Agreement.

8.22 Ownership of Initial Improvements / Alterations. The Initial Improvements and any Alterations shall be and remain Tenant's property during the Term. Upon the termination of this Lease, Tenant shall return the Premises, including the Initial Improvement and any Alterations, in good condition as set forth in Article 22; provided, Landlord shall not have the right to require Tenant to remove any of the Initial Improvements or Alterations unless these have not been maintained as required under this Lease. Any of the Initial Improvements or Alterations that Landlord does not require Tenant to remove shall automatically become Landlord's property, without payment to Tenant, on the expiration or sooner termination of this Lease. If Landlord elects to require the removal of the Initial Improvements or Alterations, Tenant shall remove such structures, buildings, installations, and/or improvements within ninety (90) days after Landlord's notification to Tenant. Tenant agrees to repair any and all damage occasioned by any such removal.

8.23 Tenant's Personal Property. Tenant's Personal Property shall be and shall remain the property of Tenant and shall be removed by Tenant, subject to the provisions of Article 22. Tenant shall be solely responsible for providing any security or other protection of or maintenance to Tenant's Personal Property.

9. APPROVAL OF FINANCING AND CONSTRUCTION CONTRACT

9.1 Required Submittals. For evidence of financing required to begin construction of the Initial Improvements, Tenant shall submit the items listed below.

(a) Development Budget. A final budget of total development costs for the Initial Improvements (the "Budget") in accordance with (i) the Final Construction Documents or the Preliminary Construction Documents if Tenant is using the Site Permit process and (ii) the Final Development Concept. The Budget shall include, but not be limited to, line items for all pre-development costs, permits and fees, architectural and engineering costs, financing costs, hard construction costs, furniture, fixtures and equipment costs, and costs of all improvements to be constructed by Tenant.

(b) Sources and Uses. A statement and appropriate supporting documents certified by Tenant to be true and correct and in form reasonably satisfactory to Landlord showing sources and expected uses of funds and sufficient to demonstrate that (i) Tenant has or will have adequate funds to complete each phase of the Initial Improvements in accordance with the Budget and (ii) such funds have been spent for uses described in the Budget or are committed and available for that purpose.

(c) Operating Budget. An operating budget, including all anticipated Gross Income, all anticipated expenses, including required deposits into the Capital Maintenance Account, as required by the Lease, and including an estimate of net revenues anticipated to be realized for the period covered by such operating budget (the "Operating Budget"). The

Operating Budget must also project expenses, Gross Income and net revenues for the two (2) year period after the initial budget year and must be approved by Landlord. The scope of Landlord's review for such approval shall include whatever Landlord reasonably determines is necessary to conclude that the Initial Improvements are financially feasible.

(d) Debt Financing. With regard to all debt financing, a copy of a bona fide commitment or commitments, with no conditions other than standard and customary conditions (or as otherwise approved by Landlord in its reasonable discretion) and no provisions requiring anything contrary to the terms of this Lease, for the financing of each phase of that portion of the Budget intended to be borrowed by Tenant, certified by Tenant to be a true and correct copy or copies thereof. In evaluating the proposed Budget, Landlord may consider whether the proposed Budget reflects a reasonable maximum loan to value ratio. The commitment or commitments shall be obtained from a Bona Fide Institutional Lender (or Lenders), and, if required by any construction lenders(s), shall include commitments for permanent financing. Tenant covenants and agrees to perform any and all conditions to funding in accordance with such commitments.

(e) Tenant Equity Investment. With regard to all paid capital contributions or equity, a written statement with appropriate supporting documents certified by Tenant to be true and correct and in a form reasonably satisfactory to Landlord showing actual receipt of contributions.

(f) Construction Contract. Evidence of a guaranteed maximum price contract or a stipulated sum contract for construction of each phase of the Initial Improvements consistent with the approved Budget and the financing for each phase of the Initial Improvements in form reasonably acceptable to Landlord with a contractor reasonably acceptable to Landlord (a "Construction Contract"). Except as otherwise specifically agreed by the TIDA Director in writing, the Construction Contract shall be a contract on commercially reasonable terms for construction of the Initial Improvements described in the Final Construction Documents: (A) with a contract sum or guaranteed maximum price consistent with the approved Budget and financing, (B) requiring Tenant or contractor to obtain performance and payment bonds guaranteeing in full the contractor's performance and payment of subcontractors under the Construction Contract; (C) naming Landlord and the City and their respective boards, commissions, directors, officers, agents, and employees as co-indemnities with respect to Tenant's contractor's obligation to indemnify and hold harmless Tenant from all Losses arising out of the Construction Contract; (D) requiring Tenant and Contractor (as applicable) to obtain and maintain insurance coverages reasonably acceptable to Landlord, including general liability and builder's risk insurance coverage that names City and its directors, officers, agents, and employees as additional insureds under the terms of the policies, (E) identifying Landlord as an intended third party beneficiary of the Construction Contract, with the right to enforce the terms and conditions of the Construction Contract and pursue all claims thereunder as if it were an original party thereto; (F) consenting to the assignment of the Construction Contract to Landlord, in whole or in part, including but not limited to the assignment of (i) all express and

implied warranties and guarantees from the contractor, all subcontractors and suppliers, (ii) all contractual rights related to the correction of nonconforming work, and (iii) the right to pursue claim(s) for patent and latent defects in the work and the completed project; and (G) providing for the contractor's(s') obligation, for a period of at least one (1) year after the final completion of construction of the Initial Improvements, to correct, repair, and replace any work that fails to conform to the Final Construction Documents (as the same may be revised during construction pursuant to properly approved change orders) and damage due to: (i) faulty materials or workmanship; or (ii) defective installation by such contractor(s) of materials or equipment manufactured by others.

(g) Adequate Security. Evidence of a performance bond or other security approved by Landlord, in 100% of the cost of construction of each phase of the Initial Improvements, or a completion guaranty that provides the reasonable equivalent or better protection to Landlord. A performance bond must be issued by a responsible surety company licensed to do business in California and acceptable to Landlord.

The foregoing submissions may be in substantially final form (including the pricing under the Construction Contract) at the time of initial submission by Tenant, but must be noted as such at the time of such submission and all material changes to such submission thereafter must be resubmitted to Landlord for approval with all additions and deletions clearly noted by Tenant. All such submissions must be in final form by no later than ten (10) days before the proposed start of construction.

9.2 Approval Process. Within thirty (30) days after Tenant's submission of all of the documents described in Section 9.1, Landlord will notify Tenant in writing of its approval or disapproval (including the reasons for disapproval) of the evidence of financing, provided that at least forty-five (45) days before the date of such request for approval, Landlord shall have received Preliminary Construction Documents in sufficient detail to allow Landlord to obtain a cost estimator's report if Landlord, in its sole discretion and at its sole cost and expense, determines to obtain such a report.

10. NO LIENS

10.1 Construction Liens. Tenant shall keep the Premises, this Lease, and any improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its agents. If Tenant does not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record or sufficiently bonded over in Landlord's reasonable determination, it shall be a material default under this Lease, and Landlord shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose and all reasonable expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant within thirty (30)

days following written demand by Landlord. Landlord shall keep the Premises and any Improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by Agents of Landlord. Without limiting the foregoing, Tenant shall Indemnify Landlord for any and all Losses resulting from any liens against the Premises or any improvements thereon.

10.2 Contests. Tenant may contest the validity or amount of any tax, assessment, encumbrance or lien related to the Premises and to pursue any remedies associated with such contest; provided, however, such contest and pursuit of remedies does not subject the Premises or any portion of it to forfeiture or sale and such contest shall be subject to all of the terms and conditions of the Lease, including, but not limited to, the provision of security.

11. SUBSEQUENT IMPROVEMENTS / ALTERATIONS

11.1 Subsequent Improvements / Alterations. Following Completion of the Initial Improvements, Tenant shall not construct, install, make or permit to be made any alterations, installations or additions in, to or about the Premises costing in excess of One Hundred Thousand Dollars (\$100,000) over the course of any twenty-four (24) month period (“Alterations”) without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to Landlord's consent as provided above, any Alterations shall be done at Tenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Landlord in writing, (ii) by Tenant or by duly licensed and bonded contractors or mechanics approved by Landlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Landlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations materially impair the use or operation of the Treasure Island property, or any portion thereof, or Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Tenant, at its sole expense, shall procure all Regulatory Approvals and shall promptly upon receipt deliver copies of all such documents to Landlord. All construction related requirements for Alterations, including without limitation Landlord’s review and approval of Construction Documents, the contractor, insurance, bonding, financing and other construction requirements shall be as set forth in Article 8 and Article 9; provided, Landlord shall have the right to waive any such requirements in its sole discretion. No material change from the plans and specifications for any Alterations approved by Landlord may be made without Landlord's prior consent. Landlord and Landlord’s Agents shall have the right to inspect the course of construction on the Premises at all times.

(a) **Material Changes.** Once approved, any and all material changes to such plans for Alterations must be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Landlord Notification. Tenant shall notify Landlord before submitting an application to any governmental regulatory agency for a Regulatory Approval for Alterations. Tenant shall also provide Landlord with a copy of all such applications within five (5) days of submittal, along with copies of all any plan submitted as part of the application. Tenant shall also provide Landlord, within ten (10) days of Tenant's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.

(c) Construction. Upon satisfaction of all conditions, Tenant shall construct the Alterations, at Tenant's cost, in accordance with the requirements set forth in Article 8. Upon completion, Tenant shall provide to Landlord as-built plans of the Alterations.

11.2 Minor Alterations. Tenant may construct, install, make or permit to be made any alterations, installations or additions in, to or about the Premises costing less than One Hundred Thousand Dollars (\$100,000) over the course of any twenty-four (24) month period ("Minor Alterations") without Landlord's prior written consent. Any Minor Alterations shall be performed at Tenant's sole expense by Tenant or by duly licensed and bonded contractors or mechanics, and in a good and professional manner. In no event shall the construction, installation or the making of any Minor Alterations impair the use or operation of the Treasure Island property, or any portion thereof, or Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Minor Alterations, Tenant, at its sole expense, shall procure all Regulatory Approvals and shall promptly upon receipt deliver copies of all such documents to Landlord. The requirements of Section 8.2 [Construction Standards], 8.4 [Utilities], 8.17 [Landlord Right of Access], 8.18 [Local Hire and Wages and Working Conditions], 8.19 [Construction Signs and Barriers], 8.23 [Ownership of Initial Improvements/Alterations, and 8.24 [Tenant's Personal Property] shall apply to all Minor Alterations.

11.3 Landlord's Alterations. Landlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of Treasure Island without Tenant's prior written consent provided that any such alterations or improvements shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein or materially interfere with Tenant's access to the Premises.

12. MAINTENANCE AND REPAIR

12.1 Tenant Responsibility

(a) Tenant Maintenance. Except as provided in Section 12.5 and 12.7 of this Lease, Tenant shall assume full responsibility for operation and maintenance of the Premises throughout the Term at no cost to Landlord. Tenant shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the Premises in a good, safe, healthy, and sanitary condition, satisfactory to Landlord and in compliance with all applicable Laws. Tenant shall make such repairs with materials, apparatus

and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired or replaced. Without limiting the foregoing, Tenant shall promptly make all such repairs and replacements: (a) at no cost to City, (b) by licensed contractors or qualified mechanics, and (c) in accordance with any applicable Laws. Tenant shall provide approved containers for trash and garbage and keep the Premises free and clear of rubbish, litter, and any other fire hazards, and encourage maximum waste diversion consistent with City policies. By March 1 of each year, Tenant shall develop and implement a preventive maintenance schedule and provide a copy to Landlord. Tenant shall also contract with qualified independent contractors, paying prevailing wages, for the maintenance and repair of items that is not performed by regular maintenance employees.

(b) **No Landlord Duty.** Except as provided in Section 12.5 and 12.7 of this Lease, Landlord shall not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or Clipper Cove in any manner. Tenant waives all rights to make repairs at the expense of Landlord, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of said Code.

(c) **Notice.** Tenant shall deliver to Landlord, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority having responsibility for the enforcement of any applicable Laws, asserting that the Premises is in violation of applicable Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies maintained by Tenant under this Lease, asserting that the requirements of such insurance policy or policies are not being met. Landlord shall deliver to Tenant, promptly after receipt, a copy of any notice which Landlord may receive from time to time from any governmental authority having responsibility for the enforcement of any applicable Laws, asserting that the Premises is in violation of such Laws.

12.2 Reserve Account. Not applicable.

12.3 Landlord Inspection. For the purpose of keeping the Premises in a good, safe, healthy, and sanitary condition, Landlord always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Premises, provided that Landlord or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and disruption to Tenant's operation as practicable; (b) occurs after reasonable notice to Landlord; and (c) comply with all reasonable safety and security requirements of Tenant. Tenant's safety and security requirements cannot be used to bar Landlord's right of inspection.

12.4 Tenant Work Following Landlord Notification. If Landlord determines, following inspection, that the Premises are not in the condition required herein, Landlord shall notify Tenant of the same, together with the reasons for Landlord's determination and a statement of work that Tenant should complete in order to bring the Premises into compliance ("Landlord's Work Notice"). Tenant shall, within fifteen (15) days of receiving Landlord's Work Notice,

notify Landlord that it intends to complete the work or, if Tenant believes that some or all of the work set forth in Landlord's Work Notice is not required, Tenant shall notify Landlord of the same and the reasons the specified work is not required. The parties agree to meet and confer in good faith for not less than sixty (60) days to agree upon an acceptable scope of work and schedule. Tenant shall begin the necessary work within ninety (90) days following the meet and confer period and diligently prosecute the same to completion. If Regulatory Approvals are required to start the work, then Tenant will begin the work within ninety (90) days following receipt of the necessary Regulatory Approval. Tenant shall not be in default of this Lease if Tenant commences the work within the above periods and diligently prosecutes same to completion.

12.5 Landlord Responsible For Certain Maintenance or Dredging. Notwithstanding anything in this Lease to the contrary, Landlord shall perform or cause the performance of all dredging in Clipper Cove in order to maintain a four (4) foot minimum depth at Mean Low Water, as necessary for the use and ongoing operation of the Premises ("Dredging"). Landlord shall not be responsible for any other dredging of Clipper Cove or surrounding areas. Any additional dredging required for Tenant's use of the Premises shall be performed by Tenant at its sole cost.

Landlord shall cooperate with Tenant in all aspects of the permitting process or loan application process for Dredging activities, provided that all costs of Dredging shall be borne solely and exclusively by Tenant and Landlord shall not be required to incur any costs in connection with its cooperation with Tenant.

12.6 Landlord's Self-Help Rights. In the event Tenant fails to maintain, repair or make any repairs or replacements as required, Landlord may, but shall not be required, upon not less than thirty (30) days prior written notice (or in the case of an emergency, notice of not less than the time period which would be reasonable in light of the nature of the emergency) and Tenant's failure to timely remedy any maintenance item properly noticed, or make any repair or replacement properly noticed, undertake the maintenance, repair or replacement noticed and the actual out-of-pocket cost thereof (including, but not limited to, the cost of labor overhead, materials and equipment) shall be charged to Tenant and payable by Tenant to Landlord as additional rent within thirty (30) days following delivery by Landlord to Tenant of a statement (with supporting invoices to the extent available) setting forth in reasonable detail the cost of such maintenance, repair or replacement. Landlord's rights reserved in this Article 12 shall not create or increase any Landlord obligations in this Lease.

