File No. 260194 **Committee Item No.** 4
Board Item No. 15

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee **Date** March 18, 2026
Board of Supervisors Meeting **Date** March 24, 2026

Cmte Board

Cmte	Board	
☐	☐	**Motion**
☒	☒	**Resolution**
☐	☐	**Ordinance**
☐	☐	**Legislative Digest**
☐	☐	**Budget and Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☒	☒	**Introduction Form**
☐	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☒	☒	**Contract/Agreement**
☒	☒	**Form 126 – Ethics Commission**
☐	☐	**Notice of Award/Award Letter**
☐	☐	**Application**
☐	☐	**Public Correspondence**

OTHER **(Use back side if additional space is needed)**

☒	☒	PRT Resolution Nos. 23-28 and 23-29 6/13/2023
☒	☒	PRT Resolution No. 26-06 2/10/2026
☒	☒	PRT Presentation 3/18/2026
☐	☐	
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Completed by: Brent Jalipa **Date** March 12, 2026
Completed by: Brent Jalipa **Date** March 19, 2026

[Real Property Lease - Dylan's Tours, Inc. - 490 Jefferson Street - $72,000 annually with 3% annual increases]

Resolution approving Port Commission Lease No. L-17378 with Dylan's Tours, Inc., a limited liability company, for approximately 1,505 square feet on the ground floor of a two-story building located at 490 Jefferson Street for a term of five years to commence on May 1, 2026, through April 30, 2031, for an initial annual base rent of $72,000 with 3% annual increases and one five-year option to renew.

WHEREAS, California Statutes of 1968, Chapter 1333 (as amended, the "Burton Act") and Charter, Sections 4.114 and B3.581 empower the San Francisco Port Commission ("Port" or "Port Commission") with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction in the City and County of San Francisco; and

WHEREAS, The Port Commission adopted Resolution Nos. 23-28 and 23-29 on June 13, 2023, which authorized the payment of Broker Commissions under the Broker Payment Policy ("Policy") and authorized Port staff to pursue tenants for certain space in a broker-assisted competitive bidding process respectively; and

WHEREAS, Port hired Maven Commercial in November 2023 to pursue a new tenant for 490 Jefferson Street under a broker-assisted competitive bidding process; and

WHEREAS, After approximately two years, Maven found limited interest in the property and most recently found Dylan's Tours, Inc., a California corporation ("Dylan's Tours"), for the ground floor of 490 Jefferson Street (the "Premises").

WHEREAS, Port staff negotiated a letter of intent, which was used as the basis for the financial structure and terms of Lease No. L-17378 (the "Lease"); and

WHEREAS, The financial terms of the Lease are consistent with current market conditions for retail leases in Fisherman's Wharf; and

WHEREAS, The proposed rent of the Lease is not less than Market Rent (as defined in Administrative Code, Section 23.2); and

WHEREAS, Dylan's Tours' use will activate a long-standing blighted vacant building on Jefferson Street, and cause customers to linger in the area who otherwise walk by; and

WHEREAS, At its February 10, 2026 meeting, the Port Commission authorized the Executive Director of the Port, or her designee, to enter into Lease No. L-17378 with Dylan's Tours, for approximately 1,505 square feet on the ground floor of a two-story building located at 490 Jefferson Street for a term of five years with one five-year option to renew; and

WHEREAS, San Francisco Charter, Section 9.118 requires Board of Supervisors' approval of certain leases that either have a term of 10 years or more or have anticipated revenue to the City of $1,000,000 or more; and

WHEREAS, The terms of Lease No. L-17378, including extension options, will be 10 years; for a term of five years to commence on May 1, 2026, through April 30, 2031, for an initial annual base rent of $72,000 with 3% annual increases and one five-year option to renew; and

WHEREAS, Other key terms of Lease No. L-17378 are described in the Port staff report to the Port Commission dated February 6, 2026, and the draft Lease No. L-17378, both of which are on file with the Clerk of the Board of Supervisors in File No. 260194; and now, therefore be it

RESOLVED, That the Board of Supervisors hereby approves Lease No. L-17378 and authorizes the Acting Executive Director of the Port, or his designee, to execute such Lease No. L-17378 in a form approved by the City Attorney and in substantially the same form on file with the Clerk of the Board of Supervisors in File No. 260194; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Port Executive Director to enter into any additions, amendments, or other modifications to Lease No. L-17378 that the Port Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port or materially reduce the benefits to the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Port Executive Director of such documents; and, be it

FURTHER RESOLVED, That within thirty (30) days of Lease No. L-17378 being fully executed by all parties, the Port shall provide a copy of the lease to the Clerk of the Board for inclusion into the official file.

CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR

LEASE NO. L-17378

BY AND BETWEEN

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

AND

DYLAN'S TOURS, INC., DBA DYLAN'S TOURS, A CALIFORNIA CORPORATION

490 JEFFERSON STREET

FEBRUARY 1, 2026

MICHAEL MARTIN
ACTING EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

GAIL GILMAN, PRESIDENT
STEPHEN ENGBLOM, VICE PRESIDENT
WILLIAM ADAMS, COMMISSIONER
STEVEN LEE, COMMISSIONER
KEN McNEELY, COMMISSIONER

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LEASE AGREEMENT
BASIC LEASE INFORMATION

Lease Date:	February 1, 2026
Lease Number:	**L-17378**
Landlord or Port:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Landlord's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Tenant:	Dylan's Tours Inc., dba Dylan's Tours, a California corporation
Tenant's Main Contact Person and Mailing Address:	David Dylan 12 Whitney St San Francisco, CA 94131 Telephone/Cell: (415) 756-1486 Email: dylantdavid@gmail.com
Tenant's Billing Contact and Address:	David Dylan 12 Whitney St San Francisco, CA 94131 Telephone/Cell: (415) 756-1486 Email: dylantdavid@gmail.com
Tenant's Emergency Contact and Address:	Same as Main Contact
Tenant's Insurance Contact and Address (not broker):	Same as Main Contact
Contact Information for Tenant's Agent for Service of Process (including address):	David Dylan 12 Whitney St San Francisco, CA 94131 Telephone/Cell: (415) 756-1486 Email: dylantdavid@gmail.com

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Premises:	490 Jefferson Street, a portion of the ground floor and overhang, as depicted on ***Exhibit A***.
Facility:	SWL 303 San Francisco, California 94133
Premises Rentable Square Footage:	Approx. 1,505 rentable square feet of retail space including the overhang area.
Additional Vehicle Staging Space:	Tenant shall have the right to park up one (1) vehicle ("Display Vehicle") in the adjacent outdoor area located in between 440 Jefferson Street and the Premises as shown on ***Exhibit A-1*** ("Mural Area") for $375.00 per month (inclusive of the 25% San Francisco parking tax) starting at the Rent Commencement Date with periodic increases on 30-day notice to Tenant. The space can be only used for the Display Vehicle, specifically excluding all other parking. The path of departure and arrival of the Display Vehicle are subject to approval by Port and other applicable government agencies. Tenant acknowledges and agrees that Port will be installing three sets of benches in front of the Display Vehicle as shown on ***Exhibit A-1***.
Length of Term:	Approximately Sixty-Six (66) months (Commencement Date to Rent Commencement date is the earlier of (i) one hundred eighty (180) days or (ii) the date Tenant opens for business; Rent Commencement Date to Expiration Date is sixty (60) months)
Extension Option:	As further described in ***Section 4.3***, Tenant shall have the option to extend the Term (the "**Extension Option**") by an additional 60 months ("**Extension Term**"). Tenant must provide written notice to Port no later than six (6) months before the Expiration Date of its election to exercise the Extension Option. If (i) any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of an Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), or (ii) a Port program or project is anticipated to occur during the applicable Extension Term that could impact the Premises, then in either event, Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Tenant never exercised the Extension Option.
Extension Option Rent	Monthly Base Rent during the first year of the Option Term shall be equal to the then prevailing Market Rate (as defined in ***Section 4.3(b)***) as established by Port's market assessment of comparable rents on comparable retail spaces, which Market Rate shall be binding; provided however, that Market Rate during the first year of the Option Term shall not be less than 103% of the Monthly

	Base Rent payable in the month immediately preceding the commencement of the Option Term. Thereafter, Monthly Base Rent shall be increased by three percent (3%) annually.		
Commencement Date:	Thirty days (30) days after full execution of the Lease.		
Rent Commencement Date:	The earlier of the date that Tenant opens for business or one hundred and eighty (180) days following the Commencement Date.		
Anniversary Date:	The first and each subsequent anniversary of the Rent Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the Commencement Date.		
Expiration Date:	Sixty (60) Months after the Rent Commencement Date.		
Monthly Base Rent:	**Months**	**Sq. Ft.**	**Monthly Base Rent**
	1-12	1,505	$6,000.00
Anniversary Date	13-24		$6,180.00
	25-36		$6,365.40
	37-48		$6,556.36
	49-60		$6,753.00
Security Deposit:	Thirteen Thousand Five Hundred Six Dollars ($13,506.00)		
Percentage Rent:	In addition to Monthly Base Rent, Tenant shall pay Percentage Rent equal to five percent (5.0%) of Gross Revenues during each calendar month over an annual breakpoint of Nine Hundred Thousand Dollars ($900,000). As further described in ***Section 5***, in addition to the Monthly Base Rent specified above, Tenant will pay on a monthly basis, any Percentage Rent due based upon the calculation described above.		
Payment of First Month's Rent and Security Deposit:	Prior to Port's execution of this Lease, Tenant must pay in advance, the first month's Base Rent equal to Six Thousand Dollars ($6,000.00) and the Security Deposit of Thirteen Thousand Five Hundred Six Dollars ($13,506.00). Total Due is Nineteen Thousand Five Hundred Six Dollars ($19,506.00)		

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Environmental Requirements:	Tenant shall be required to do the following: • Ensure that no materials from the operation are transported from the property via wind or stormwater. Tenant is advised that storm drains in and around the Premises discharge directly into the Bay. • Conduct daily inspections and immediately clean any materials that might contaminate stormwater. • Place drip pans under any leaking vehicle / equipment. Immediately repair or replace leaking equipment. • Maintain a spill kit on the Premises, the purpose of which is to be prepared to clean up liquid releases of fuel and oil from equipment or other sources. • Clean spills and releases of liquids / fluids immediately and completely upon discovery. This includes the removal and proper disposal of all absorbent waste materials. • Properly dispose of hazardous waste. • Use and/or storage of compressed and flammable gases may require a permit from the San Francisco Department of Public Health (SFDPH) Hazardous Materials Unified Program Agency (HMUPA), which will be verified by SFDPH inspection staff. For more information, go to: Apply to use and store hazardous material at your business | SF.gov or call (415) 252-3900. Tenant shall contact and obtain permits with the SFDPH HMUPA as applicable. Provide proof of permit application submission and any permit-related correspondence between Tenant and SFDPH HMUPA to Port. **SPILL KIT CONTENTS** • Instructions for use • Absorbent spill pads and / or socks • Absorbent material (e.g., solvent absorbent, vermiculite, kitty litter, etc.) • Hydrophobic mop (i.e., a mop that absorbs oil, but not water) • Safety gloves (that are appropriate for oils, and other petroleum) • 5-gallon bucket/drum with lid • Hazardous Waste Labels **WASTE DISPOSAL** If the amount of the oil waste is less than 27 gallons per month, then a City sponsored program can be used for disposal. This program is called the Very Small Quantity Generators (VSQG) program and allows businesses to use a drop-off program by making an appointment to take their own waste to the City's Household Hazardous Waste Facility. VSQG drop-off days are held once or twice a month (usually the last Wednesday of the month). Motor oil can be dropped off during all business hours.

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	To schedule an appointment, call SF Recycling & Disposal at (415) 330-1425.
Landlord's Work:	Landlord's Work is defined and limited to that work listed on Silverado Contractors letter dated March 31, 2025, attached hereto as ***Exhibit E***. Port will do no additional work in the Premises other than Landlord's Work, and, for clarity, Landlord will not do any work for Mechanical Electrical, Plumbing, and HVAC systems needed for the Premises, excluding the Facility.
Initial Tenant Work and TI Allowance:	After Landlord Work is complete, Port will deliver the Premises to Tenant in its then **AS-IS** condition so Tenant can perform all Initial Tenant Improvement Work. All Initial Tenant Work shall be constructed at Tenant's sole cost and expense and in accordance with the Work Letter attached as ***Exhibit D*** (and the Scope of Work attached to the Work Letter) and ***Section 13***. Port shall provide Tenant with up to Three Hundred Twenty Thousand Dollars ($320,000.00) (the "**TI Allowance**") but excluding any remediation of Hazardous Materials (which shall be performed by Port outside of Tenant's Work) for costs related to Initial Tenant Work, in accordance with the process detailed in the Work Letter attached hereto as ***Exhibit D.*** The San Francisco Fire Department requires Tenant to install an appropriate life safety system/fire alarm system as part of the Initial Tenant Work. The TI Allowance may be used for Initial Tenant Work but may not be used for the purchase of furniture, fixtures, or equipment or any other personal property. Tenant understands and agrees that other than the TI Allowance, it will not receive or seek improvement allowances, rent credits or other compensation or consideration for construction of any Improvements and agrees that it will not seek additional term for the purpose of amortizing any Improvements it constructs. Tenant further understands and agrees that, except for the TI Allowance, it will not seek or receive rent credit or other compensation or consideration or additional term for any additional time it may take to obtain Regulatory Approvals, including those issued by Port.
Permitted Use:	The Premises shall be operated as Dylan's Tours, providing bicycle and open-air van group tours and for no other purposes. Tenant shall have a retail component selling merchandise, clothing and products associated with Dylan's Tours and San Francisco. Tenant shall not be permitted to change the use, including through any sublease or assignment. Tenant's use of the Premises shall not interfere with the use or Port's ability to lease the second floor of

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	the building in which the Premises are located or the "Annex" behind the Premises.
Operating Covenant:	In addition to the requirements set forth in ***Section 8.2*** (Tenant's Operating Covenants), from and after the Rent Commencement Date, Tenant is required to open for business and operate throughout the Term, fully fixtured, stocked and staffed, ready to do business with the public. Minimum Hours are: Monday – Sunday; 10:00 AM to 5:00 PM.
Additional Prohibited Uses:	In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities: • Storage of hazardous materials, including but not limited to combustible liquids (e.g., gear oil / lubricants); corrosives; explosives; flammable liquids (paints and varnishes); pesticides, rodenticides, and herbicides; and storage of hazardous waste, other than those explicitly permitted. • Hot works, welding, and cutting. • Washing, maintenance, and fueling of vehicles or equipment. • Application of paint or coatings. • Discharge of any material, solid, slurry, or liquid (including potable water), into any stormwater catch basin. Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.
Superstructure:	See ***Schedule 2*** attached hereto**.**
Maintenance and Repair:	Tenant agrees to keep and maintain the nonstructural elements of the Premises and appurtenances and every part thereof, including without limitation, the interior surface of the walls, the windows, doors and door hardware, plate glass, and all electrical, plumbing, heating and air conditioning ("HVAC", if any) and mechanical systems serving the Premises in good and sanitary order, condition and repair at Tenant's sole cost and expense during the Term, consistent with ***Section 11 below*** Port shall maintain in good condition and repair the roof, structural portions of exterior walls, and foundations provided Tenant has not caused the need for repair by their acts or omissions, and excepting any repair caused by Alterations made by Tenant or any Tenant Party, or necessitated by any loss or damage, the repair of which is Tenant's responsibility under the lease, consistent with ***Section 11.***
Utilities:	Tenant's sole responsibility, as further described in ***Section 12*** below.