12.7 Utilities. Landlord shall provide connection points to the basic electricity, water, telecommunications, and sewer utilities to the Premises. Tenant shall be responsible for obtaining, and paying for, any utilities or services that Tenant may need for its use of the Premises. Tenant shall pay, without set off or counterclaim, all amounts due and owing for such utilities and services at the rates charged by the utility provider. Tenant understands and acknowledges that existing utility lines at Treasure Island are old and in need of repair and replacement, and any interruption in, or failure or inability to provide any utility shall not

constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord or the City any liability whatsoever. Tenant agrees, with respect to any public utility services provided to the Premises by Landlord or the City (if applicable), that no act or omission of Landlord or the City in its capacity as a provider of public utility services shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant 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 Landlord relating to this Lease, any losses arising from or in connection with the provision (or failure to provide) public utility services. If and to the extent utility services are provided by the SFPUC, Tenant agrees to purchase such services from the SFPUC at the standard rates charged to tenants and property owners.

12.8 Other Services. Tenant shall provide all janitorial services for the Premises at no cost to Landlord. Tenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times in compliance with Laws. Tenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations. Tenant shall pay for the removal of trash from the designated containers. Tenant shall abide by all rules established by Landlord for the handling of trash.

12.9 No Right to Repair and Deduct. Tenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at Landlord's expense, or to terminate this Lease because of Landlord's failure to keep the Premises or any part of Treasure Island in good order, condition or repair, or to abate or reduce any of Tenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Tenant to terminate this Lease and with respect to any obligations of Landlord hereunder or any right of Tenant to make repairs or replacements and deduct the cost thereof from Rent.

12.10 Water and Energy Conservation; Mandatory or Voluntary Restrictions. If any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on Landlord or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event Landlord is required or elects to make alterations to any part of the Premises in order to comply with such mandatory or voluntary controls or guidelines or to save power, water or other utility charges, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Rent hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that Landlord shall consult with Tenant prior to the construction of any

such alterations in order to minimize the effect of any such improvement on the operations of Tenant under this Lease.

13. COMPLIANCE WITH LAWS

13.1. Compliance with Laws. Subject to Sections 2.1 and 6.5, Tenant shall promptly, at its sole expense, maintain the Premises and Tenant's use and operations thereon in strict compliance at all times with all present and future Laws relating to the Premises or the use or occupancy thereof, whether foreseen or unforeseen, ordinary as well as extraordinary, and with any and all recorded covenants, conditions and restrictions affecting the Treasure Island property or any portion thereof. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Hazardous Materials Laws (as defined in this Lease below), and all applicable provisions of the San Francisco Environment Code. Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Tenant any right to seek redress against Landlord for failing to comply with any Laws. Tenant's obligation to comply with all Laws provided herein is a material part of the bargained for consideration under this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

13.2. Regulatory Approvals; Responsible Party. Tenant understands and agrees that Tenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of Landlord. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify Landlord and City, including their respective Agents, against any and all Losses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

13.3. Compliance with Landlord's Risk Management Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Landlord from any potential premises liability. Tenant shall faithfully observe, at its expense (i) any and all reasonable requirements of Landlord's Risk Manager with respect thereto, and (ii) the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations.

14. LIENS AND LEASEHOLD MORTGAGES

14.1 No Liens on Landlord's Fee Interest.

Tenant may not under any circumstance engage in any financing or other transaction creating any mortgage, lien or other encumbrance on Landlord's fee interest in the Premises. Landlord's fee interest in the Premises shall not be subordinated under any circumstance whatsoever to any Mortgage.

14.2 Leasehold Encumbrances.

(a) Tenant's Right to Mortgage Leasehold. Except as expressly permitted in this Article 14, Tenant shall not Encumber Tenant's leasehold interest in the Premises, the Initial Improvements or Alterations, or this Lease. Any Mortgage that is not permitted hereunder shall be deemed to be a violation of this Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced. Pursuant to the terms and to the extent permitted by this Section, Tenant shall have the right to Encumber Tenant's leasehold estate created by this Lease by way of a leasehold Mortgage; provided that, (i) notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent and for the performance of all other obligations under this Lease, and (ii) no Mortgage shall secure debt that exceeds seventy percent (70%) of the cost of the Initial Improvements without the prior written approval of the Authority Director the Authority Director's sole discretion. Tenant shall promptly notify Landlord of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Premises, the Initial Improvements or Alterations, or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise. In no event will Landlord's fee interest in the Premises (including, without limitation Landlord's right to receive rent hereunder) be encumbered or subordinated as a result of any Mortgage entered into by Tenant.

(b) Leasehold Mortgage Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder. Notwithstanding anything herein to the contrary, any rights given to Mortgagees under this Lease shall not apply to more than one Mortgagee at any one time. If at any time there is more than one Mortgage constituting a lien on any portion of the Premises, the lien of

the Mortgage prior in time to all others shall be vested with the rights under this Article 14 to the exclusion of the holder of any junior Mortgage.

(i) No Invalidation of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including, without limitation, the use of any proceeds of any debt, the repayment of which is secured by the Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of the Mortgage. Neither the occurrence of any default under a Mortgage, nor any foreclosure action or conveyance in-lieu-of foreclosure, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease.

(ii) Purpose of Mortgage; Protections Limited to Permitted Mortgagees. A Mortgage may be given only to a Bona Fide Institutional Lender, or to any other lender approved by Landlord in its sole discretion. A Mortgage shall be made only to finance the Initial Improvements or any approved Alterations, or for the purpose of refinancing a permitted Mortgage, and shall not be cross-collateralized or cross defaulted with any other debt of Tenant or any other party. Tenant shall not be permitted to refinance a permitted Mortgage in order to take out cash for application to property other than the Premises or for application to the obligations of Tenant other than those created under this Lease.

(iii) Rights Subject to Lease; Restoration Obligations. All rights acquired by the Mortgagee under a Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder. None of such covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of the Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing. Except as set forth below, no Mortgagee shall be obligated to restore any damage to the Premises; provided, however, (i) that nothing in this Section shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements permitted under this Lease, and (ii) in the event that the Mortgagee obtains title to the leasehold and chooses not to complete or restore the improvements where Tenant otherwise has the obligation to so restore, it shall so notify Landlord in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to restore the improvements as required under this Lease, but in any event the Mortgagee shall cause such sale to occur within six (6) months following the Mortgagee's written notice to Landlord of its election not to restore. If Mortgagee fails to sell its tenancy interest using good faith efforts within such six (6) month period, it shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to restore the improvements to the extent Tenant is required under this Lease to so restore, and all such work shall be performed in accordance with all the requirements set forth in this Lease.

(iv) Required Notice Provision in Mortgage. Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give a copy

of each written notice to Landlord of the occurrence of any event of default under the Mortgage; (b) that Landlord shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

14.3 Notices to Mortgagee.

(a) Copies of Notices. Subject to subsection (b) below, Landlord shall give a copy of each default notice Landlord gives to Tenant from time to time of the occurrence of a default or an Event of Default, to a Mortgagee that has given to Landlord written notice substantially in the form provided in subsection (b). Copies of such notices shall be given to the Mortgagee at the same time as notices are given to Tenant by Landlord, addressed to the Mortgagee at the address last furnished to Landlord. Landlord's delay or failure to give such notice to the Mortgagee shall not be deemed to constitute a default by Landlord under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee to cure any default by Tenant. Any such notices to Mortgagee shall be given in the same manner as provided in Section 24.1 [Notices].

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

“The undersigned does hereby certify that it is the Mortgagee, as such term is defined in that certain Lease entered into by and between Landlord and County of San Francisco, as landlord, and _____, as tenant (the “**Lease**”), of Tenant's interest in the Lease of the premises known as the Treasure Island Sailing Center, a legal description of which is attached hereto as Exhibit A. The undersigned hereby requests that copies of any and all default notices from time to time given under the Lease by Landlord to Tenant be sent to the undersigned at the following address:
_____.”

14.4 Mortgagee's Right to Cure.

If Tenant shall enter into a Mortgage in compliance with the provisions of this Lease, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. In the case of any notice of default given by Landlord to Tenant, the Mortgagee shall each have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied plus an additional fifteen (15) days thereafter for a monetary default or an additional thirty (30) days thereafter for a nonmonetary default, and Landlord shall accept such performance by or at the instance of the Mortgagee as if the same had been made by Tenant within the applicable cure periods under the Lease.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured before Mortgagee obtaining possession, Landlord shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified Landlord of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch and completes such proceedings no later than six (6) months thereafter. A Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults or Events of Default hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) the Mortgagee shall agree with Landlord in writing to comply during the period Landlord forebears from terminating this Lease with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by the Mortgagee. Notwithstanding anything to the contrary, the Mortgagee shall have the right at any time to notify Landlord that it has relinquished possession of the Premises to Tenant, or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further rights or liability from and after the date it delivers such notice to Landlord, and, thereupon, Landlord shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are reasonably susceptible of being performed by the Mortgagee. Notwithstanding anything herein to the contrary, to the extent the Mortgagee is not reasonable capable of performing an obligation under this Lease, such obligations shall apply to and remain effective on a prospective basis to any assignee or transferee of the Mortgagee notwithstanding Mortgagee's inability to perform. Notwithstanding anything to the contrary above, if the Premises are not used by Tenant or Mortgagee or a designee of Mortgagee as required by this Lease and such non-use continues for a period of twelve (12) months, then Landlord shall have the right to terminate this Lease by providing thirty (30) days' notice of

termination, subject to Tenant's and/or Mortgagee's right to cure by commencing operations during the thirty (30) day period and continuing thereafter in accordance with this Lease.

(c) Construction. Subject to subsection (b) above, if an Event of Default occurs following any damage but before restoration of the Initial Improvements or Alterations, the Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the improvements beyond the extent necessary to preserve or protect the improvements or construction already made, unless the Mortgagee expressly assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to restore, in the manner provided in this Lease, the improvements. Upon assuming Tenant's obligations to restore, the Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the restoration to the date of such assumption.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, except as a result of damage or destruction to the Premises as set forth in Article 15 or a Taking as set forth in Article 16, Landlord shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. The Mortgagee shall thereupon have the option to obtain a New Lease (a "New Lease") in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, Landlord shall enter into a New Lease of the Premises with the Mortgagee within such period or its designee, subject to the provisions set forth in this Section and provided that the Mortgagee assumes all of Tenant's obligations under any subleases or contracts affecting the Premises then in effect; and

(ii) Such New Lease shall be entered into at the sole cost of the Mortgagee, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease (provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by Landlord after the Commencement Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease). Such New Lease shall require the Mortgagee to perform any unfulfilled obligation of Tenant under this Lease. Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease. Effective upon the commencement of the term of

any New Lease, any sublease or contract then in effect shall be assigned and transferred to Mortgagee.

(e) Nominee. Any rights of a Mortgagee under this Article 14 may be exercised by or through its nominee or designee (other than Tenant) which is an affiliate of the Mortgagee; provided, however, no Mortgagee shall acquire title to the Lease through a nominee or designee which is not a person otherwise permitted to become Tenant hereunder; provided, further that the Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of the Mortgagee.

(f) Limited to Permitted Mortgagees. Notwithstanding anything herein to the contrary, the provisions of this Article 14 shall inure only to the benefit of the holder of a Mortgage which is permitted hereunder.

(g) Consent of Mortgagee. No material modification, termination or cancellation of this Lease (herein, a “change”) shall be effective as against a permitted Mortgagee unless a copy of the proposed change shall have been delivered to the Mortgagee and such Mortgagee shall have approved the change in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Any Mortgagee shall either approve or disapprove the proposed modification, termination, cancellation or surrender, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain Mortgagee's approval, in writing within thirty (30) days after delivery of a copy thereof. Mortgagee's failure to deliver an approval or disapproval notice within such thirty (30) day period shall be deemed approval.

(h) Limitation on Liability of Mortgagee. Notwithstanding anything herein to the contrary, no Mortgagee shall be liable to perform Tenant's obligations under this Lease unless and until the Mortgagee acquires Tenant's rights under this Lease.

14.5 Assignment by Mortgagee

The foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or other transferee in connection therewith as the tenant under this Lease. Such Mortgagee's or transferee's right thereafter to transfer, assign or sublet this Lease or a New Lease shall be subject to the restrictions of Article 17.

14.6 Transfer of Mortgage

Landlord hereby consents to the transfer of a Mortgage, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such transfer, the new holder of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

14.7 Memorandum of Lease.

In the event the recordation of a memorandum of this Lease (a “Memorandum of Lease”) is necessary in connection with a Mortgage permitted under this Lease, Tenant shall have the right to at its sole cost to record a Memorandum of Lease confirming the existence of this Lease, and commencement and expiration dates and option dates, and referencing the actual Lease for all other provisions. In such event, Landlord agrees to prepare, execute and acknowledge such Memorandum of Lease in recordable form, and deliver the Memorandum of Lease to Tenant for Tenant's execution and recordation at Tenant's cost. If such a Memorandum of Lease is recorded, then upon expiration or earlier termination of this Lease, Tenant agrees promptly to execute, acknowledge and deliver to Landlord, upon written request by Landlord, a termination of such Memorandum of Lease in such form as Landlord may reasonably request, for the purpose of terminating any continuing effect of the previously recorded Memorandum of Lease as a cloud upon title to the Premises, and Tenant shall Indemnify Landlord from and against any and all Losses (including, without limitation, Attorneys' Fees and Costs) arising out of or in connection with Tenant’s failure to so promptly execute such termination of Memorandum of Lease.

14.8 Assignment of Rents.

Tenant hereby assigns to Landlord, as security for Tenant's performance of its obligations under this Lease, all of Tenant's right, title and interest in and to all rents and fees due or to become due from any present or future subtenant, licensee, concessionaire, or other person occupying or providing services or goods on or to the Premises (collectively, “Assigned Rents”), but such assignment shall be subject to the right of Tenant to collect such rents until the date of any default hereunder. Landlord shall apply amount collected hereunder to the Rent due under this Lease. The foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 14.2 of which Landlord has been made aware in writing until such time as Landlord has terminated this Lease, at which time the rights of Landlord in all rents and other payments assigned pursuant to this Section shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, Landlord shall, upon the request of a Mortgagee, execute a subordination agreement reflecting the subordination described in this Section in form and substance reasonably satisfactory to such Mortgagee and to Landlord. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to Landlord the rents so collected (less the actual and reasonable cost of collection) to the extent necessary to pay Landlord any Rent, through the date of termination of this Lease.