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	If a utility or service is not separately metered, Tenant shall reimburse Port its estimated prorata share of such utility or service, as reasonably determined by Port each calendar quarter.
Location of Asbestos in Facility:	See ***Schedule 1*** attached hereto.
Hazardous Materials Disclosure:	See ***Schedule 4*** attached hereto.
Development Project:	• Seawall Improvement Project • Wharf J-11 shoring project • Ongoing ground well monitoring • Lease to reestablish marine vessel fueling at the fueling dock at Hyde Street Harbor
Port Share of Excess Sublease Rent:	100% of Excess Sublease Rent.
Participation in Sale Proceeds:	100% of Net Sale proceeds
Signage:	Tenant is permitted to install signage on the exterior of the Premises upon the prior approval of Port which shall not be unreasonably withheld. All signage must comply with Port's Sign Criteria and Tenant must obtain all required Regulatory Approvals.
Lease Prepared By:	Don Kavanagh, Senior Property Manager

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LEASE AGREEMENT

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

1. DEMISE.

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

2. DEFINITIONS.

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

"**ACMs**" is defined in Section 15.6 below.

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

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

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

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

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

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

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

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

"**Audit Period**" is defined in Section 5.3 below.

"**Base Rent**" means the monthly Base Rent specified in the Basic Lease Information and described further in Section 5.1 hereof.

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

"**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents used in Tenant's business operations for the Premises, whether maintained by Tenant or a third-party contractor. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

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

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

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

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

"**Certified Construction Costs"** are Construction Costs that Port has approved through the procedures described in Section 20.4

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

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

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

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

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

"**Common Areas**" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other tenants or permittees, and that are designated by Port from time to time for the general common use or convenience of Port, Tenant, or other tenants of Port, and the respective authorized Agents and Invitees of the same. The Common Areas include, without limitation, driveways, delivery areas, pedestrian walkways, service corridors accessing loading docks, utility rooms, and other areas or improvements provided or designated by Port for common use. The Common Areas shall not include any parking areas located outside the boundaries of the Facility.

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

"**Completion Date**" is defined in the Work Letter.

"**Concession**" is defined in Section 30.16 below.

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

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"**Construction Costs**" means actual costs paid by Tenant for all categories of costs for Initial Tenant Work, without interest, and subject to the limitations set forth in ***Exhibit D***, Work Letter.

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

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

"**Costs of Sale**" means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable brokerage commissions taking into account market conditions and the type of property; (b) customary closing fees and costs, including title insurance premiums, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys' fees; and (d) new tenant improvements performed in compliance with Section 13 and made solely to increase the value of the Sale price minus the increase in the Sale price by such tenant improvements. Costs of Sale exclude rents, property taxes, or other income or expense items customarily prorated in connection with sales of commercial real property.

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

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

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

"**Encroachment Area**" is defined in Section 3.3 below.

"**Encroachment Area Charge**" is defined in Section 3.3 below.

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

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

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

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

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

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

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

"**Extension Option**" is defined in Section 4.3(a).

"**Extension Term**" is defined in Section 4.3(a).

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

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

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

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

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

"**goodwill**" means the value assigned to Tenant's intangible business assets.

"**Gross Revenue**" means, subject only to the exceptions stated below, all sales, payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received or receivable by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises, excluding on-line sales, including without limitation, all returns and refunds, employee meals, discounted and complimentary meals, beverages and services or similar benefits, the total value, based on price, for the tickets, cover charges, merchandise, retail sales, and any other items and the operation of any event or tours, including any special or fundraising event, and catering or food delivery business conducted by, from or at the Premises (irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed). Except as specified below, Gross Revenues shall be determined without reserve or deduction for failure or inability to collect (including, without limitation, spillage and waste) and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues.

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

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

(ii) Sales by redemption of gift certificates or like vouchers, but only to the extent previously reported as part of Gross Revenues;

(iii) Sums collected for any sales or excise tax imposed directly upon Tenant by any duly constituted governmental authority, but only if stated separately from the selling price of the goods or merchandise, or services, and collected from customers and such amounts are in fact paid to the appropriate governmental entities for which they are collected; and

(iv) All food and beverage sales to employees of Tenant, not to exceed, however, one percent (1%) of Gross Revenues in any single month, and provided further that said sales are at a discount; and

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

(vi) Intra and inter-company transfers of inventory and supplies between and among Tenant and Affiliates (as defined in Section 20.1); and

(vii) Bona fide promotional discounts to Tenant's customers for food, beverages and other sales, up to a maximum of the lesser of two and one half percent (2.5%) of Gross Revenues or five thousand dollars ($5,000) in any single month; and

(viii) sums collected by Tenant and paid out by Tenant for postage, delivery and handling of merchandise;

(ix) the amount received from returns to shippers or manufacturers;

(x) proceeds from the sale of used trade fixtures;

(xi) credit card processing fees imposed on Gross Revenues by non-affiliated credit card processing companies, not to exceed three percent (3%);

(xii) fees charged by and paid to third-party delivery companies;

(xiii) chargebacks from credit card processing companies, which were previously included in Gross Revenues;

(xiv) on-line bookings fulfilled or staged elsewhere;

(xv) multi-location tours originating off-site;

(xvi) pass-through partner ticketing revenue;

(xvii) affiliate sales not materially dependent on the Premises; and

(xviii) revenue unrelated to transactions conducted at or from the Premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Initial Tenant Work**" means the work to be performed by Tenant, at its sole cost and expense (subject to reimbursement by Port up to the TI Allowance), as further described in the Work Letter and the attached Scope of Work.

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

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports,

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performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

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

"**Late Charge**" means a fee of fifty dollars ($50.00).

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

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

"**Monthly Percentage Rent Statement**" is defined in Section 5.2(b) below.

"**Net Sale Proceeds**" means Gross Sale Proceeds less Costs of Sale.

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

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

"**Notice to Cease Prohibited Use**" is defined in Section 8.4 below.

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

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

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

"**Outside Completion Date**" is defined in the Work Letter.

"**PACMs**" is defined in Section 15.6 below.

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

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

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

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

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

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"**Port's Sale Participation**" means the portion of Net Sale Proceeds that Tenant must pay to Port pursuant to ***Section 20.4*** below.

"**Port Work**" is defined in Section 13.9 below.

"**Premises**" means the real property described in Section 3.1 below and depicted on ***Exhibit A-1***.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Seawall**" is defined in Section 3.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. PREMISES; AS-IS CONDITION.

3.1. *Premises*.

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on ***Exhibit A-1*** attached hereto and incorporated herein by reference. Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises. Port and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

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

3.2. *Accessibility Inspection Disclosure*.

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

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

CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

3.3. ***No Right to Encroach***.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in Section 3.3(c), at law or in equity.

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

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

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

3.4. ***Proximity of Development Project***. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, constructed on the Premises or on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may

result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

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

3.6. ***Unique Nature of Premises***. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; (b) the Facility is located along the waterfront adjacent to, on top of, and bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.7; (c) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (d) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (e) there is a risk that sea level rise will increase the cost of Substructure repairs and/or prevent or limit the ability to make repairs to the Substructure; and/or (f) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

3.7. ***Seawall***. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("**Seawall**") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: https://www.sfportresilience.com. Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.8. ***As-Is Condition***. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.7 including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information on the Port's website; the FEMA disclosure notice attached as ***Schedule 3*** and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in ***Schedule 2*** attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and

agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.9. ***Reserved Rights Regarding Seawall***. Port has the right to use the Premises on an extended basis without charge, and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice (except in the event of an emergency which poses an imminent danger to public health or safety as determined by Port in its sole discretion) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform or place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for inconvenience, disturbance, loss of business, nuisance or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses commercially reasonable efforts to conduct the activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to the activities of Tenant, its Subtenants (if any), and their respective Invitees. In no event will inconvenience or disturbance caused by Port's activities under this Section constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port's activities under this Section. If use of the Premises is required by Port or its Agents under this Section, then the Parties will coordinate their use of the Premises and use their good faith efforts to minimize adverse impacts to each of their respective needs. Port will have the absolute right to use the Premises without charge in the event of an emergency involving the Seawall.

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

3.11. ***Port's Rights Regarding Premises***. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT.

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

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.2. ***Termination Rights***.

(a) Port has the right to terminate this Lease under this Section when the Premises is needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Section, upon ninety (90) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 90-day period.