15. DAMAGE OR DESTRUCTION

15.1 Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Tenant or Tenant's Agents or Tenant's Invitees, (ii) is not covered by the insurance required to be held by Tenant under this Lease, (iii) prevents Tenant from operating the Premises for the purposes stated herein, and (iv) costs more to repair than the Repair amount set forth in the Basic Lease Information, either party may terminate this Lease upon sixty (60) days prior written notice and upon any such termination Tenant shall surrender the Premises in accordance with Article 22 [Surrender] (except, notwithstanding anything in this Lease to the contrary, Tenant shall be required to restore the Premises to a safe condition, clear of debris and garbage, even when Tenant is not required to repair casualty damage). If Landlord elects to terminate the Lease, Tenant may nevertheless elect to pay for the costs of restoration, and must so notify Landlord within thirty (30) days of Landlord notifying Tenant of its election to terminate the Lease, and upon such timely notice, the Landlord's termination notice shall be voided and Tenant shall be obligated to complete the restoration of the Premises and its Improvements as provided below. Furthermore, if neither Party terminates this Lease as provided in this Section, then Tenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in before such damage or destruction, to the extent possible in accordance with then applicable Laws. All insurance proceeds received by Tenant for the repair or rebuilding of the Premises shall be used by Tenant for the repair or rebuilding of the Premises. All restoration performed by Tenant shall be in accordance with the procedures set forth in Article 11 relating to Alterations and shall be at Tenant's sole expense. Under no circumstances shall Landlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty. In the event of a major casualty to the Premises during the last five (5) years of the term, where the costs of repair exceed thirty five percent (35%) of the then replacement value of such Improvements, Tenant shall have the right to terminate the Lease and surrender the Premises to Landlord without any fee or penalty.

15.2 Termination. Upon any termination under Section 15.1, Tenant shall promptly pay or cause to be paid to Landlord such insurance proceeds recoverable by Tenant, if any, relating to the damage or destruction. Upon such termination, the Parties shall be released thereby without further obligations to the other party as of the effective date of such termination subject to payment to Landlord of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that the Indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. City's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease.

15.3 No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Lease as provided in Section 15.1, there shall be no abatement in the Rent payable hereunder.

15.4 Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises, or the Initial Improvements, Alterations, or Minor Alterations, and Landlord and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

16. CONDEMNATION

16.1 Definitions.

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

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

(c) “Award” means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

(d) “Improvements Pertaining to the Realty” means improvements or fixtures or equipment installed for use on the Premises that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation, but excluding all of Tenant's Personal Property. In determining whether particular property can be removed “without a substantial economic loss,” the value of the property in place considered as part of the realty should be compared with its value if it were removed and sold.

16.2 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. Landlord and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

16.3 Total Taking; Automatic Termination. If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

16.4 Partial Taking; Election to Terminate.

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, or the Taking is of areas that are necessary for Tenant to derive sufficient income to perform its obligations hereunder, and (B) Tenant elects to terminate; or (ii) if there is a partial Taking of a substantial portion of the Premises, then Landlord shall have the right to terminate this Lease in its entirety; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, fully perform all of its obligations hereunder. Upon a partial Taking, the Rent shall not be adjusted to equitably reflect the level of impairment caused by such partial Taking.

(b) Either party electing to terminate under the provisions of this Section shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

16.5 Rent; Award. Upon termination of this Lease pursuant to an election under Section 16.4, Landlord shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease, provided further, that Tenant shall receive any Award made specifically to Tenant for the unamortized value of the Initial Improvements, Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

16.6 Partial Taking; Continuation of Lease. If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 16.4, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) any Award shall be payable first to Tenant to be applied to the restoration or repair of the balance of the Premises not taken, to the extent required to render such portion of the Premises tenantable, and (b) Landlord shall be entitled to that portion of the balance of the Award attributable to this Lease or the Premises (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

16.7 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess

of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to perform all of the terms, conditions and covenants of this Lease; provided that Tenant shall be relieved from all obligations under this Lease requiring possession of that portion of the Premises so condemned for the period of such temporary Taking. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the Tenant's use or occupancy of the Premises during the applicable Taking and Landlord shall be entitled to receive that portion of the Award representing compensation for Landlord's use or occupancy of the Premises (if any) during the applicable Taking.

17. TRANSFER - ASSIGNMENT – SUBLEASE

17.1 Assignments and Subleases. The public and community benefits provided by Tenant in its operation of the Premises, Tenant's non-profit status and its particular mission, are an essential part of the consideration and the reduced rate of Rent for this Lease. Accordingly, Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without Landlord's prior written consent in each instance, which consent may be given or withheld in its sole discretion, except that Landlord's consent shall not be required for Permitted Subleases and for a revocable, non-exclusive license to enter upon, use or operate within the Premises. Such a license shall include, but not be limited to, tenant's staff, volunteers, trainers, coaches, students, visitors and contractors, those who serve those persons and anyone participating in classes camps, programs, training sessions and races nor for the rental of boat storage space. "Permitted Subleases" means: (i) revocable permission to enter upon, use or operate within the Premises on a non-exclusive basis for a period not longer than twenty-four (24) consecutive hours consistent with Tenant's approved community benefits program; and (ii) permits or licenses that Tenant regularly uses in the ordinary course of its nonprofit programs and activities for a type or category of use (such as use of the Premises by a school group or other community based league) on a form that has been approved by the Authority Director for such uses from time to time (which approval will not be unreasonably withheld or delayed). The Authority Director may rescind its approval of the forms of Permitted Subleases at any time upon thirty (30) days' prior written notice. Notwithstanding anything to the contrary set forth in this Lease, the Premises shall remain subject to this Lease regardless of any Assignment or Sublease made at any time or from time to time. Landlord's consent to one Assignment or Sublease shall not be deemed a consent to subsequent Assignments or Subleases. Any Assignment or Sublease made without Landlord's consent shall constitute an Event of Default hereunder and shall be voidable at Landlord's election. In no event will Landlord's consent to an Assignment or Sublease be deemed to be a release of Tenant as primary obligor hereunder

unless expressly evidenced by Landlord in writing. Landlord's release of Tenant as primary obligor may be given or withheld in Landlord's sole discretion.

17.2 Notice of Proposed Transfer. If Tenant desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to Landlord of its intention to do so. The Notice of Proposed Transfer shall identify the proposed transferee and state the terms and conditions of the proposed Assignment or Sublease. Tenant shall deliver to Landlord with its request for Landlord's consent the proposed Assignment or Sublease and current financial statements of the proposed Transferee, prepared by an independent certified public accountant, and promptly upon Landlord's request for same, any additional documents or information reasonably related to the proposed transaction or transferee.

17.3 Landlord's Response; Right of Recapture. Within twenty (20) business days after Landlord's receipt of the Notice of Proposed Transfer (the "Response Period"), Landlord may elect, by written notice to Tenant, to: (a) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Minimum Base Rent (a "Recapture"), (b) disapprove the Assignment or Sublease, or (c) approve the Assignment or Sublease on terms and conditions specified in Landlord's response and those set forth in Section 17.4 (Conditions of Consent) below. In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "Recapture Space") shall be deleted from the Premises for all purposes hereunder, and Tenant and Landlord shall be relieved of all their rights and obligations hereunder with respect to the Recapture Space except to the extent the same would survive the Expiration Date or other termination of this Lease, and (ii) Landlord shall pay any cost incurred in physically separating the Recapture Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental laws or regulations relating to such separation.

17.4 Conditions of Consent. In addition to other conditions imposed by Landlord in its sole discretion, any Assignment or Sublease is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable:

(a) any proposed assignee or sublessee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of Landlord, must expressly assume all of the obligations of Tenant under this Lease, and any other agreements or documents entered into by and between Landlord and Tenant relating to the Premises so assigned or sublet, and must agree to be subject to all of the conditions and restrictions to which Tenant is subject;

(b) the Assignment or Sublease is made for a legitimate business purpose and not to deprive Landlord of the benefits of this Lease, including the continued public and community benefits afforded by Tenant. It is the intent of this Lease, to the fullest extent permitted by Law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Assignment of this Lease, or any interest therein, however effected or occurring, and whether voluntary or involuntary, by operation of Law or otherwise,

foreseen or unforeseen, shall operate, legally or practically, to deprive or limit Landlord of the value of its interest in this Lease, or with respect to any rights or remedies or controls provided in or resulting from this Lease relating to the Premises and the construction of the Initial Improvements that Landlord would have had, had there been no such Assignment or Sublease;

(c) One Hundred percent (100%) of any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Minimum Base Rent, Percentage Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Assignment or Sublease) shall be paid to Landlord, after Tenant has recovered any reasonable brokers' commissions and the reasonable cost of any leasehold improvements that Tenant has incurred in connection with such Assignment or Sublease.

(d) all instruments and other legal documents involved in effecting the Assignment or Sublease shall have been submitted to Landlord for review, including the agreement of sale, transfer, or equivalent, and Landlord shall have approved such documents;

(e) there shall be 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 assignee, nor shall there have been more than one (1) Event of Default during the immediately prior twelve (12) month period;

(f) the proposed assignee or sublessee (A) has demonstrated to Landlord's reasonable satisfaction that it is reputable and capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, (B) is not forbidden by applicable Law from transacting business or entering into contracts with Landlord; (C) is subject to the jurisdiction of the courts of the State of California, (D) is not in default with respect to any obligations that it has to Landlord, and (E) can demonstrate a net worth in an amount reasonably satisfactory to Landlord.

(g) any proposed Sublease may be subject to such further conditions as deemed appropriate by Landlord, which conditions may include, without limitation, that: (a) the proposed uses are consistent with this Lease; (b) the proposed sublease is consistent with and expressly subject and subordinate to, all the terms and provisions of this Lease and incorporates all necessary provisions of this Lease, (c) the term of the sublease does not extend beyond the term of this Lease, and requires the subtenant to leave the Premises, without payment, upon any termination of this Lease; (d) the proposed subtenant indemnifies Landlord and the City for any Losses arising in connection with the sublease in form reasonably satisfactory to Landlord; (e) Tenant remains liable under this Lease; (f) the proposed subtenant provides liability and other insurance reasonably requested by Landlord, naming Landlord and the City as an additional insured, in form and amounts approved by Landlord; (g) the proposed sublease contains rental rates that are not below fair market rental rates, as reasonably determined by Landlord.

17.5 Delivery of Executed Assignment. No Assignment or Sublease of any interest in this Lease made with Landlord's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to Landlord, within thirty (30) days after Tenant entered into such Assignment or Sublease, an executed counterpart of the agreement effecting the Assignment or Sublease containing an agreement, in recordable form, executed by Tenant and the assignee or sublessee, wherein and whereby such assignee or sublessee assumes performance of all of the obligations on Tenant's part to be performed under this Lease, and the other assigned documents to and including the end of the Term (provided, however, that the failure of any assignee or sublessee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such assignee or sublessee from such obligations or limit Landlord's rights or remedies under this Lease or under applicable Law). The form of such instrument of Assignment or Sublease shall be subject to Landlord's approval.

17.6 Tenant to Pay Costs. If Tenant requests Landlord's consent to an Assignment or Sublease, hereinafter referred to as a "transaction," Tenant shall reimburse Landlord for all Landlord's reasonable costs and expenses actually incurred that are associated with the transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

17.7 Proposed Transferee. In connection with the Landlord's consideration of any request for its consent to an Assignment or Sublease, Landlord may consider the financial condition of the proposed assignee ("Proposed Transferee"), the Proposed Transferee's experience in the operation and management of the property of the type subject to this Lease and the character and reputation of the Proposed Transferee. In connection with the foregoing, at such time as the Tenant shall request Landlord's consent, Tenant shall provide Landlord with appropriate financial statements, including balance sheets and profit and loss statements, demonstrating the Proposed Transferee's financial condition for the preceding three (3) years. In addition, the Tenant shall provide Landlord with such additional information as may be reasonably requested by Landlord to determine the character and reputation of the Proposed Transferee, as well as the Proposed Transferee's experience in the operation and maintenance of property similar to the Premises.

17.8 Additional Considerations. The following standards are to apply to proposed transactions requiring Landlord's consent under this Article 17, and shall be considered by Landlord in determining whether to give consent.

(a) The Proposed Transferee must have a net worth determined to be sufficient in relation to the financial obligations of the Tenant under the Lease (equal to at least three (3) times the total Minimum Base Rent due to Landlord for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the Landlord may be substituted for the net worth requirement. If the Proposed Transferee's net worth is materially less than the

transferor's, Landlord may disapprove the assignment or require additional security such as that described in the previous sentence.

(b) The Proposed Transferee must have significant experience in the construction (if contemplated), operation and management of the type of improvements existing on or to be constructed on the Premises, or provide evidence of contractual arrangements for these services with providers of such services reasonably satisfactory to the Landlord. Changes in the providers of such services and changes to the contractual arrangements must be approved by Landlord.

(c) The individual or individuals who will acquire Tenant's interest in this Lease or the Premises, or own the entity that will so acquire Tenant's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with Hazardous Materials Laws, or any other legal requirements or formally adopted ordinances or policies of Landlord.

(d) The price to be paid in connection with the transaction shall not result in a financing obligation which jeopardizes the Proposed Transferee's ability to meet its rental obligations under the Lease. Market debt service coverage ratios and leasehold financial performance, at the time of the proposed transfer, will be used by Landlord in making this analysis.

(e) If the Proposed Transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the Landlord will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required or contemplated under this Lease (excluding any excluded transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Tenant that is not done primarily as a transfer of this leasehold will not be subject to Landlord approval.

(f) The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any improvements thereon.

18. DEFAULTS AND REMEDIES

18.1 Tenant Defaults. The occurrence of any one (1) or more of the following events shall constitute an event of default (each, an "Event of Default") by Tenant:

(a) Tenant abandons the Premises within the meaning of California Civil Code Section 1951.3 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment or vacation from City;

(b) Failure by Tenant to pay, when due, any Rent or other amounts due hereunder, where such failure continues for a period of ten (10) days after written notice from Landlord; provided (i) Landlord shall not be required to give such notice more than three (3) times during any calendar year, and failure to pay Rent or other amounts when due thereafter shall be an immediate default without need for further notice, and (ii) any notice provided in this Section shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure;

(c) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Authority 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 diligently prosecute such cure to completion within a reasonable time thereafter;

(d) Subject to any restrictions or limitations placed on Landlord by applicable laws governing bankruptcy, Tenant's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidation of all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for thirty (30) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Tenant's assets or of Tenant's interest in this Lease;

(e) A writ of execution is levied on the leasehold estate which is not released within sixty (60) 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 sixty (60) days;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for ten (10) days after written notice from Authority of such failure;

(g) Tenant suffers or permits an Assignment, Sublease or other transfer of this Lease or any interest therein to occur in violation of this Lease, which event is not cured by Tenant within thirty (30) days after written demand by Authority by an effective rescission of the Assignment, Sublease or transfer or through Authority's consent; or

(h) Tenant engages in or allows any use not permitted hereunder which event is not cured by Tenant within ten (10) days after written demand by Authority, or, if such cure cannot reasonably be completed within such ten (10)-day period, if Tenant does not within such ten (10)-day period commence such cure, and having so commenced, does not diligently prosecute such cure to completion within a reasonable time thereafter and in all events within sixty (60) days.

18.2 Landlord's Remedies Generally. Upon the occurrence and during the continuance of an Event of Default under this Lease, Landlord shall have all rights and remedies provided in this Lease or available at law or equity that are not otherwise specifically waived or limited pursuant to the terms of this Lease. All of Landlord's rights and remedies granted pursuant to this Lease shall be cumulative, and except as may be otherwise provided by applicable Law or specifically limited pursuant to this Lease, the exercise of any one or more rights shall not preclude the exercise of any others.

18.3 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, Landlord may continue this Lease in full force and effect pursuant to Civil Code Section 1951.4.

(b) No Termination. No act by Landlord allowed by this Article 18, nor any appointment of a receiver upon Landlord's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(c) Application of Proceeds of Reletting. In the event of any such subletting, rents received by Landlord from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, Attorneys' Fees and Costs, and expenses of removal of Tenant's Personal Property, trade fixtures and alterations; (ii) second, to the payment of Rent then due and payable hereunder; (iii) third, to the payment of future Rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

18.4 Right to Perform Tenant's Covenants. Landlord may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant. Any amount due Landlord under this subsection shall constitute additional rent hereunder. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Landlord under this Lease, if at any time Tenant fails to pay any sums required to be paid by Tenant pursuant to this Lease to any person other than Landlord, or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following any applicable cure period specified above, then Landlord may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

18.5 Right to Terminate Lease.

(a) Damages. Landlord may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Landlord's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by Landlord other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, Landlord shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following: (i) the worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease; (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom. "The worth at the time of the award" shall be computed by allowing interest at a rate per annum equal to the Default Rate; provided, however, for purposes of subclause (iii) above only, "the worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid within twenty (20) days following written demand for payment of such Rent shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. If Landlord terminates Tenant's right to possession of the Premises, and if such termination is contested by Tenant and Landlord successfully prevails, and in any appeal thereof, Tenant hereby waives any rights to recover or

regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) **No Rights to Transfer or Sublet.** Upon the occurrence and continuation of an Event of Default, Tenant shall have no right to Assign or Sublease the Premises in whole or in part or to enter into any Event Permits without Landlord's written consent, which may be given or withheld in Landlord's sole discretion.

18.6 Equitable Relief. In addition to the other remedies provided in this Lease, Landlord shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief, an order for specific performance, or any other equitable relief, where appropriate to the circumstances of such default.

18.7 Continuation of Subleases and Agreements. If this Lease is terminated before the expiration date, and subject to any non disturbance agreements entered into by Landlord pursuant to the terms of this Agreement, Landlord shall have the right, at its sole option, but not the obligation, to assume any and all agreements by Tenant for the use or maintenance or operation of the Premises, including any Subleases. Landlord may, at its option, require Tenant to terminate any such agreements and take appropriate action to deliver the Premises to Landlord free of such agreements or obligations. Tenant hereby further covenants that, upon request of Landlord following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to Landlord such further instruments as may be necessary or desirable to vest or confirm the continuation or the termination of such or agreements, as above specified.

18.8 Waiver of Notice. Tenant hereby expressly waives, so far as permitted by Law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future Law, if Tenant is evicted or Landlord takes possession of the Premises by reason of any default by Tenant hereunder.

18.9 No Accord or Satisfaction. No submission by Tenant or acceptance by Landlord of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of Landlord's rights or remedies hereunder or constitute an accord or satisfaction, whether or not Landlord had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Landlord. Landlord 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 Landlord to be

due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall 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 shall 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).

18.10 Default by Landlord. Landlord shall be deemed to be in default hereunder only if Landlord fails to perform or comply with any material obligation on its part hereunder and (i) such failure shall continue 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, or, (iii) if such default cannot reasonably be cured within such applicable cure period, subject to Force Majeure, Landlord shall not within such period commence the cure of such default, or, having so commenced, shall thereafter fail to diligently prosecute such cure. Upon the occurrence of default by Landlord as described above, which default substantially and materially interferes with Tenant’s use of the Premises, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of actual damages incurred by Tenant as a direct result of Landlord’s default, but only after obtaining a judgment in a court of competent jurisdiction for such damages, or (b) to seek equitable relief in accordance with applicable Laws; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder or to otherwise recover or obtain from Landlord or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages proximately arising out of a default by Landlord hereunder) or Losses other than Tenant’s actual damages as described in the foregoing clause (a), and (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant’s remedies hereunder shall constitute Tenant’s sole and absolute right and remedy for a default by Landlord hereunder.

19. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

The provisions of this Article 19 shall not impair any rights or recourse based on (i) Landlord's obligations under this Lease, and (ii) the United States Navy’s continuing indemnity obligations under Section 330 of Public Law 102-484, as amended, and other ongoing Navy CERCLA and other hazardous remediation obligations.

19.1 Release and Waiver of Claims. Tenant, on behalf of itself and Tenant’s Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Tenant for, and, to the fullest extent allowed by any Laws, Tenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except this release and waiver does not apply to such Losses that are

caused solely by the gross negligence or willful misconduct of the Indemnified Parties or their Agents. Without limiting the generality of the foregoing:

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

(b) Without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Landlord terminates this Lease because of such claim for inverse condemnation or eminent domain.

(c) As part of Tenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Tenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Tenant's intended use.

(d) Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated, and Tenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Tenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Lease the Premises to Tenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Tenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Lease.

(g) In executing these waivers and releases, Tenant has not relied upon any representation or statement other than as expressly set forth herein, and has consulted with its own counsel.

(h) Tenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Tenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Tenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. 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. The waivers and releases contained herein shall survive any termination of this Lease.

19.2 Tenant's Indemnity. Except for the Navy's ongoing indemnity obligations under Section 330 of Public Law 102-484, as amended, or its other continuing CERCLA and other hazardous remediation obligations, Tenant, on behalf of itself and Tenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Tenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in

whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Tenant or Tenant's Agents or Tenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Tenant's Agents and Tenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Tenant, Tenant's Agents or Tenant's Invitees or any person or entity claiming through or under any of them, of the Premises; (e) any matter relating to the condition of the Premises caused by Tenant or any of its Assignees, Subtenants, Agents or Invitees; (f) any construction or other work undertaken by Tenant on or about the Premises, or the 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 Assignees, Subtenants, Agents or Invitees; (g) any legal actions or suits initiated by any user or occupant of the Premises; and (h) any acts, omissions or negligence of Tenant, Tenant's Agents or Tenant's Invitees, in, on, or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Lease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Landlord, the City, or their respective Agents. The foregoing Indemnity shall include, without limitation, Attorneys Fees and Costs. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Landlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by Landlord and continues at all times thereafter. Tenant's obligations under this Section shall survive the expiration or sooner termination of this Lease. The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under this Lease.

19.3 Defense. Tenant shall, at its option but subject to the reasonable consent and approval of Landlord, be entitled to control the defense, compromise, or settlement of any indemnified matter through counsel of the Tenant's own choice (so long as such counsel is reasonably satisfactory to Landlord); provided, however, in all cases Landlord shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in Landlord's reasonable judgment, within a reasonable time following notice from Landlord alleging and describing in reasonable detail the nature of such failure, to take reasonable and appropriate action to defend such suit or claim, Landlord shall have the right promptly to use the San Francisco City Attorney or to hire outside counsel to carry out such defense, at Tenant's sole expense, which expense shall be due and payable to Landlord within thirty (30) days after receipt by the Tenant of an invoice therefore.

20. INSURANCE

20.1 Tenant's Insurance. Tenant shall procure and maintain throughout the Term for the mutual benefit of Landlord and Tenant, or shall obtain from its third party consultants or providers, the following insurance, at no cost to Landlord:

(a) Professional Liability Insurance. Professional Liability insurance with limits not less than \$1,000,000 each claim and aggregate, including coverage for negligent acts, errors or omissions arising out of professional services performed under this Agreement for architectural, engineering and geotechnical services, with any deductible not to exceed \$25,000 each claim.

(b) Property Insurance. Property insurance on an ISO "special form" (excluding earthquake and flood) with any exposures for reconstruction loss of rents up to 12 months included in the aggregate limit. The loss of rents coverage shall have a deductible of no more than \$5,000 per occurrence. The deductible will be no greater than \$50,000 per occurrence for property related losses only. Any vacancy clause will be waived or extended to no less than 3 days. The limit of coverage will be full replacement cost or a stop loss limit that covers at least 35% of the total insurable value of all covered rentable units.

(c) Builders Risk Insurance. At all times during construction of any Alterations, Tenant shall maintain, on a form reasonably approved by Landlord, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the Improvements, against "all risk" or "special form" hazards, including an additional insured City with any deductible (other than earthquake and flood) not to exceed Fifty Thousand Dollars (\$50,000).

(d) Environmental Pollution Insurance. Limited Sudden & Accidental Pollution Insurance, with limits not less than \$1,000,000 each occurrence, including coverage for pollution or contamination, with any deductible not to exceed \$50,000 each occurrence.

(e) Commercial General Liability Insurance. Commercial General Liability Insurance shall be written on an occurrence and on a site-specific basis with coverage equal to or better than the ISO form CG-OOI. Primary limits shall be \$2,000,000 Combined Single Limit (CSL) per occurrence and \$5,000,000 aggregate. A deductible, per claim, of no greater than \$10,000 will be acceptable. Coverage should include within the policy limits: Personal Injury, Independent Contractors, Contractual liability, Products and Completed operations and a Severability of interests' clause. (Explosion, collapse and underground coverage shall not be included, but shall be included in coverages obtained by Tenant's third party contractors on a

case-by-case basis.) An excess policy increasing the total limit to \$10,000,000 will be required. Said excess policy may be an umbrella or a following form excess contract.

(f) Workers Compensation Insurance. Worker's compensation insurance with statutory limits as required by California law, and Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(g) Automobile Liability Insurance. Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses or causes to be used automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under ISO F01111 Number CA-00-01.

(h) Watercraft and Aircraft Insurance. For any aircraft or watercraft used by Tenant in performance of its activities under this Agreement, insurance for such operations, in amount, form and with insurers reasonably satisfactory to the Authority, shall be obtained, paid for, and maintained by Tenant throughout such operations.

(i) Employee Fidelity Bonds. Fidelity bond insurance coverage for on-site employees with a \$1,000,000 limit and \$1,000 deductible.

(j) Professional Liability. Tenant shall require all architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for the Initial Improvements or any Alterations to maintain professional liability (errors and omissions) insurance, with limits not less than One Million And No/100 Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefore and a deductible of not more than Ten Thousand Dollars (\$10,000) per claim, during any period for which such professional services are engaged and for five (5) years following the completion of any such professional services.

(k) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Two Million Dollars (\$2,000,000) each occurrence combined single liability for Bodily Injury, Property Damage and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(l) Other Insurance. Tenant shall obtain such other insurance, or increase the insurance coverage amounts, as may be reasonably requested by City's Risk Manager and is reasonably customary for similar property or uses in the San Francisco Bay Area.

20.2 General Requirements. All insurance provided for under this Agreement shall be effected under valid enforceable policies issued by insurers with ratings comparable to A-, VIII or higher that are authorized to do business in the State of California.

(a) Claims Made Form. Should any of the required insurance be provided under a claims made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of five (5) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the Term give rise to claims made during the one year period after expiration or termination of this Agreement, such claims shall be covered by such claims made policies.

(b) Endorsements. All insurance policies shall be endorsed to provide the following:

(i) The Authority and the City shall be named as an additional named insured and loss payee on liability and property coverages as its interest may appear, if necessary. Tenant shall be first named insured. All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds the "THE TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(ii) Any other insurance carried by the Authority, which may be applicable, shall be deemed excess insurance and Tenant's insurance shall be deemed primary for all purposes. Tenant's policies shall also provide for severability of interest provisions.

(iii) Tenant shall give thirty (30) days' prior written notice of cancellation, non-renewal or material change in coverage to Landlord. Ten (10) days' prior written notice will be acceptable for notice of non-payment.

(c) On or before the Commencement Date, Tenant shall deliver to Landlord certificates of insurance and additional insured policy endorsements in form and with insurers satisfactory to Landlord, evidencing the coverages required hereunder, and Tenant shall provide Landlord with certificates thereafter at least ten (10) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or deliver such certificates, Landlord may, at its option, after providing five (5) days' prior written notice of the Landlord's intention to do so, procure the same for the account of Tenant and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of an invoice for such

cost. Tenant shall, upon Landlord's request, promptly furnish Landlord with a complete copy of any insurance policy required hereunder.

20.3 No Limitation on Indemnities. Tenant's compliance with the provisions of this Article 20 shall in no way relieve or decrease Tenant's indemnification obligations herein or any of Tenant's other obligations or liabilities under this Agreement.

20.4. Tenant's Personal Property. Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

20.5 Landlord Entitled to Participate. Landlord shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Fifty Thousand and No/100 Dollars (\$50,000.00) covered by the insurance required to be carried hereunder, but only to the extent that its interest may appear; provided, however, that Landlord's consent shall not be unreasonably withheld.

20.6 Insurance of Others. If 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 on, the Premises, Tenant shall require that such policies name Tenant and Landlord and City as additional insureds. Notwithstanding the foregoing, Tenant shall 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 insurance coverages required by the respective construction contract, sublease, or other agreement governing such party's activities that was approved by Landlord, if applicable.

20.7 Landlord's Self Insurance. Tenant acknowledges that Landlord self-insures against casualty, property damage and public liability risks and agrees that Landlord may at its sole election, but shall not be required to, carry any third party insurance with respect to the Premises.

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

21. ACCESS BY LANDLORD

21.1 Access to Premises by Landlord.

(a) General Access. Landlord reserves for itself and Landlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Tenant (except in the event of an emergency) for any purpose. In addition, Landlord covenants and agrees that it will use good faith efforts to require that the Master Developer coordinate and cooperate with Tenant regarding Master Developer's access to the Premises or to the landside adjacent to the Premises so as to (i) provide notice to Tenant of Master Developer's development and construction activities and (ii) to minimize adverse impacts to Tenant's operations.

(b) Emergency Access. In the event of any emergency, as determined by Landlord, Landlord may, at its sole option and without notice, enter the Premises and alter or remove any improvements or Tenant's Personal Property on or about the Premises that impede Landlord's ability to respond to such emergency. Landlord shall have the right to use any and all means Landlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Landlord shall be responsible for any damage or injury to the extent required by applicable Law. Any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

(c) Landlord Reservation. Notwithstanding anything to the contrary in this Lease, Landlord reserves and retains the right to grant future easements, permits and rights of way over, across, under, in and upon the Premises as Landlord shall determine to be in the public interest, including for the installation, operation, maintenance, and repair of equipment for cellular telephone, radio or other telecommunications services, provided that any such easement, permit or right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement, permit or right of way, and provided further that any such easement, permit or right-of-way shall not materially interfere with Tenant's use of the Premises.

(d) Master Developer Access for Improvements. Tenant shall provide reasonable access in, on, under and across the Premises to Landlord, Master Developer and their respective Agents, including unimpaired access to the shoreline, for the DDA Work, provided that Landlord or Master Developer have (i) provided Tenant with at least forty-eight (48) hours advance written notice; (ii) minimize adverse impacts to Tenant's operations to the extent possible consistent with the DDA Work; and (iii) conduct their activities thereon in a manner that does not unreasonably interfere with Tenant's use of the Premises and its conduct of business thereat. Tenant shall reasonably cooperate and coordinate its construction and all other related activities with the construction and related activities of Landlord and Master Developer and their respective Agents. Landlord and Master Developer shall access the Premises and conduct their activities thereon in a manner that does not unreasonably interfere with Tenant's use of the Premises.