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

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

(c) Within sixty (60) days after Tenant's surrender under this Section, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements in any Port building permits for such work obtained by Tenant and which are approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by

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reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial Term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial Term of this Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

4.3. ***Extension Term***.

(a) Option to Extend Term. Provided all the terms and conditions of the Basic Lease Information and this ***Section 4.3*** are satisfied by Tenant, Port grants to Tenant one (1) option (the "**Extension Option**") as to the entire Premises only for an additional five (5) years (the "**Extension Term**") commencing upon the first day after the Expiration Date. Tenant may exercise the Extension Option by giving Port no less than six (6) months' and no more than nine (9) months' prior written notice prior to the Expiration Date of the Term, its intent to exercise the Extension Option, along with evidence of satisfaction of the conditions to exercise as described in the Basic Lease Information, if applicable. Any such notice by Tenant shall be irrevocable by Tenant. If (i) any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), or (ii) a Port program or project is anticipated to occur during the Extension Term, then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Tenant never exercised the Extension Option.

(b) Base Rent; Percentage Rent; and Other Terms. If Tenant elects to exercise an Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the last day of the applicable Extension Term, and the Base Rent for any Extension Term will be the greater of the Market Rate or 103% of the monthly Base Rent during the prior Lease Year, and Monthly Base Rent will increase by three percent (3%) every Anniversary Date thereafter during the Extension Term. "**Market Rate**" specifically includes Percentage Rent and the base rate per rentable square foot being charged by landlords, including Port, in San Francisco for any uses similar to the Permitted Use for space that is comparable in size, location, and quality to the Premises.

(c) Determining Market Rate. If Tenant has timely given the applicable notice of the exercise of its Extension Option, Port shall within thirty (30) days thereafter deliver to Tenant a written notice of Port's determination of what the Market Rate (Monthly Base Rent and Percentage Rent) would be during the Extension Term ("**Port's Extension Rent Notice**"). Within ten (10) business days after Tenant's receipt of Port's Extension Rent Notice, Tenant shall give Port a written notice ("**Tenant's Extension Response Notice**") electing either (1) to accept the Market Rate set forth in Port's Extension Rent Notice, in which case the Market Rate shall be the Market Rate set forth in Port's Extension Rent Notice, or (2) to terminate the Lease. If Tenant fails to deliver Tenant's Extension Response Notice within the ten (10) business day period following its receipt of Port's Extension Rent Notice, Tenant shall conclusively be deemed to have accepted Port's determination of the Market Rate as set forth in Port's Extension Rent Notice.

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

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

5. RENT.

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

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

5.2. ***Percentage Rent***.

(a) Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to Section 5.1, a monthly Percentage Rent as set forth in the Basic Lease Information.

(b) Percentage Rent shall be determined and paid by Tenant for each calendar month by the twentieth day of the immediately following calendar month, except that in the event this Lease expires or terminates on a day other than the last day of a calendar month, Percentage Rent for such calendar month shall be determined and paid within twenty (20) days after such expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement (the "**Monthly Percentage Rent Statement**") in the form attached hereto as ***Exhibit F***. Each Monthly Percentage Rent Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar quarter. The Monthly Percentage Statement must be submitted every month, even if no Percentage Rent is due.

(c) Each Monthly Percentage Rent Statement shall be certified as accurate, complete and current by a financial officer or other accountant employed by Tenant who is authorized and competent to make such statement. At Port's option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Statement showing an overpayment.

If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; or (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due), such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Monthly Percentage Rent Statement within the time period set forth in this Section 5.2 (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for five (5) business days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a CPA to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The Parties agree that the charges set

forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.

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

5.3. ***Books and Records***. Tenant agrees that the business of Tenant upon the Premises shall be operated with a point of sale system reasonably acceptable to Port shall be issued with each sale, whether for cash, credit or exchange. Furthermore, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises or other principal place of business in the San Francisco Bay Area at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the "**Audit Period**"). Port agrees to maintain the confidentiality of any Books and Records of Tenant provided to Port pursuant to this Lease except (i) as may be required by Law and (ii) to Port's Agents as may be reasonably necessary in connection with this Lease.

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

5.5. ***Audit***.

(a) Tenant agrees to make its relevant Books and Records available to Port, or to any City auditor, or to any auditor or representative designated by Port or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than fifteen (15) business days prior written notice to Tenant, for the purpose of examining said Books and Records to the extent reasonably necessary to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after a Percentage Statement is delivered to the Port. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office during regular business hours, or at such other location in the San Francisco Bay Area where the Books and Records are kept, and no books or records may be removed by Port Representative without the prior express written consent of Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Premises through one or more Subtenants or Agents, Tenant shall require each such Subtenant or Agent to provide the Port with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, Port shall deliver a copy of the audit report to Tenant.

(b) If an audit reveals that Tenant has understated its Gross Revenues for said audit period, Tenant shall pay Port, within thirty (30) days of such reveal, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Tenant has

overstated its Gross Revenues for said audit period, Tenant shall be entitled to a credit against rent for either Base Rent or Percentage Rent next owed equal to the difference between the amount Tenant has paid and the amount it should have paid to Port. If Tenant understates its Gross Revenues for any audit period by three percent (3%) or more, Tenant shall pay the cost of the audit; otherwise, the cost of the audit shall be borne by Port. A second understatement within any three (3) Lease Year period of the first such understatement shall be considered an Event of Default.

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

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

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

5.9. ***Net Lease***. It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and any Improvements, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease.

Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.10. ***Additional Charges***. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 15.3 (Tenant's Environmental Condition Notification Requirements), 15.8 (Storm Water Pollution Prevention), 28.1(d) (CMD Form), and 32 (Estoppel Certificate) or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars ($100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars ($150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.10 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.10 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.10 and the reasonableness of the amount of the charges described in this Section 5.10.

6. TAXES AND ASSESSMENTS.

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

6.2. ***Possessory Interest Tax***. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay

all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

7. SECURITY DEPOSIT.

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

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

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

8. USE OF THE PREMISES.

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

8.2. ***Tenant's Operating Covenants***.

(a) Covenants. Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with the highest industry standards for bicycle rental shops and tour offices within a one-mile radius of the Premises. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing

and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 11, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, and (d) security services for the Premises.

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

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

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

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

(c) any activity or object which will exceed load restrictions, if any, or cause damage to the Premises;

(d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

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

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

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

(h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;

(i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;

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

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

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

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

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

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

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

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

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

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

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

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

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

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

10.3. ***Compliance with City's Risk Manager's Requirements***. Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably

interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

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

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

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

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

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

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges

associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

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

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

12. UTILITIES AND SERVICES.

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

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

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

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the

Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

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

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

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

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

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

13. IMPROVEMENTS AND ALTERATIONS.

13.1. *Port Consent Required*.

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii)

until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

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

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

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

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

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

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

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

(d) At the completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within sixty (60) days after completion of the Improvements, Port, after giving notice to Tenant shall have the right, but

not the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

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

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

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

13.4. ***Removal of Improvements***. Prior to the Expiration Date or earlier termination of this Lease, Port may give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified

in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

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

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

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

13.8. ***Improvements on Roof***. Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.8, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to

Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts to notify Port in advance of such entry.

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

14. LIENS.

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

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

15. HAZARDOUS MATERIALS.

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

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

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

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

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

15.3. ***Tenant's Environmental Condition Notification Requirements***.

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

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

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

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

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

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

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

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

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

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

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

15.4. ***Requirement to Remediate***.

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

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

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

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

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

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

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

15.6. ***Notification of Asbestos***. Port hereby notifies Tenant, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as

amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("**ACMs**") and/or presumed asbestos-containing materials ("**PACMs**") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in ***Schedule 1*** attached hereto.

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

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

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

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

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

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

(2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

15.8. ***Storm Water Pollution Prevention***.

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

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

15.9. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in ***Schedule 1*** attached hereto, naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in ***Schedule 4***, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 78700 and related Laws. Tenant must disclose the information contained in this Section 15.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 78700 as well as the penalties that apply for failure to meet such obligations.

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

16. INSURANCE.

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

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

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars ($1,000,000.00) each occurrence

combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation, Tenant's Agents and Invitees.

(c) Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars ($1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with Sections 8.3(h) and 8.3(i) above, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of Tenant's Property and Alterations, in, on, or about the Premises, personal property insurance on an all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Tenant's sole discretion, for the replacement of Tenant's Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Tenant by Port pursuant to this Lease in such amounts as Port deems reasonably appropriate and Tenant shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Tenant's Property, Alterations, or any Improvements regardless of cause of loss.

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

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

(ii) In addition, Tenant shall carry "**Builder's All Risk**" insurance on a form reasonably approved by Port, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials

and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "**all risk**" and "special form" hazards.

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

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

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

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

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

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

16.6. ***General Insurance Matters***.

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

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

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

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

17. DAMAGE AND DESTRUCTION.

17.1. Damage and Destruction. If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

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

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

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

18. EMINENT DOMAIN.

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

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

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

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

18.5. ***Award; Waiver; Termination of Lease; Rent***. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to

Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

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

19.2. ***Hazardous Materials Indemnity***.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

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

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

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the

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Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

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

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

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

Initials: _____ _____
Tenant *Tenant*

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

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

20. ASSIGNMENT AND SUBLETTING.

20.1. *Transfer to Affiliate*.

(a) Tenant may make a Transfer to an Affiliate without obtaining Port's consent, provided: (1) at the time Tenant provides Port with notice, there is no Event of Default nor is there an event that with notice or the passage of time or both would constitute an Event of Default if not cured; (2) if the proposed Transferee is a successor to Tenant by purchase, such proposed Transferee shall acquire all or substantially all of the stock or assets of Tenant's

business or, if such proposed Transferee is a successor to Tenant by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Tenant; (3) such proposed Transferee must have a net worth which is at least equal to the greater of Tenant's net worth as of the Commencement Date or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization as evidenced to Port's reasonable satisfaction; (4) such proposed Transferee operates the business in the Premises for the Permitted Use and no other purpose; and (5) Tenant gives Port written notice at least sixty (60) days prior to the effective date of the proposed Transfer and provides copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date. A Transfer to an Affiliate that does not meet the criteria specified in this Section 20.1(a) shall be subject to Port's prior written consent under Section 20.2.

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

(c) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease.

20.2. ***Transfer to Non-Affiliate***.

(a) Except for a Transfer to an Affiliate meeting the requirements of Section 20.1, Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

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

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

(b) At least sixty (60) days before any Transfer to a Non-Affiliate, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the three (3) years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified

Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

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

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

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

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

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

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

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

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

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20.4. ***Sale*** . In addition to all requirements in Section 20.2, the following provisions apply to any Transfer in the form of a Sale.

(a) Tenant must pay to Port 100% of Tenant's Net Sale Proceeds as Port's Sale Participation, concurrently with and as a condition to the Sale Closing.

(b) As soon as available after Port consents to the Sale, Tenant must deliver to Port an estimated closing statement that includes Tenant's best estimate of: (i) Gross Sale Proceeds; (ii) Costs of Sale; (iii) Net Sale Proceeds; and (iv) Port's Sale Participation. The closing statement must be updated and delivered to Port at least ten (10) business day before the Sale Closing. If an escrow account is not established for the Sale, Tenant's chief financial officer or independent accountant must certify to Port under penalty of perjury the accuracy of the final closing statement or provide a detailed accounting of and documentation supporting any variances from the estimated closing statement in form and content reasonably acceptable to Port. Tenant must submit the amount of any underpayment with the certificate or accounting. Tenant's obligation to pay Port's Sale Participation will survive the Sale Closing and the expiration or termination of this Lease.

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

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

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

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

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

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

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

(f) A provision under which the Transferee expressly agrees to report the transfer to the County Assessor in accordance with Section 6.2 of this Lease.

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

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compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

20.7. ***Transfer Audit***. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer until the later of (i) four (4) years after the end of each Lease Year to which such records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties as to the accuracy of Tenant's financial reporting on the Transfer, until such audit or controversy is concluded. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Affiliates where applicable.

20.8. ***Acknowledgement***. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 20.

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

21. DEFAULT BY TENANT.

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

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

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

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

(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 32 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

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

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

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

(i) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 21, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

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

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

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

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

22. PORT'S REMEDIES.

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

22.1. ***Tenant's Right to Possession Not Terminated***. Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third

parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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

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

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

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

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

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

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

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

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

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

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

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

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

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

24. PORT'S ENTRY ON PREMISES.

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

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

(a) To perform any necessary maintenance, repairs or restoration to the Premises or the Seawall, or to perform any services which Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To post "**For Sale**" signs at any time during the Term; to post "**For Lease**" signs during the last six (6) months of the Term or during any period in which Tenant is in default;

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

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

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

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

24.4. ***No Liability***. Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment

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into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

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

25. SURRENDER AND QUITCLAIM.

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

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

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

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

25.3. ***Abandoned Property***. Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the

Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

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

26. HOLDING OVER.

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

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

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

27. MINERAL RESERVATION.

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

28. CITY AND PORT REQUIREMENTS.

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

28.1. ***Nondiscrimination***.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Articles 131 or 132 of Division II of the San Francisco Labor and Employment Code (formerly Chapter 12B and 12C of the San Francisco Administrative Code) or in retaliation for opposition to any practices forbidden under Articles 131 or 132 of Division II of the Labor and Employment Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 28.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2 (a), 12B.2(c) - (k) and 12C.3 of the Administrative Code) and shall require all subtenants and other contractors to comply with such provisions.

(c) Nondiscrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 131.2 of the Labor and Employment Code.

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

(e) Penalties. Tenant understands that pursuant to Section 131.2(h) of the Labor and Employment Code, a penalty of $50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

28.2. ***Requiring Health Benefits for Covered Employees***. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Labor and Employment Code Division II, Article 121 (formerly Administrative Code Chapter 12Q).

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

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

thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Article 121 of Division II of the Labor and Employment Code. Tenant shall notify the Office of Labor Standards Enforcement ("**OLSE**") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 121.5 of the Labor and Employment Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

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

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

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

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

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

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

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

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

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

28.5. ***Indoor Air Quality***. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

28.6. ***Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution***. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

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

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

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

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

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

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

immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

28.13. ***Notification of Limitations on Contributions***. If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 28.13 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars ($100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 28.13 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

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

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

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

28.17. ***Prevailing Wages and Working Conditions***. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Labor and Employment Code Section 101.1.

Tenant will require its Contractors and Subcontractors performing work on any Covered Project at the Premises to pay Prevailing Wages in accordance with the requirements of San Francisco Labor and Employment Code Article 103 and employ Apprentices in accordance with San Francisco Labor and Employment Code Article 104.

Any contract, subcontract, or other type of agreement for the performance of that Covered Project shall (A) require the payment of the highest general Prevailing Rate of Wages as fixed and determined in accordance with San Francisco Labor and Employment Code Section 103.2 to all persons performing labor or work for the Covered Project and employment of Apprentices in accordance with San Francisco Labor and Employment Code Section 104.1, (B) require all records described in San Francisco Labor and Employment Code Section 103.3(e) to be kept and submitted in compliance with the requirements of that subsection, (C) name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage requirements of San Francisco Labor and Employment Code Article 103 and apprenticeship requirements of San Francisco Labor and Employment Code Article 104, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Labor and Employment Code Articles 103 through 106, (D) include the Prevailing Rate of Wages or a statement that copies of the Prevailing Rate of Wages as fixed and determined in accordance with San Francisco Labor and Employment Code Section 103.2 are on file at the job site and available to any interested party on request, and (E) include the following provisions:

(1) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on the Contractor by the San Francisco Charter or Municipal Code;

(2) the Contractor agrees that the Labor Standards Enforcement Officer, and the Officer's designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, Contractor daily logs, payroll records, employee paychecks, employee paystubs, and proof of payment documents;

(3) the Contractor shall maintain a record in the format prescribed by the Office of Labor Standards Enforcement of sign-in and sign-out showing which employees have been present on the job site

(4) the Contractor shall prominently post at each job site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and

(5) the Labor Standards Enforcement Officer may audit such records of the Contractor or Subcontractor as the Labor Standards Enforcement Officer reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the San Francisco Charter or Municipal Code.