(e) No Liability. Landlord shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Landlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Landlord or Landlord's Agents and not contributed to by the acts, omissions or negligence of Tenant, Tenant's Agents or Tenant's Invitees.

22. SURRENDER

22.1 Condition of Premises. Upon the expiration or other termination of this Lease, Tenant shall quit and surrender to Landlord the Premises, with the Initial Improvements and all Alterations, in good order and condition, free and clear of all liens, but with reasonable wear and tear (consistent with Tenant's maintenance obligations under this Lease), casualty and condemnation, if applicable, excepted. Tenant hereby agrees to execute all documents as Landlord may deem necessary to evidence or confirm any such other termination. Upon expiration or termination of this Lease, Tenant and its Agents shall have the right to remove their respective Personal Property, but any damage to the Premises or the Initial Improvements or Alterations that is caused by their removal shall be repaired at Tenant's expense. Tenant shall also remove, at no cost to City, any Personal Property belonging to Tenant that remains on the Premises. In connection with any removal, Tenant shall obtain any and all necessary permits and approvals. Tenant's obligations under this Section shall survive the termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the termination of this Lease may, at Landlord's option and after sixty (60) days written notice to Tenant, be deemed abandoned and in such case Landlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

22.2 Termination of Subleases. Upon the expiration or any termination of this Lease, any and all Subleases or other rights of parties acting by and through Tenant shall terminate without further action unless Landlord takes an action to assume the agreements as set forth in Section 18.7.

22.3 No Holding Over. If Tenant fails to surrender the Premises to Landlord as required by this Section, Tenant shall Indemnify Landlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Tenant resulting from Tenant's failure to surrender the Premises. Tenant shall have no right to hold over without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. If Tenant holds over the Premises or any part thereof after expiration or earlier termination of this Lease, such holding over shall be terminable upon written notice by Landlord, and the Minimum Base Rent shall be increased to two hundred percent (200%) of the Minimum Base Rent in effect immediately before such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Lease. This Section shall not be

construed as Landlord's permission for Tenant to hold over. Acceptance of any holdover Base Rent by Landlord following expiration or termination of this Lease shall not constitute an extension or renewal of this Lease.

22.4 Security Deposit. Tenant shall pay to Landlord upon execution of this Lease a security deposit in the amount set forth in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. The security deposit shall be increased on each Adjustment Date to equal the then-applicable Minimum Base Rent. Tenant agrees that Landlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Tenant, Tenant's Agents or Tenant's Invitees, or any failure of Tenant to perform any other terms, covenants or conditions contained in this Lease, without waiving any of Landlord's other rights and remedies hereunder or at Law or in equity. Should Landlord use any portion of the security deposit to cure any Event of Default by Tenant hereunder, Tenant shall immediately replenish the security deposit to the original amount, and Tenant's failure to do so within five (5) days of Landlord's notice shall constitute a material Event of Default under this Lease. Landlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Landlord shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Tenant's liability for the performance of any of its obligations under this Lease. To the extent that Landlord is not entitled to retain or apply the security deposit pursuant to this Section, Landlord shall return such security deposit to Tenant within forty-five (45) days of the termination of this Lease.

23. HAZARDOUS MATERIALS

23.1 No Hazardous Materials. Except for the United States Navy's Section 330 of Public Law 102-484, as amended, Indemnity Obligations and other continuing CERCLA and other hazardous remediation obligations, Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion. Tenant shall immediately notify Landlord if and when Tenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Landlord may from time to time request Tenant to provide adequate information for Landlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all Hazardous Materials Laws, and Tenant shall promptly provide all such information. Landlord and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Tenant (except in the event of an emergency). As applicable, Tenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved

hazardous materials management plan. Tenant agrees that it shall comply with the restrictions or limitations set forth in the Navy Deed, the Covenant to Restrict Use of Property (the "CRUP", if any relate to the Premises), and any additional requirements imposed by regulators with jurisdiction over the Premises. Landlord agrees that the following shall be deemed approved and permitted, so long as the use, storage and disposal of these items complies with Hazardous Materials Laws in such reasonably limited amounts as are customarily used and necessary for: (i) common commercial and household cleaning and building maintenance; (ii) fuel, lubricants and like substances used in the operation of vehicles, power equipment, hoisting devices, generators, motors on boats for Tenant's Uses; (iii) small boat repair supplies and materials; and (iv) Hazardous Materials used or generated by Boat Slip Renters such as waste oil, paint, batteries, and fuel so long as such Hazardous Materials are stored and used in compliance with Hazardous Materials Laws and in the ordinary course of its operations in order to keep the same from being improperly discarded by Boat Slip Renters.

23.2 Tenant's Environmental Indemnity. Except for liability or costs associated with the United States Navy's continuing CERCLA and other hazardous remediation obligations, if Tenant breaches any of its obligations contained in this Article 23 or if any act or omission or negligence of Tenant or its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises or the Treasure Island property, without limiting Tenant's general Indemnity contained in this Lease, Tenant, on behalf of itself and its Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Treasure Island property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Landlord property. Without limiting the foregoing, if Tenant or any of Tenant's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Treasure Island property, Tenant shall, immediately, at no expense to Landlord, take any and all appropriate actions to return the Premises or other Landlord property affected thereby to the condition existing before such Release and otherwise investigate and remediate the Release in accordance with all Hazardous Materials Laws. Tenant shall provide Landlord with written notice of and afford Landlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

23.3 Acknowledgment of Receipt of EBS and FOST. Tenant hereby acknowledges for itself and its Agents that, before the execution of this Lease, Tenant has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Transfer ("FOST") issued by the U.S. Navy. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as,

but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOST. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

24. GENERAL PROVISIONS

24.1 Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to the appropriate addresses set forth in the Basic Lease Information. Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days before the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section and applicable Laws, shall be deemed receipt of such notice.

24.2 No Implied Waiver. No failure by Landlord to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises before the expiration of the Term by any Agent of Landlord, shall constitute a waiver of such breach or of Landlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord given in any instance under the terms of this Lease shall not relieve Tenant of any obligation to secure the consent of Landlord in any other or future instance under the terms of this Lease.

24.3 Amendments. Neither this Lease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

24.4 Authority. If Tenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby covenant

and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Tenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a Lease containing those provisions and their legal effect.

24.5 Joint and Several Obligations. The word "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several.

24.6 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall 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. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Landlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Landlord is required to be obtained by Tenant hereunder, Landlord may give or withhold such consent in its sole and absolute discretion. Whenever this Lease references that a Party's approval or consent is required, such approval or consent shall be exercised in a commercially reasonable manner, unless expressly stated to the contrary in this Lease.

24.7 Successors and Assigns. Subject to the provisions of Article 17 [Transfers], the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

24.8 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Lease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the

party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

24.9 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 shall 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 shall 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, in which case, the parties will negotiate in good faith a replacement provision which is not invalid to accomplish substantially the same intention as the provision held invalid.

24.10 Governing Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

24.11 Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither Landlord nor Landlord's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

24.12 Attorneys' Fees. If either party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Landlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the

City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Lease, the term "Attorneys' Fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "Attorneys' Fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues. Any Attorneys' Fees incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment. The Attorneys' Fees shall be deemed an "actual pecuniary loss" within the meaning of Bankruptcy Code Section 365(b)(1)(B), and notwithstanding the foregoing, all Fees incurred by either party in any bankruptcy case filed by or against the other party, from and after the order for relief until this Lease is rejected or assumed in such bankruptcy case, will be "obligations of the debtor" as that phrase is used in Bankruptcy Code Section 365(d)(3).

24.13 Time of Performance. (a) All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date. (b) A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 pm on the next business day. For purposes of this Lease, a business day means any day except Saturday, Sunday, or a day on which City and County of San Francisco is closed for business. (c) All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein. (d) 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.

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

24.15 Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Tenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Tenant has an immediate and independent obligation to defend Landlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or

may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by Landlord and continues at all times thereafter.

24.16 No Joint Venture; Relationship of Parties. Tenant shall have complete control over its employees in the method of performing their work under this Lease. Subject to the requirements of this Lease, Tenant retains the right to exercise full control and supervision of the services and full control of the employment, direction, compensation and discharge of all its employees and Tenant agrees to be solely responsible for all matters relating to its employees. All personnel employed by Tenant shall be employees of Tenant and not of Landlord. Landlord is not, and none of the provisions in this Lease shall be deemed to render Landlord, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. The subject of this Lease is a lease with neither party acting as the Agent of the other party in any respect. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by Landlord does not constitute authorization or approval by Landlord of any activity conducted by Tenant on, in or relating to the Premises.

24.17 Non-Liability of Indemnified Parties' and Tenant's Officials, Employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by Landlord or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of Landlord under this Lease. No elective or appointive board, commission, member, officer or employee of Tenant shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by Tenant or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of Tenant under this Lease.

24.18 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24.19 Authority Consent. Unless stated to the contrary, wherever this Lease requires or permits the giving by Landlord of its consent or approval, or whenever a waiver, notice, or other instrument or document is to be executed by or on behalf of Landlord, the Authority Director shall be authorized to give or withhold such consent or approval or execute such document on behalf of Landlord, except as otherwise required by applicable Law or Landlord's formation documents.

24.20 Tenant Representations. Tenant represents, warrants and covenants to Landlord as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence, Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of California. Tenant has the

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

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

(c) No Limitation on Ability to Perform. 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 are required to complete the Initial Improvements and future improvements). There are no undischarged judgments pending against Tenant, and Tenant and its members have not received notice of the filing of any pending suit or proceedings which might materially adversely affect Tenant's ability to perform under this Lease.

(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 Landlord 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 businesses, or (C) the articles of incorporation or bylaws 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 Landlord in writing, neither Tenant nor any of its members (i) have knowledge of a material default under, or received notice asserting that it is in default under, any lease or management agreement or the like, (ii) have filed a petition for relief under any chapter of the U.S. Bankruptcy Code, and (iii) have suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

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

25. SPECIAL PROVISIONS

25.1 Transportation Plan. Tenant acknowledges that the Treasure Island Mobility Management Agency ("TIMMA") is authorized to implement the Treasure Island Transportation Plan attached to the DDA, as may be amended (the "Transportation Plan"),

including implementing congestion pricing, a mandatory transit pass system, transportation demand management programs, and other fees and programs. Tenant acknowledges that the Premises are and will be subject to the Transportation Plan and the jurisdiction, fees and programs implemented by the TIMMA. TIMMA will develop, implement, operate, and administer strategies and programs to manage transportation resources in the entirety of Treasure Island and Yerba Buena Island. Tenant shall cooperate with TIMMA and impose such obligations on each user and renter at the Premises, as shall be required by TIMMA in order to implement the Transportation Plan and the fees associated therewith. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Tenant's sole expense. Without limiting the foregoing, Tenant shall comply with all applicable requirements of the Transportation Plan.

25.2 Jobs EOP and TIHDI Job Broker. Tenant shall comply, and require its contractors, subcontractors and consultants to comply, with the Jobs EOP, including the First Source Hiring and the TIHDI Job Broker and Economic Development Opportunities programs.

25.3 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Tenant in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(b) **Subleases and Other Subcontracts.** Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership

discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **CMD Form.** As a condition to this Lease, Tenant shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco City Administrator’s Contract Monitoring Division (the “CMD”). Tenant hereby represents that before execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation; and (ii) the CMD approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

25.4 MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

25.5 Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Lease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation

in an amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

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

25.7 Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Landlord or the City, including the Premises and the Treasure Island property. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

25.8 Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Landlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

25.9 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or

organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

25.10 Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Tenant becomes aware of any such fact during the Term of this Lease, Tenant shall immediately notify Landlord.

25.11 Charter Provision. This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

25.12 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. Landlord shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Landlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Landlord.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Landlord may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that Landlord has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Landlord with regard to Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

(g) Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall provide reports to Landlord in accordance with any reporting standards promulgated by Landlord under the HCAO, including reports on Subcontractors and Tenants, as applicable.

(i) Tenant shall provide Landlord with access to records pertaining to compliance with the HCAO after receiving a written request from Landlord to do so and being provided at least five (5) business days to respond.

(j) Landlord may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with Landlord when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) (or [Fifty Thousand Dollars (\$50,000) if Tenant is a qualified nonprofit), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with Landlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

25.13 Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City or a state agency on whose board an appointee of a City elective officer serves, for the selling or leasing of any land or building to or from the City or a state agency on whose board an appointee of a City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six (6) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors; Tenant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide Landlord the name of each person, entity or committee described above.

25.14 Preservation-Treated Wood Containing Arsenic. As of July 1, 2003, Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

25.15 Resource Efficient City Buildings and Pilot Projects. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

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

25.17 Estoppel Certificates. At any time and from time to time, within ten (10) business days after Landlord's request, Tenant will execute, acknowledge and deliver to Landlord a statement certifying the following matters: (a) the Commencement Date and Expiration Date of this Lease; (b) 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 the date and nature of such modifications); (c) the dates to which the Rent has been paid; (d) that there are no Events of Default under this Lease (or if there are any Events of Default, the nature of such Event of Default); and (e) any other matters reasonably requested by Landlord. Landlord and Tenant intend that any such statement delivered pursuant to this paragraph may be relied upon by any assignee of Landlord's interest in the Lease, any mortgagee or any purchaser or prospective purchaser of the building or land on which the Premises are located. Tenant irrevocably appoints Landlord, as Tenant's agent, to execute and deliver in the name of Landlord any such instrument if Tenant fails to do so, which failure shall also be an Event of Default under this Lease.

25.18 Addendum. The terms of the Addendum, if any, attached to this Lease are incorporated into the Lease by reference. In the event of any inconsistency between the Lease and the Addendum, the terms of the Addendum shall control.

25.19 Cooperative Drafting. This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

25.20 Criminal History in Hiring and Employment Decisions

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

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

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

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

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

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

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of

\$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

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

25.21 Local Hiring Requirements.

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Improvements and Alterations (as defined in Section 7.1) are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any construction, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project"). The provisions of this Section 25.21 apply to Covered Projects.

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

(1) For each contractor and subcontractor performing Tenant improvements in amounts exceeding the Threshold Amount for a Covered Project, Tenant and its subtenants shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices set forth in Administrative Code §6.22(G)(4).

(2) For Covered Projects estimated to cost more than \$1,000,000, before commencement of any work subject to the Local Hiring Policy, Tenant and its subtenants shall prepare and submit to Landlord and the City's Office of Economic and Workforce Development (OEWD) for

approval a “local hire plan” for the project in accordance with Administrative Code §6.22(G)(6).

(3) Tenant and its subtenants shall comply with applicable recordkeeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy, including allowing access to employees of its contractors and subcontractors and other witnesses at the Premises.

(4) Tenant agrees that (i) Tenant shall comply with all applicable requirements of the Local Hiring Policy; (ii) the provisions of the Local Hiring Policy are reasonable and achievable by Tenant and its subtenants; and (iii) Tenant and its subtenants have had a full and fair opportunity to review and understand the terms of the Local Hiring Policy.