Failure to comply with any of these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(h), as amended from time to time. Tenant will reasonably cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to pay the Prevailing Rate of Wages or employ Apprentices as required. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in accordance with San Francisco Labor and Employment Code Articles 103 through 106 against the breaching party.

Tenant will also pay, and will require its subtenants, and Contractors and Subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for work as required by San Francisco Labor and Employment Code Article 102, including a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in San Francisco Labor and Employment Code Section 102.3); a Show (as defined in San Francisco Labor and Employment Code Section 102.4); a

Special Event (as defined in San Francisco Labor and Employment Code Section 102.8); Broadcast Services (as defined in Section 102.9); Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in San Francisco Labor and Employment Code Section 102.10); and Security Guard Services for Events (as defined in San Francisco Labor and Employment Code Section 102.11).

28.18. ***Local Hire***. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Labor and Employment Code Division II, Articles 101 and 108 (formerly Administrative Code Section 23.62) (the "**Local Hiring Requirements**"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than the Threshold Amount (as defined in San Francisco Administrative Code Section 6.1) per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Labor and Employment Code Division II, Articles 101 and 108. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Labor and Employment Code Division II, Articles 101 and 108 against the breaching party.

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

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

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

28.22. ***Consideration Of Criminal History In Hiring And Employment Decisions***.

(a) Tenant agrees to comply with and be bound by all of the provisions of San Francisco Labor and Employment Code Division II, Article 142 (formerly Administrative Code Chapter 12T) (Criminal History in Hiring and Employment Decisions; "**Article 142**"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Article 142 in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

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

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Article 142.

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

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Article 142, the City shall have the right to pursue any rights or remedies available under Article 142 or this Lease, including but not limited to a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

If Tenant has any questions about the applicability of Article 142, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 142.8.

28.23. ***Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings***. Tenant shall not install or permit any vending machine on the Premises without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco

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

28.24. ***Tenant's Compliance with City Business and Tax Regulations Code***. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 28.24 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

28.25. ***Consideration of Salary History***. Tenant shall comply with San Francisco Labor and Employment Code Division II, Article 141 (formerly Administrative Code Chapter 12K), the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Article 141. Information about Article 141 is available on the web at https://sfgov.org/olse/consideration-salary-history.

29. NOTICES.

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

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

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

30. MISCELLANEOUS PROVISIONS.

30.1. ***California Law; Venue***. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

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

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

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

30.5. ***Interpretation of Lease***.

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

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

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

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

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of

non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

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

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

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

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

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

30.7. ***Real Estate Broker's Fees***. The Parties represent and warrant to the other that neither had any conversations or negotiations with any finder or broker concerning this Lease other than Maven Commercial, Inc. ("**Maven**"). Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this Lease, except those payable to Maven. Port shall pay any commission with respect to this Lease due to Maven. Each Party agrees to Indemnify the other Party from any Claims, including attorneys' fees, arising out of any conversations or negotiations had by it with any person(s), finder(s), or broker(s) to a commission in connection with this Lease, other than by Maven.

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

30.9. ***Authority***. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is at the time of execution and at all times while this Lease is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

30.10. ***No Implied Waiver***. No failure by Port to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a

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waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

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

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

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

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

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

30.16. ***Additional Written Agreement Required***. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "**Concession**") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

31. LIMITATION ON DAMAGES.

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

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

31.3. ***Limitation on Port's Liability Upon Transfer***. In the event of any transfer of Port's interest in and to the Facility, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the

date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

32. TENANT ESTOPPEL CERTIFICATES.

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

33. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

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

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **DYLAN'S TOURS INC., A CALIFORNIA CORPORATION DBA DYLAN'S TOURS**

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: A. Mathai-Jackson
Deputy City Attorney

Lease Prepared By: Don Kavanagh, Commercial Property Manager _____
(initial)

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT A-1

DESCRIPTION OF MURAL AREA

[Attachment on following page]

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

Landlord:	**CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**
Tenant:	
Lease Number:	
Lease Date:	
Premises:	[_____, Suite _____] San Francisco, California

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

PORT:

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

By: _____
Scott Landsittel
Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except by:

3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

4. That the commencement date under the Lease was _____, 20__, the expiration date of said Lease is _____, 20___.

5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is $_____.

6. The security deposit held by Port under the terms of the Lease is $_____ and Port holds no other deposit from Tenant for security or otherwise.

7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.

8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.

9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.

11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

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

Dated: _____, 20___.

[Name of Tenant]

By:

Name:

Title:

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EXHIBIT D

TENANT WORK LETTER

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

1. GENERAL TERMS

1.1. ***Definitions***. Initially capitalized terms used in this Work Letter have the meanings given them when first defined. Any initially capitalized words or acronyms used butnot defined in this Work Letter shall have the same meanings as in the Lease.

1.2. ***Relationship between Work Letter and the Lease***. This Work Letter governs Tenant's obligations to construct the Initial Tenant Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Tenant Improvements, Tenant's obligations to obtain final approvals for the Initial Tenant Improvements, and the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and theLease. Upon expiry of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

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

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

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

2. CONSTRUCTION OF THE INITIAL TENANT IMPROVEMENTS

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to use commercially reasonable efforts to Complete the construction of the Initial Tenant Improvements within one hundred eighty (180) days of the Lease Commencement Date ("**Outside Completion Date**"). Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the

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Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease including without limitation Section 16 thereof. All such requirements aresometimes referred to collectively as the "**Project Requirements**."

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

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

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

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

2.4. ***Insurance***. At all times during the construction of the Initial Tenant Improvements, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars ($500,000) per incident, One Million Dollars ($1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than

One Million Dollars ($1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "**any auto**", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) workers' compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars ($100,000) per accident, Five Hundred Thousand Dollars ($500,000) aggregate disease coverage and One Hundred Thousand Dollars ($100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice. In addition, Tenant shall carry "**Builder's All Risk**" insurance covering the construction of the Initial Tenant Improvements as set forth in the Lease. The liability insurance shall be written on an "**occurrence**" basis and shall name Port as additional insureds (by endorsement reasonably acceptable to Port). All of the insurance required to be carried by Tenant or Tenant's Agents hereunder shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Port, shall provide that Port shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage, and shall be placed with companies which are rated A-VIII or better by Best's Insurance Guide and licensed to business in the State of California. All deductibles and self-insured retentions under Tenant's policies are subject to Port's reasonable approval, and all insurance, except workers' compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Tenant's compliance with the provisions of this Section 2.4 shall in no way limit Tenant's liability under any of the other provisions of this Work Letter or the Lease.

2.5. ***Performance Bond***. At least five (5) business days prior the start of construction,Tenant shall provide Port, at Tenant's sole cost and expense, (i) a corporate surety payment bond and a performance bond substantially in the form attached hereto as ***Attachment 2*** obtained by each of Tenant's contractors performing work on the Initial Tenant Improvements or, (ii) a financial guarantee, in a form approved by Port in its sole discretion, from a third party with liquid assets in an amount of no less than One Hundred Ten (110%) of the cost of the Initial Tenant Improvements, net of the Improvement Allowance. Each bond shall be in an amount equal to One Hundred Ten percent (110%) of the estimated costs of such work on the Initial Tenant Improvements, net of the Improvement Allowance. Each performance bond shall guarantee the contractor's faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor's payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each corporate surety bondshall obligate the surety to Tenant and the City and County of San Francisco as co-obligees.

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

2.7. ***Port and Other Governmental Permits***. Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the

Initial Tenant Improvements and shall make application for such permits directly to the applicable Regulatory Agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with Section 10.2 of the Lease.

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

2.9. ***Construction Signs and Barriers***. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Initial Tenant Improvements and shall post the signs on the Premises during the period of construction. The size, design, test and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably.

3. PREPARATION AND APPROVAL OF PLANS

3.1. The Construction Documents.

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

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

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

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

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

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

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

(1) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All

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Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

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

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

(4) Floor plans

(5) Preliminary interior improvement plans.

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

(7) Interior and Exterior Signage Plans.

(8) Exterior lighting plans.

(9) Material and color samples.

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

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

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

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

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

3.3. Construction Document Review Procedures.

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Scheduleof Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable

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Construction Documents are properly submitted in accordance with the Schedule ofPerformance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

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

3.4. Changes in Construction Documents.

(a) Approval of Changes in Construction Documents. Tenant shall not make or cause to be made any material changes in any Port-approved Construction Documents without Port's express written approval in its reasonable discretion as provided in Section 3.4(b) below. Prior to making any changes that Tenant considers to be non-material to any Port-approved Construction Documents, including, without limitation, substituting materials which are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant shall notify Port in writing. If Port in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to Port's approval under Section 3.4(b). Port's determination of whether such changes are material will be conclusive. Without otherwise limiting the requirements of this Section 3.4(a), any changes that cost Five Thousand Dollars ($5,000.00) or less in the aggregate and that would not otherwise affect the structural elements of the Initial Tenant Improvements shall be presumed to be non-material changes.

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

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

4. NO DELAY EXCEPT FORCE MAJEURE

4.1. ***Completion of Construction***. Tenant shall use commercially reasonable efforts to commence, prosecute and Complete the Initial Tenant Improvements by the dates set forth in the Schedule of Performance. During construction of the Initial Tenant Improvements, Tenant shall submit written progress reports to City, in form and detail as may be required reasonably by Port.

4.2. ***Force Majeure***. Tenant's obligation to Complete construction of the Initial Tenant Improvements as set forth in Section 4.1 above shall be subject to Force Majeure, butshall be otherwise final and absolute, and shall not be subject to Port delays, Regulatory Approval delays or any other delays.

4.3. ***Port's Remedy for Tenant's Failure to Timely Complete Construction***. In the event Tenant fails to complete the Initial Tenant Improvements in a manner sufficient to cause Port to determine the Initial Tenant Improvements to be Completed by the Outside Completion Date, Port shall have the right to charge Tenant an amount equaling Three Hundred Dollars

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($300.00) per day commencing on the Outside Completion Date and shall continue at such rate until the Completion Date in addition to the Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Force Majeure, Port delays or other reasons.

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

TENANT _____ PORT _____

5. COMPLETION

5.1. Completion.

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

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

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

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

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

6. TERMINATION OF LEASE

6.1. ***Plans and Data***. If the Lease terminates as a result of an Event of Default by

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

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

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

7. TENANT IMPROVEMENT ALLOWANCE

7.1. ***Improvement Allowance***. Tenant shall be entitled to a one-time improvement allowance (the "**Improvement Allowance**") in the amounts set forth in the Basic Lease Information for the costs relating to the initial design and construction of Tenant's improvements which are permanently affixed to the Premises (the "**Initial Tenant Improvements**"). In no event shall Port be obligated to make disbursements in a total amount which exceeds the Improvement Allowance. Any unused portion of the ImprovementAllowance remaining as of the date that is six (6) months following the Rent Commencement Date (shall revert to Port and Tenant shall have no further right thereto.

7.2. Disbursement of Improvement Allowance.

(a) Improvement Allowance Items. Except as otherwise set forth in this Work Letter, the Base Building Allowance and Improvement Allowance shall be disbursed by Port only for the following items and costs (collectively the "**Improvement Allowance Items**"): [Under review,subject to Port Commission approval]

(i) Payment of fees for preparation of Schematic Drawings, Preliminary Construction Documents and Final Construction Documents, as those terms are defined in Section 3.1 of this Work Letter, shall not exceed an aggregate amount equal to $5.00 per square foot of gross leasable area of the Premises and payment of the fees incurred by, and the cost of documents and materials supplied by, Port and Port's consultants in connection with the preparation and review of the "Construction Documents," as that term is defined in Section 3.1 of this Tenant Work Letter; The payment of plan check, permit and license fees relating to construction of the Improvements;

(ii) The cost of construction of the Initial Tenant Improvements,

including, without limitation, testing and inspection costs, hoisting and trash removal costs and contractors' fees and general conditions;

(iii) The cost of Initial Tenant Improvements to the Premises when such changes are required by the Construction Documents, such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

(iv) The cost of any changes to the Construction Documents or Initial Tenant Improvements required by all applicable building codes; and

(v) Sales and use taxes.

(b) Disbursement of Improvement Allowance Items. During the construction of the Initial Tenant Improvements, Port shall make monthly disbursements of theImprovement Allowance for Improvement Allowance Items for the benefit of Tenant and shallauthorize the release of monies for the benefit of Tenant as follows:

(i) Monthly Disbursements. On or before the day of each calendar month, as determined by Port, during the construction of the Initial Tenant Improvements (or such other date as Port may designate), Tenant shall deliver to Port: (i) a request for payment to Tenant, in a form to be provided by Port, showing the schedule, by trade, of percentage of completion of the Initial Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed; (ii) invoices from all of Tenant's Agents (other than Tenant's contractor) for labor rendered and materials delivered to the Premises; (iii) executed mechanic's lien releases from all of Tenant's Agents which shall comply with the appropriate provisions, as reasonably determined by Port, of the California Civil Code; and (iv) all other information reasonably requested by Port. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. Thereafter, Port shall deliver a check to Tenant made payable to Tenant, or directly to Contractor at Port's sole discretion, in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this ***Section 7.2(a)***, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "**Final Retention**"), and (B) the balance of any remaining available portion of the Improvement Allowance (not including the Final Retention), provided that Port does not dispute any request for payment based on non-compliance of any work with the Final Construction Documents as that term is defined in ***Section 3.1*** of this Work Letter, or due to any substandard work, or for any other reason. Port's payment of such amounts shall not be deemed Port's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request. For avoidance of doubt, Tenant and/or the Contractor shall be solely responsible for further disbursing the Improvement Allowance and/or otherwise paying all invoices and sums owed to Tenant's Agents directly to such Tenant's Agents.

(ii) Final Retention. Subject to the provisions of this Work Letter, a check for the Final Retention payable to Tenant, or directly to Contractor at Port's sole discretion, shall be delivered by Port to Tenant following the completion of construction of the Premises, provided that (i) Tenant delivers to Port properly executed mechanic's lien releases in compliance with both California Civil Code Section 8134 and either Section 8136 or Section 8138, (ii) Port has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Premises, the structure or exterior appearance of the Premises, or any other tenant's use of such other tenant's leased premises located in proximity to the Premises, (iii) Tenant's architect delivers to Port a certificate, in a form reasonably acceptable to Port, certifying that the construction of the Initial Tenant Improvements in the Premises has been substantially completed in accordance with the Final Construction Drawings, (iv) Tenant delivers to Port a "close-out package" in both paper and electronic forms (including, as-built drawings, and final record CADD files for the associated plans, warranties and guarantees from all contractors, subcontractors and material suppliers, and an independent air balance report), (v)

Tenant delivers to Port a certificate of occupancy for the Premises and (vi) Tenant has opened for business in the Premises.

(iii) Other Terms. Port shall only be obligated to make disbursements from the Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items. All Improvement Allowance Items for which the Improvement Allowance has been made available shall be deemed Port's property under the terms of this Lease.

ATTACHMENTS

ATTACHMENT 1 SCOPE OF DEVELOPMENT
ATTACHMENT 2 FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND

DRAFT

Attachment 1

Scope of Development

[TBD]

DRAFT

Attachment 2

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors,administrators, successors or assigns, or its subcontractors, shall fail to pay (i) any of the persons named in California Civil Code Section 9100 for any materials, provisions, or other supplies used in, upon, for or about the performance of work under the Contract, or for any work or labor performed under the Contract; or (ii) amounts due under the California Unemployment InsuranceCode with respect to work or labor performed under the Contract; or (iii) for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work or labor, that Surety will pay for the same in an amount not exceeding the sum specified in this Bond. In the event that suit is brought upon this Payment Bond, the parties not prevailing in such suit shall pay reasonable attorney's fees and costs incurred by the prevailing parties in such suit.

This Payment Bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit broughtagainst this Bond.