(5) Tenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Tenant's personnel needs and to contract with local businesses for Tenant's purchase of supplies, materials, equipment or services.

25.22 Local Hiring Requirements for Special Events.

Unless exempt, if Tenant has a special event on the premises, Tenant must comply with all applicable provisions of the San Francisco Local Hiring Policy in the performance of construction activities during the set-up, execution and strike of Events of four (4) or more consecutive or non-consecutive days. Before starting any Construction Work for Special Events covered under the Local Hiring Policy, Event Sponsor shall contact the City's Office of Economic Workforce and Development (“OEWD”) to verify the Local Hiring Policy requirements that apply to the Special Event, and Event Sponsor shall comply with all such requirements. Failure to comply with the obligations in this subsection shall constitute a material breach and may subject Event Sponsor to the consequences of noncompliance specified in the Local Hiring Policy, including but not limited to penalties.

(1) For construction work on events covered by the Local Hiring Policy that exceed \$400,000, a budget of construction activities must be submitted with this application for review by OEWD.

(2) Contractors shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in Section 6.22(G)(4).

(3) Contractors shall comply with applicable recordkeeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy, including allowing access to employees of its contractors and subcontractors and other witnesses at the Premises.

25.23. Bottled Drinking Water. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Lease as though fully set forth.

21. 24. Vending Machines: Nutritional Standards and Calorie Labeling Requirements.

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the TIDA Director. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the “Nutritional Standards Requirements”). Tenant agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this [Section 28.48] shall be deemed a material breach of this Lease. Without limiting Landlord’s other rights and remedies under this Lease, Landlord shall have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

21.25. All-Gender Toilet Facilities

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

25.26 Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with Tenant, or any subtenant or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Tenant, and any subtenant or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code

Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires. If Tenant, or any subtenant or subcontractor, is providing services under this Lease for recreational uses, Tenant shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of an offense listed in Welfare and Institution Code Section 15660(a). Tenant shall further comply, and cause its subtenants and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks.

25.27 Employee Signature Authorization Ordinance. San Francisco Administrative Code Sections 23.50-23.56 requires employers in hotel or restaurant projects with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Tenant acknowledges and agrees that Tenant shall comply, and it shall cause Tenant's subtenants to comply, with the requirements of these requirements if Tenant operates a restaurant at the Premises.

(Remainder of page intentionally blank)

Landlord and Tenant have executed this Lease as of the date first written above.

TENANT:

**TREASURE ISLAND SAILING
CENTER FOUNDATION, a California
nonprofit corporation**

By: _____
Carisa Harris-Adamson
President

LANDLORD:

**TREASURE ISLAND DEVELOPMENT
AUTHORITY**

By: _____
Robert P. Beck
Treasure Island Director

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:

Charles R. Sullivan, Deputy City Attorney

Lease Prepared By: Richard A. Rovetti, Deputy Director of Real Estate _____
(initial)

EXHIBIT A

NAVY DEED

EXHIBIT A-1

DIAGRAM OF PREMISES

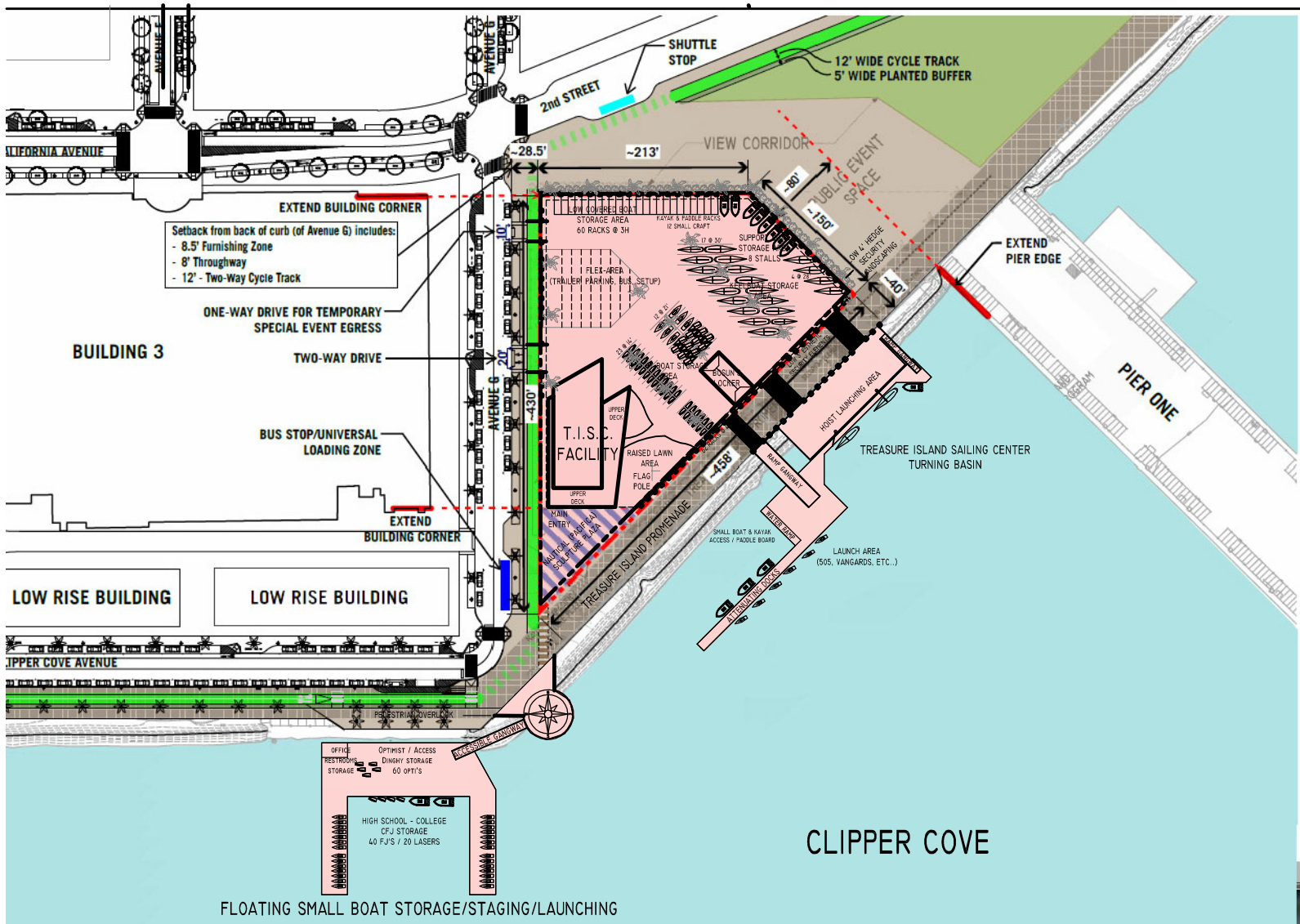


EXHIBIT A-2

LEGAL DESCRIPTION
(Clipper Cove)

EXHIBIT B

MASTER DEVELOPER IMPROVEMENTS

1. TICD shall collaborate with Tenant to provide adequate access to the Sailing Center for Tenant's guests and equipment during TICD's construction of the public improvements along Clipper Cove.
2. TICD will provide at no cost to Tenant the ability to connect to TICD-installed utility connections and Island-wide infrastructure constructed on Treasure Island, provided that Tenant shall be responsible for its own costs of connecting to all utility connections and Island-wide infrastructure.
3. Tenant, upon making its connection to the utility system at Treasure Island, shall be solely responsible for paying the market-rate rates charged at Treasure Island by the utility system providers.
4. TICD shall be responsible for constructing the Clipper Cove promenade and all improvements associated with its completion at its sole and exclusive expense.
5. Tenant shall be responsible for its own janitorial and garbage removal services and shall coordinate its garbage removal services with TICD and TIDA so as to not interfere with Island-wide activities.

EXHIBIT C

JOBS AND EQUAL OPPORTUNITY PROGRAM (JEOP)

EXHIBIT D

COVENANT TO RESTRICT USE OF PROPERTY (CRUP)

EXHIBIT E

**PERCENTAGE RENT:
PERCENTAGES OF INCOME REVENUE**

<u>Gross Income Source</u>	<u>% Fees</u>
Rentals and Dry Storage Fees	10 %
Other Revenues: merchandise sold, or water vessel rental fees, and any other revenues (Excluding grant funding, donations of any kind from any source, and Tenant's sailing program revenues). The Parties will review and identify sources of revenue at the start of each calendar year.	10 %
<u>Net Income Source</u>	<u>% Fees</u>
Net Revenue from Special Events (Excluding fundraising programs or activities for the primary and direct benefit of Tenant)	5 %

EXHIBIT F

RULES AND REGULATIONS

Except as otherwise expressly provided in the Lease:

1. Tenant and its agents and contractors shall comply with the use provisions and restrictions in the Lease, and shall not permit any authorized use of the Premises.
2. Except as approved as part of any Construction Documents, no signs, advertisements, or notices shall be attached to, or placed on or about, the Premises without prior written approval of Landlord.
3. Tenant's contractors and invitees, while on the Premises, shall be subject to these Rules and Regulations. Tenant's contractors shall be licensed by the State Contractors Licensing Board for the trades they practice at the Premises.
4. Tenant shall install and maintain at Tenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises. Tenant shall comply with the directives of the Fire Marshall and U.S. Coast Guard.
5. Tenant shall not block access to any public areas in or about the Premises.
6. Tenant shall not use or keep in the Premises any kerosene, gasoline or flammable, combustible or noxious fluid or materials except as required and approved in connection with the normal operation and maintenance of the Sailing Center. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive to Landlord or other occupants of Treasure Island by reason of noise, odors, and/or vibrations.
7. Tenant shall operate the Premises in accordance with the Approved Operating Standards, as they may be amended and updated from time to time.
8. Tenant shall not sponsor or permit any fireworks displays originating from the Premise without the prior written consent of Landlord.
9. Tenant shall not install any antenna, lighting or loudspeaker on the Premises without the prior written consent of Landlord.
10. Tenant shall store all its trash and garbage within the Premises in a clean and secure location at all times until removal of the same. Tenant shall maintain an appropriate number of trash receptacles as needed to prevent garbage from accumulating on the Premises and adjacent properties.
11. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage.

12. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of the Lease.
13. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Premises, and for the preservation of good order on Treasure Island.
14. Tenant shall be responsible for the observance of these Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

EXHIBIT G

APPROVED OPERATING STANDARDS

Except as otherwise expressly provided in the Lease:

1. Tenant and its agents and contractors shall, at all times during the Term of this Lease, comply with all of the terms and conditions of the Lease, including but not limited to the, the use provisions and restrictions in the Lease, and shall not permit any unauthorized use of the Premises.
2. Tenant shall, at all times during the Term of this Lease, operate its approved Uses at the Premises in a professional and commercially reasonable manner, and shall observe all requirements and regulations of the City and TIDA pertaining to the approved Uses at the Premises.
3. Tenants shall, at all times during the Term of this Lease, ensure that the Premises is adequately secured, maintained in a professional and commercially reasonable manner, free of pests and that its trash is properly secured and removed.
4. Tenant shall, at all times during the Term of this Lease, cooperate with TIDA and the Master Developer in accordance with the terms of this Lease.
5. Tenant's contractors and invitees, while on the Premises, shall be subject to these Rules and Regulations. Tenant's contractors who are performing any Work on the Premises, shall be subject to the licensing requirements under applicable law and must be insured and bonded as provided for in the Lease.
6. Tenant shall install and maintain at Tenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises. Tenant shall comply with the directives of the Fire Marshall and U.S. Coast Guard.
7. Tenant shall not create temporary or permanent barriers so as to block access to any public areas in or about the Premises.
8. Tenant shall not use or keep in the Premises any kerosene, gasoline or flammable, combustible or noxious fluid or materials except as required in connection with the normal operation and maintenance of the Sailing center. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive to Landlord or other occupants of Treasure Island by reason of noise, odors, and/or vibrations.
9. Tenant shall not sponsor or permit any fireworks displays originating from the Premise without the prior written consent of Landlord.
10. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage.
11. These Approved Operating Standards are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements

and conditions of the Lease.

12. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Premises, and for the preservation of good order on Treasure Island.
- 13.** Tenant shall be responsible for the observance of these Approved Operating Standards by Tenant's employees, agents, clients, customers, invitees and guests.
14. Tenant shall, at all times during the Term of this Lease, operate the Premises in accordance with these Approved Operating Standards, as they may be amended and updated from time to time.

EXHIBIT H

FINAL DEVELOPMENT CONCEPT AND DESCRIPTION OF INITIAL IMPROVEMENTS

The Initial Improvements shall be constructed in no more than 10 phases, with multiple sub-phases consisting of construction over a maximum of 15 years. Tenant shall prepare plans and specifications for all of the Initial Improvements, which will be subject to the prior review and approval of the Authority Board of Directors following any required environmental review. Tenant shall not initiate any of the Initial Improvements without having first obtained such approval.

- Perimeter fencing. The first stage will be to provide a perimeter landscaping of approximately 800 linear feet that is agreeable to TICD. The perimeter fencing will be adequate to allow security of boats, equipment and facilities, but also provide the community with the opportunity to see their community sailing center in action. Possible fencing options include 4 ft vertical posts closely aligned to prevent persons or equipment entering/exiting area.
- Temporary surfacing and landscape. The second stage will include a temporary surfacing of the area with as much landscaping as practical to allow for continued development while improving the aesthetics of the area.
- Waterside Area- Part 1. A hoist launch area of 7000square feet with 2 boat hoists will be constructed along the waterfront. This will include docks at the bottom of the hoist area and a ramp/gangway for walk down access.
- Waterside Area – Part II. Adjacent to Part I, an additional ADA ramp/gangway that also allows dinghy access/launching will be constructed with a float on the end allowing smaller boats to be launched without a hoist.
- Bosuns Locker. A building of approximately 2000 square feet will be constructed and include an office, classroom space and bathroom facilities. It will also include an area for light repair and maintenance of boats and drying of gear.
- Removal of current platform/hoists. The removal of current platform and hoists will take place to prepare for the construction of the Waterside Area Part II.
- Waterside Area- Part III. The construction of a dinghy access /ADA accessible ramp will be constructed with an approximate 15000 square foot float for the storage and launching of small boats for our Youth Sailing Program.
- Primary facility. A primary facility will be built that is at least approximately 8,000 square feet and up to 30,000 square feet. It will include a large meeting space, smaller classrooms with science/education labs, offices, a kitchen for program food preparation, locker rooms with showers and toilets, storage closets.
- Nautical Plaza. A triangular plaza south of the facility will be constructed to act as a meeting area for programs as well as a public space during community events and specified days/times (when youth programs are not using space)

- Permanent surfacing & landscape. Once all construction has been completed, permanent covering (blacktop or concrete driveway of some kind) and landscaping will be installed to include some trees, bushes and greenery throughout the premises.

EXHIBIT I

SCHEDULE OF PERFORMANCE

<u>Schedule Item</u>	<u>Responsible Party</u>	<u>Performance</u>
1. Provide guaranty of Lease obligations satisfactory to Landlord	Tenant	On or before Effective Date
2. Payment of Security Deposit	Tenant	On or before Effective Date
3. Submittal of perimeter fencing plans to TICD & TIDA	Tenant	90 days before construction
4. Obtain building & site permits for perimeter fencing	Tenant	10 days before construction
5. Install Perimeter fencing, temporary surfacing and landscaping	Tenant	within 2 years of commencement date
6. Obtain BCDC and other permits for Waterside I improvements and provide to Landlord	Tenant	Within 3 years & 9 months of commencement date
7. Start construction for Waterside Improvements Part I	Tenant	Within 4 years of commencement date
8. Obtain Building and Site permits and any Regulatory Approvals from Treasure Island Development Authority, City and applicable regulatory agencies (e.g., BCDC, Army Corps of Engineers, DTSC, Regional Water Quality Control Board) for the "Bosuns Locker"	Tenant	Within 4 years & 9 months of commencement date
9. Provide initial design concept to TICD and TIDA for feedback for Primary facility and Nautical Plaza		No later than 5 years following the effective date
10. Obtain BCDC and other permits for Waterside II improvements and provide to Landlord	Tenant	Within 5 years of commencement date
11. Start construction for Waterside Improvements Part II	Tenant	Within 5 years of commencement date

12. Obtain BCDC and other permits for removal of existing Pier and launch area and Waterside III improvements; provide to Landlord	Tenant	No later than 7 years & 9 months following the Effective Date
13. Start removal of existing pier and construction for Waterside Improvements Part II	Tenant	No later than 8 years following the Effective Date
14. Obtain Building and Site permits and any Regulatory Approvals from Treasure Island Development Authority, City and applicable regulatory agencies (e.g., BCDC, Army Corps of Engineers, DTSC, Regional Water Quality Control Board) for the “Primary Facility”	Tenant	No later than 13 years 6 months following the effective date
15. Start construction for the “Primary Facility”	Tenant	No later than 14 years following the effective date
16. Start Construction for the Nautical Plaza, permanent surfacing and landscaping.	Tenant	No later than 15 years following the Effective Date

EXHIBIT J

PLANS / DRAWINGS

EXHIBIT K

CERTIFICATE OF ARCHITECT/ENGINEER

DATE:

TO: Treasure Island Development Authority

Attention: _____

FROM:

RE: [Description of Improvements] (the "Improvements")

This Certificate is being provided pursuant to Section 8.5 of that certain Treasure Island Sailing Center Lease by and between the Treasure Island Development Authority, a California nonprofit public benefit corporation (the "Authority"), and Treasure Island Sailing Center Foundation, a California nonprofit corporation ("Tenant") dated for reference purposes as of _____ (the "Lease"). Capitalized terms used but not otherwise defined in this Certificate have the meanings given to them in the Lease.

As the [Engineer/Architect] for the design and construction of the Improvements, I visited the Improvements site at intervals appropriate to the state of construction to become generally familiar with the progress and quality of the construction completed and to determine in general if the construction was being performed in a manner indicating that the construction when completed would be in accordance with the Construction Documents and applicable code. My opinions and statements provided in this certificate are limited to my on-site inspections. I am not required to make nor have I made exhaustive or continuous on-site inspections of the Improvements. I neither retained nor exercised control over or charge of, nor am I responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Improvements.

I shall not be responsible for the contractor's schedules or failure to carry out the work in accordance with the Construction Documents. I neither have nor have had control over or charge of acts or omissions of any contractor, subcontractor or their agents or employees, or of any other person performing portions of the construction.

As the [Engineer/Architect] for the construction of the Improvements and subject to the limitations set forth above, I hereby certify to the best of my knowledge, information and belief, in my professional opinion, as follows:

1. I have observed the construction of the Improvements as set forth above.
2. Construction of the Improvements has been performed in a good and work person-like manner and in accordance with the Construction Documents, except as may be noted on the attachment hereto.
3. Construction of the Improvements has been completed in accordance with all applicable building laws, regulations and ordinances.

[Engineer/Architect]

By:

Name:

Title:

EXHIBIT L

INSURANCE REQUIREMENTS (Treasure Island Sailing Center Lease)

A. Definitions:

1. **“Approval”** means the Authority’s approval, not to be unreasonably withheld, as determined by the Authority Director.
2. **“City Parties”** means, collectively, the Authority, the City and County of San Francisco, and their respective supervisors, commissioners, officers, agents and employees.
3. **“Completed”** has the meaning set forth in the Lease.
4. **“Construction Contractor”** means any person, corporation, partnership, trust, company or any other entity that is acting as a general contractor in a direct or indirect contract with Tenant for a Specific Project.
5. **“Construction Subcontractor”** means any person, corporation, partnership, trust, company, or any other entity that is in direct contract with a Construction Contractor for the performance of a Specific Project.
6. **“Design Consultant”** means any person, corporation, partnership, trust, company or any other entity that has a direct contract with Tenant for architectural services, engineering, landscape architectural services or any other professional design services for a Specific Project.
7. **“Design-Build Contractor”** means as any person, corporation, partnership, trust, company, or any other entity that has a contract to perform any design services and Work for a Specific Project.
8. **“Improvements”** means Initial Improvements or Alterations, as defined in the Lease.
9. **“Pollution Work”** means, collectively, any Work that involves disturbance of soil, groundwater, lead-based paint, asbestos containing materials or the removal, transportation and disposal of Hazardous Substances, as defined in the Lease.
10. **“Project”** means the construction of the Initial Improvements or Alterations under the Lease.
11. **“Specific Project”** means a portion of the Work that is under construction.
12. **“Work”** means the furnishing of any physical construction or labor for the Initial Improvements or any subsequent Alterations.

B. Insurance Requirements:

Tenant shall procure and maintain, or cause to be procured and maintained, throughout the Lease, the insurance policies set forth herein. Tenant is permitted to obtain or substitute any of the insurance required with project-specific insurance, including Owner

Controlled Insurance Programs (OCIPs) and Contractor Controlled Insurance Programs (CCIPs), if such project-specific insurance meets each of the requirements set forth in the following sections.

1. Workers' Compensation and Employers' Liability Insurance:

Minimum Scope and Limits. Worker's Compensation Insurance with Employer's Liability insurance with limits of the following (or any higher limits as required by applicable law):

Coverage A. Statutory Benefits - State of Hire

Coverage B. Employers' Liability limits of:

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Policy Term. The policy shall be maintained for the duration of the Specific Project or such longer period as may be required by law.

Waiver of Subrogation. Tenant shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City Parties for losses arising from work performed by or on behalf of Tenant. Tenant shall waive all rights against the City Parties for loss or damage to the extent covered by the Worker's Compensation Insurance or Employers' Liability Insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

1. Automobile Liability Insurance:

Minimum Scope. Insurance Services Office form number CA 00 01 covering Automobile Liability.

Minimum Limits. \$1,000,000 combined single limit per accident for bodily injury and property damage.

Policy Term. The policy shall be maintained for the duration of the Specific Project.

Acceptability. Tenant shall ensure that the insurance is placed with insurers with a then current A.M. Best's rating of no less than "A(-):VIII" or higher, licensed to do business in the State of California or, if not rated by A.M. Best, then a comparable rating from a nationally recognized rating agency approved by the Authority Director.

Additional Insureds. The City Parties are to be covered as additional insureds with respect to liability arising out of the automobiles owned, leased, hired or borrowed by Tenant for the Specific Project, or that are otherwise used in connection with the Specific Project.

Primary Coverage. For claims arising out of work on the Specific Project, Tenant's insurance coverage shall be primary insurance with respect to the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of Tenant's insurance and shall not contribute to it or limit the amounts payable by Tenant's insurer.

Waiver of Subrogation. Tenant shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City Parties. Tenant shall waive all rights against the City Parties for loss or damage to the extent covered by the Automobile Liability Insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

2. Commercial General Liability Insurance:

Minimum Scope. Insurance Services Office ("ISO") Commercial General Liability coverage (occurrence form CG 0001 or its equivalent) combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground ("XCU"), Personal Injury, Broad-Form Property Damage to apply to products, and completed operations or its equivalent.

Minimum Limits. Tenant shall maintain limits no less than: Each Occurrence: \$5,000,000; General Aggregate: \$5,000,000; Products/Completed Operations Aggregate: \$5,000,000; and such amounts increased to \$7,000,000 if claims, investigation or legal defense costs are included in the maximum. Limits may be satisfied by utilizing a primary insurance policy and an umbrella/excess liability insurance policy.

Policy Term. The insurance shall be maintained for the duration of the Specific Project and either for (i) ten (10) years from the date of Substantial Completion of the Specific Project or (ii) such insurance shall have Products and Completed Operations coverage for ten (10) years from the date of Substantial Completion of the Specific Project.

Form. Coverage must be on an "occurrence" form for the General Liability Insurance.

Additional Insureds. Additional Insured Endorsement(s) will be issued covering the City Parties.

Coverage. Premises and Operations coverage and liability to cover Tenant's liability arising out of Work performed by Construction Contractors and Construction Subcontractors.

Deductibles and Self-Insured Retentions. Any deductibles or SIRs greater than \$100,000 will be approved by the Authority Director and will be the responsibility of Tenant and/or Construction Contractors or Construction Subcontractors to pay.

Primary Coverage. For claims arising out of or relating to work on the Specific Project, Tenant's insurance coverage shall be primary insurance with respect to the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of Tenant's insurance and shall not contribute to it or limit the amounts payable by Tenant's insurer.

(g) Waiver of Subrogation. Tenant shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City Parties. Tenant shall waive all rights against the City Parties for loss or damage to the extent covered by the Commercial General Liability Insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

Application. Tenant's insurance shall apply separately to each insured person or entity against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability, and rights or duties specifically assigned to the first or other named insureds.

Tenant may structure the Commercial General Liability insurance program as an Owner (or Contractor) Controlled Insurance Program ("OCIP" or "CCIP") for all of the Specific Projects. Any OCIP or CCIP shall be Approved by the Authority Director.

3. Excess Liability Insurance:

Excess liability coverage on a follow-form basis, in excess to the Commercial General Liability coverage stated above, with limits for each occurrence and in the aggregate to be determined by Tenant with the Approval of the Authority Director as part of the applicable Sub-Phase Application. The limits will be dependent on a variety of factors, including, among other things, the size and nature of the Specific Project, the amount and type of Improvements and Stormwater Management Controls to be Completed (e.g., amount and type of transportation or park improvements), the risk involved and the then current insurance market.

(b) Tenant may structure the Commercial General Liability insurance program as an Owner (or Contractor) Controlled Insurance Program ("OCIP" or "CCIP") for all of the Specific Projects.

4. Other Insurance Provisions for the Workers Compensation and Employers' Liability; Automobile Liability and Commercial General Liability Insurance Coverages:

Cancellation. The policies will have standard cancellation/non-renewal clauses, conforming to the California Insurance Code, and meeting the requirements set forth in Section 1(g) above.

Primary and Excess Coverage. All required limits of insurance may be purchased or placed through a combination of primary and excess insurance policies.

Acceptability. Tenant shall ensure that the insurance is placed with insurers with a then current A.M. Best's rating of no less than "A(-):VIII" or higher, licensed to do business in the State of California or, if not rated by A.M. Best, then a comparable rating from a nationally recognized rating agency approved by the Authority Director.

Verification of Coverage. Tenant must furnish the Authority with certificates of insurance evidencing coverage and satisfy the other requirements set forth in Section 13(d) below.

5. Professional Liability Insurance:

Professional Liability Insurance or Errors and Omissions Insurance will be required to be carried by Design Consultants and Design-Build Contractors or, in the alternative, any of their subcontractors or subconsultants.

Minimum Scope. Professional Liability or Errors and Omissions insurance shall include prior acts coverage, at least back to commencement of services for the Specific Project, to cover their specific services and contractual liability under the applicable contracts, to the extent such liability is insurable under Professional Liability or Errors and Omissions insurance.

Minimum Limits. The limits of any Professional Liability or Errors and Omissions shall not be less than \$1,000,000 per claim/\$2,000,000 aggregate, or the applicable Design Consultant's standard limit carried, whichever is higher, with a deductible or SIR amount not greater than \$100,000.

Policy Term. The policy shall be maintained for the duration of the Design Consultant's and Design-Build Contractor's contracts and for a period of five (5) years after Substantial Completion of the applicable Design Consultant's or Design-Build Contractor's services.

Other Insurance Requirements.

Acceptability. Tenant shall require its Design Consultants and Design-Build Contractors to ensure that the insurance is placed with a then current A.M. Best rating of not less than "A(-):VIII" or higher, licensed to do business in the State of California or, if not rated by A.M. Best, then a comparable rating from a nationally recognized rating agency approved by the Authority Director.

Verification of Coverage. Tenant shall require its Design Consultants and Design-Build Contractors to furnish Tenant, and the Authority, with certificates of insurance evidencing coverage. All certificates and endorsements are to be received by Tenant and the Authority before the Design Consultant begins services relating to Work for the Specific Project.

6. Construction Contractors', Design-Build Contractors' and Design Consultants' Insurance Coverages:

Tenant will require Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design Consultants to procure and maintain the following insurance for work and services performed at the Project.

Workers' Compensation and Employers' Liability.

Minimum Scope and Limits. Workers' Compensation in statutory amounts with Employers' Liability insurance with limits of the following (or any higher limits as required by applicable law):

Coverage A. Statutory Benefits- State of Hire

Coverage B. Employers' Liability limits of:

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Policy Term. The policy shall be maintained for the duration of the contracts with Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design Consultants for a Specific Project, or such longer period as required by applicable law.

Waiver of Subrogation. Tenant shall require its Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design-Consultants to waive all rights of subrogation in favor of Tenant, the City Parties and each other for loss or damage to the extent covered by Workers' Compensation, Employers' Liability insurance, or any other employment-related insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. Each such party will waive all rights against each other, and against Tenant and the City Parties, for loss or damage to the extent covered by the Workers' Compensation, Employers' Liability insurance, or other employment-related insurance applicable to the Work. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

Automobile Liability Insurance.

Minimum Scope. Insurance Services Office form number CA 00 01 covering Automobile Liability.

Minimum Limits. \$1,000,000 combined single limit per accident for bodily injury and property damage.

Policy Term. The policy shall be maintained for duration of the contracts with Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design Consultants for a Specific Project.

All Autos Covered. Tenant and the City Parties are to be covered as insured with respect to liability arising out of the automobiles owned, leased, hired, or borrowed by Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design Consultants for the Specific Project or used to access the Specific Project.

Primary Coverage. For claims arising out of services relating to the Specific Project, Construction Contractors' (and their Construction Subcontractors') Design-Build Contractors' and Design Consultants' insurance coverage shall be primary insurance with respect to the City Parties. Any insurance or self-insurance maintained by the Authority or the City Parties shall be excess of Construction Contractors' (and their Construction Subcontractors') Design-Build Contractors' and Design Consultants' insurance and shall not contribute with it.

Commercial General Liability Insurance. The following Commercial General Liability insurance shall be required for (i) Construction Contractors (their Construction Subcontractors), Design-Build Contractors, and Design Consultants that are (i) not enrolled in an OCIP or CCIP for the Specific Project for their on-site or off-site Work, and (ii) for Construction Contractors (or their Construction Subcontractors) Design-Build Contractors and Design Consultants that are enrolled in an OCIP or CCIP for the Specific Project for their off-site Work:

Minimum Scope. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Minimum Limits. Each Occurrence: \$1,000,000; General Aggregate: \$2,000,000; Products/Completed Operations Aggregate: \$2,000,000; and Personal and Advertising Injury: \$1,000,000.

Policy Term. The policy shall be maintained for the duration of the contracts with Construction Contractors (and their Construction Subcontractors) and Design-Build Contractors for a Specific Project until either (i) five (5) years from the date of Substantial Completion of the Specific Project or (ii) such insurance shall have Products and Completed Operations coverage for five (5) years from the date of Substantial Completion of the Specific Project. The policy shall be maintained for the duration of the contracts with each Design Consultant until two (2) years from date of completion of its services on the Specific Project.

Form. Coverage must be on an "occurrence" form.

(5) An Additional Insured Endorsement(s). Additional Insured Endorsement(s) shall be issued to cover the City Parties and Tenant. The policy shall stipulate that the insurance afforded to the Additional Insureds (Tenant and all the City Parties) shall apply as primary insurance and that any other insurance carried by Tenant and the City Parties (and any other entity and individual required

to be named as additional insured) will be excess only and will not contribute with this insurance. The policy shall contain substantially similar language to the following: “Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary for claims and or damages arising out of the project then under construction and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy.”

(6) Premises and Operations coverage with no explosions, collapse, or underground damage exclusion.

(7) Independent Contractors’ Liability to cover Contractor’s liability arising out of work performed by its subcontractors.

(8) Broad-Form Property Damage.

(9) The policy may not be subject to a SIR that exceeds \$25,000. Any and all SIRs must be susceptible of being satisfied under the policy through payments by the named insured or its agents, and any additional insureds or co-insures. If a SIR applies, the Allocated Loss Adjustment Expense (including defense costs) shall satisfy the SIR.

7. Other Insurance Provisions for all Commercial General Liability, Workers’ Compensation and Automobile Liability Insurance Coverages for Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design Consultants:

Cancellation. The policies will all have standard reduction/cancellation/non-renewal clauses, conforming to the California Insurance Code.

Primary and Excess Coverage. All required limits of insurance may be purchased or placed through a combination of primary and excess insurance policies.

Acceptability. Tenant shall require its Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design Consultants to ensure that the insurance is placed with insurers with a then current A.M. Best’s rating of no less than “A(-):VIII” or higher, licensed to do business in the State of California or, if not rated by A.M. Best, then a comparable rating from a nationally recognized rating agency approved by the Authority Director.

Verification of Coverage. Construction Contractors (and their Construction Subcontractors), Design-Build Contractors and Design Consultants must furnish Tenant and, upon request, the Authority, with certificates of insurance evidencing coverage and satisfy the other requirements set forth in Section 13(d) below. All certificates and endorsement are to be received by Tenant before Work or services commence on the Specific Project.

(e) Construction Contractors’ (and their Construction Subcontractors’), Design-Build Contractors’ and Design Consultants’ insurance shall apply separately to each

insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and rights or duties specifically assigned to the first or other named insured.

8. Property Insurance for Construction Contractors (and their Construction Subcontractors) and Design-Build Contractors:

Minimum Scope and Limits. "Special Cause of Loss" property insurance (commonly referred to as "all risk" or "special perils" coverage) in an amount equal to the full replacement cost of Construction Contractor's (their Construction Subcontractor's and Design-Build Contractor's property for which it has title and/or risk of loss. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed.

Policy Term. The policy shall be maintained for the duration of the contracts with Construction Contractors (and their Construction Subcontractors) and Design-Build Contractors for a Specific Project and continue until the property is delivered to Tenant.

Waiver of Subrogation. Tenant will require its Construction Contractors (and their Construction Subcontractors) and Design-Build Contractors to include a waiver of rights of recovery clause in favor of Tenant and the City Parties for losses arising from work or services performed for a Specific Project. Construction Contractor (and their Construction Subcontractors) and Design-Build Contractors will waive all rights against each other and against Tenant, the City Parties and all other subcontractors for loss or damage to the extent covered by All-risk Property insurance or any other property or equipment insurance applicable to the work or services, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

9. Contractors Pollution Insurance:

In connection with any Pollution Work, Tenant will or shall require its Construction Contractors and Design-Build Contractors or in the alternative their subcontractors or subconsultants that will be performing the Pollution Work (collectively, "**Pollution Contractors**") to obtain the following insurance coverages:

Minimum Scope and Limits. Contractors Pollution Liability insurance applicable to Pollution Work with limits of not less than Two Million Dollars (\$2,000,000) for each claim or occurrence and Two Million Dollars (\$2,000,000) aggregate, per policy period of one year, or for the duration of the Pollution Work if longer than one year. If such activity involves or may involve lead-based paint or asbestos identification / remediation, such insurance shall not contain lead-based paint or asbestos exclusions.

Policy Term. The policy shall be maintained for the duration of the Pollution Contractors' contract and for a period of at least five (5) years after completion of the Pollution Work.

Self-Insured Retentions. Any Contractors Pollution Liability insurance policy containing a SIR greater than One Hundred Thousand Dollars (\$100,000) shall be disclosed to Tenant and the Authority and shall be subject to the Authority's Approval. If any policy is subject to a SIR, then such SIR shall contain or be endorsed to provide that the SIR may be satisfied by (i) the named insured, or (ii) Tenant, or (iii) the City Parties and its successors and assigns. If a SIR applies the Allocated Loss Adjustment Expense (including defense costs), shall satisfy the SIR.

Claims Made Forms. The Contractors Pollution Liability coverages may be written on a claims made or occurrence form, but in either case shall meet the following requirements.

The retroactive date must be shown, and must be before the effective date of the contract or subcontract of the Pollution Contractor or the date such Pollution Work commences, whichever is later.

If coverage is reduced, canceled or non-renewed, and not replaced with another claims made or occurrence policy form with a retroactive date before the effective date of the contract or subcontract of the Pollution Contractor or the date such Pollution Work commences, whichever is later, the Pollution Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of such Pollution Work.

Endorsements. All Contractors Pollution Liability insurance shall be endorsed to provide the following:

The City Parties are to be covered as additional insureds.

Such Contractors Pollution Liability policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of the Specific Project and the Pollution Contractor's contract. Such policies shall also provide for severability of interests. For any claims that may arise from or in connection with the Specific Project, Pollution Contractor's insurance shall be primary insurance with respect to Tenant and City Parties. Any insurance or self-insurance maintained by Tenant or City Parties shall be excess of Pollution Contractor's insurance and shall not contribute with it.

Non-Owned Disposal Site coverage.

Cancellation. Thirty (30) days' advance written notice of reduction or cancellation in coverage or ten (10) days' advance written notice in case of non-payment.

Claims Requirements. A copy of the claims reporting requirements must be submitted to Tenant before any Pollution Work commences.

Primary and Excess Coverage. All required limits of insurance may be purchased or placed through a combination of primary and excess insurance policies.

Acceptability. Tenant shall require its Pollution Contractors to ensure that the insurance is placed with insurers with a then current A.M. Best's rating of no less than "A(-):VIII" or higher, licensed to do business in the State of California or, if not rated by A.M. Best, then a comparable rating from a nationally recognized rating agency approved by the Authority Director.

Verification of Coverage. Tenant must furnish the Authority with certificates of insurance evidencing coverage and satisfy the other requirements set forth in Section 13(d) below. All certificates and endorsement are to be received by the Authority before the Pollution Work commences on the Specific Project.

10. Waiver and Adjustments to Insurance Requirements:

(a) Waiver of Tenant's Insurance Requirements. Tenant and the City Parties understand that the design and construction of the Project may take years, and that there are community benefits objectives for the Project, including but not limited to, the hiring of local Construction Subcontractors and Design Consultants. In addition, the availability of commercially reasonable insurance coverages is dependent upon the market at the time of the Specific Project. Based upon the foregoing, Developer may, from time to time, request a waiver from or amendment to the insurance that it or its Construction Contractors, Construction Subcontractors, Design-Build Contractors and/or Design Consultants are required to carry under these Insurance Requirements. The Authority shall use good faith efforts to respond to Developer's waiver or amendment request in an expeditious manner. The Authority Director may issue a waiver in any specific instance, or may in appropriate circumstances bring the matter to the Authority Board for consideration.

11. Miscellaneous:

Minimum Limits. The insurance limits set forth in these Insurance Requirements are minimum limits, scopes and requirements of insurance only. Nothing herein should be construed to limit the actual limits, scopes, types or requirements of the insurance that Tenant may acquire or that Tenant will require of any of its Construction Contractors, Construction Subcontractors, Design-Build Contractors, Design Consultants, or any other person performing any services or Work or providing any materials or supplies for the Project, the Sub-Phase or any Specific Project. Tenant, in its sole and absolute discretion, can require additional limits, scopes, types and requirements of insurance without notice to the Authority provided that the minimum requirements set forth herein are met, or a written waiver has been received. If additional limits and/or coverages are obtained, to the extent permitted, such insurance shall also be for the benefit of the Authority.

Increases. Not more often than every five (5) years and upon not less than sixty (60) days prior written notice, the Authority may require Tenant to increase the insurance limits set forth above if the Authority finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with Tenant's activities. Before requiring any increase in insurance, the Authority and Tenant shall meet and confer in good faith to determine whether such increase is necessary.

No Limitation on Other Coverage. Tenant's compliance with the provisions of these Insurance Requirements shall in no way relieve or decrease Tenant's other obligations under the Lease (including any indemnification obligation) or under any other agreement relating to the Project.

Verification of Coverage. Tenant (and, upon request, each Construction Contractor, Construction Subcontractor, Design-Build Contractor and Design Consultant) must furnish the Authority with certificates of insurance and with endorsements evidencing coverage required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All Tenant's certificates and endorsements are to be received before the applicable Work or services commence (or before the applicable Work or service is performed by a Construction Contractor, Construction Subcontractor, Design-Build Contractor, or Design Consultant, when a copy of the certificate or endorsement is requested). The Authority reserves the right to require, and Tenant (and each Construction Contractor, Construction Subcontractor, Design-Build Contractor and Design Consultant) agrees to provide, complete, certified copies of all required insurance policies, including endorsements, demonstrating the coverage required by these specifications in connection with any loss, claim, lawsuit, or denial of coverage.

Tenant's Requirements for Environmental Insurance. Tenant's requirements for Environmental Insurance will be addressed at the time that Tenant performs any Pollution Work.

EXHIBIT M

CERTIFICATE OF COMPLETION

This Certificate of Completion is made by the Treasure Island Development Authority, a California nonprofit public benefit corporation (the "Authority"), pursuant to Section 8.20 of that certain Treasure Island Sailing Center Lease by and between the Authority and Treasure Island Sailing Center Foundation, a California nonprofit corporation ("Tenant") dated for reference purposes as of _____ (the "Lease"). Capitalized terms used but not otherwise defined in this Certificate have the meanings given to them in the Lease.

WHEREAS, the Authority has conclusively determined that the construction obligations of Tenant as specified in the Lease with respect to the Initial Improvements have been fully performed in accordance with the Construction Documents; and

WHEREAS, the Authority's determination regarding the above construction obligations is not directed to, and the Authority assumes no responsibility for, engineering or structural matters, latent defects, or compliance with building codes and regulations or applicable law regarding construction standards; and

NOW, THEREFORE, as provided in the Lease and subject to the foregoing provisions hereof, the Authority does hereby certify that the Initial Improvements have been fully performed and completed by Tenant as set forth above [except for the following _____].

Nothing contained in this instrument shall modify in any other way any other provisions of the Lease, including the survival provisions contained therein.

IN WITNESS WHEREOF, the Authority has executed this Certificate of Completion as of _____, 20__.

AUTHORITY:

TREASURE ISLAND DEVELOPMENT
AUTHORITY,
a California nonprofit public benefit
corporation

By: _____

Name: _____

Title: Executive Director

EXHIBIT N

COMMUNITY PUBLIC BENEFIT

Youth Program Scholarships

In keeping with the framework and intent derived from the San Francisco Parks and Recreation Department scholarship guidelines, Treasure Island Sailing Center (TISC) will adapt the aforementioned policy and amend it to state:

100% or Full Scholarships will be awarded to students 18 years of age or younger whose household incomes are equal or less than 200% of the United States Federal Poverty Level (FPL) determined annually and found at: <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/>

50% or Half Price Scholarships will be awarded to students 18 years of age or younger whose household incomes are equal or less than 300% of the United States Federal Poverty Level (FPL) determined annually and found at: <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/>

Either Documentation confirming income as follows:

- Prior year's tax return
- Current SSI (Supplemental Security Income) statement

Or

Documentation confirming participation in any of the San Francisco Human Services Agency (H.S.A.) administered programs as follows:

- Medi-cal – provide current Notice of Action letter
- CalWORKS – provide current Notice of Action letter
- Food Stamp – provide current Notice of Action letter
- Public Housing Authority – provide rent receipt

The same criteria above will be used for those with a documented ADA disability. Under the **ADA**, a person has a **disability** if he/she 1) has a physical or mental impairment that substantially limits one or more major life activities, 2) has a record of such an impairment, or 3) is regarded as having such an impairment

Volunteer Rewards Program for those older than 18 years of age

The vision for this program is twofold:

1. To encourage the use, development, and retention of volunteers
2. To provide access to those adults who chose not to or could not pay for TISC's programs

Volunteers provide a unique and important community service which TISC relies on to fulfill its mission. TISC provides opportunities for adults to contribute to its mission and the community through volunteerism. TISC utilizes volunteers in a variety of ways from helping with

community or fundraising events, upkeep of the facilities, maintaining its fleet to office work and assistance with program instruction. TISC volunteers, while receiving no payment are covered for liability and injury while volunteering for TISC.

Volunteer Rewards Program:

- Volunteers who complete a minimum of 16 hours of service in a calendar year qualify
- Volunteers can trade their hours equal to hours of instruction for any of TISC's courses or hours for boat rentals
- TISC will reserve 10% of its course spots for volunteers up until 2 weeks prior to start of the class. After that it is first come first serve basis.
- Volunteers must adhere to TISC's progression of courses and boat usage policies
- Volunteers must complete volunteer hours equal to any course or rental prior to any reservation
- Volunteer Rewards are non-transferrable unless in the case of a minor to whom the volunteer is a legal guardian

EXHIBIT O

SPECIAL EVENTS NOTIFICATION POLICY

Tenant Venue Special Use Request Form

Today's Date: _____

Event Location: _____

Event Sponsor: _____

Contact Name: _____

Phone Number: _____

E-mail Address: _____

Event Description: **Attach complete event description including plans for any additional permitting required, (Dig permit, ABC, SFFD, SFPD, DEM, DPH,SFEC, road closure) as well as medical, waste management /recycling plans if applicable.**

TIDA: Richard A. Rovetti,
Deputy Director of Real Estate

Event Date/Dates: _____

Signature

Event Times: _____

TIDA: Robert Beck
Treasure Island Director

Guest/ Participant Count: _____

Is event contained within Premises?

Signature