Should the condition of this Payment Bond be fully performed, then this obligation shall becomenull and void; otherwise, it shall be and remain in full force and effect.

Surety, for value received, hereby expressly agrees that no change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the work to be performed thereunder, or to the Specifications accompanying the same, and no inadvertent overpayment of progress payments, shall in any way affect its obligations on these Bonds; and it does hereby waive notice of any such change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the Work to be performed thereunder, or to the Specifications, or of any inadvertent overpayment of progress payments.

DRAFT

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this_____day of_____, 20___, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant toauthority of its governing body.

Approved as to form:

Dennis J. HerreraCity Attorney

By: _____
Deputy City Attorney

Principal

By: _____

Surety

By: _____

END OF DOCUMENT

DRAFT

EXHIBIT E

LANDLORD'S WORK

[Attachment on following page]

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SCHEDULE 1

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

[Attachment on following page(s)]

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SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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SCHEDULE 3

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program ("NFIP"), Federal Emergency Management Agency ("FEMA") issued the final flood insurance rate maps ("FIRMs") for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 ("Floodplain Management Program Ordinance") and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco ("City"), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as "Special Flood Hazard Areas" ("SFHAs"), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter "A" or "V" on the FIRMs. Port's structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission ("SFPUC") has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at https://www.sfpuc.gov/learning/emergency-preparedness/flood-maps. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC's Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City's Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter is available on the City/Port websites and FEMA website as listed below-

DRAFT

San Francisco Floodplain Management Program website:
https://onesanfrancisco.org/San-Francisco-Floodplain-Management-Program

Port Floodplain Management Program Website:
https://www.sfport.com/business/permit-services/floodplain-management-program

FEMA's NFIP website:
www.FloodSmart.gov.

DRAFT

SCHEDULE 4

HAZARDOUS MATERIAL DISCLOSURE

DRAFT

Item 4: Dylan’s Tours, Inc., New five-year Lease with one five-year option

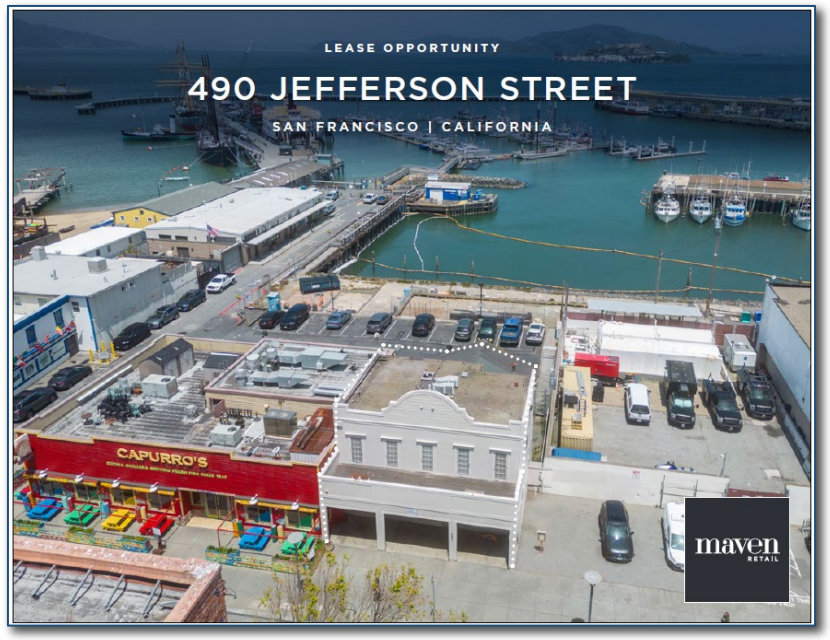
Request to approve a new five-year lease (with one five-year extension option) with Dylan's Tours, Inc. a California corporation for approximately 1,505 square feet of the ground floor of 490 Jefferson Street

March 18, 2026

Presented by: _____

PORT OF SAN FRANCISCO

Background



Property Overview

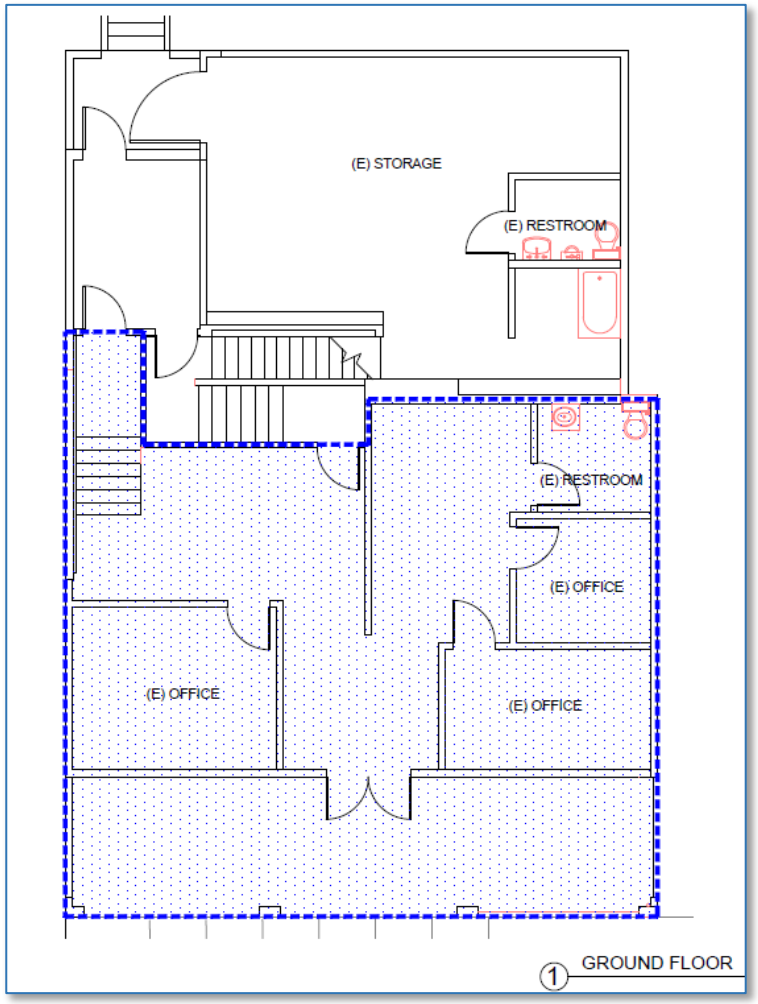
- 490 Jefferson Street sits on the north side of Jefferson Street between Leavenworth and Hyde Streets.
- The 3,465 sq. ft. two-story building, built in phases starting in the early 1900's, has served various uses, most recently as office space.
- Since the property has vacant for many years it shows signs of deferred maintenance (e.g., dry rot in framing for front windows and doors) and requires hazardous materials abatement.

Leasing Activity

- Maven Commercial listed the property for lease in late 2023 with ongoing but sporadic interest from prospects.
- In summer 2025, Dylan's Tours approached Maven about relocating from Columbus Avenue to 490 Jefferson. With Maven's guidance, Port staff began discussions for leasing the ground floor to Dylan's Tours.
- Lengthy negotiations resulted in a final lease agreement with Dylan Tours with essential lease terms presented on the next page.

PORT OF SAN FRANCISCO

Proposed Lease (L-17378) Terms



Premises

- Dylan Tours premises are 1,505 square feet on the ground floor of 490 Jefferson plus one outdoor space next to the premises for tour van staging

Base Rent

- $6,000 per month ($3.99 psf/mo); 3% annual increases.

Option Period Base Rent

- Option Rent is established by a FMW assessment by Port.

Percentage Rent

- 5.00% of Gross Revenues over a breakpoint of $900,000. Percentage rent is in addition to Base Rent.

Port Work

- Limited to hazardous materials remediation

Tenant Improvement Allowance

- The Port proposed a Tenant Improvement allowance of $320,000 ($213 psf) for improvements and needed capital repairs to space.

PORT OF SAN FRANCISCO

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PORT OF SAN FRANCISCO

MEMORANDUM

February 6, 2026

TO: MEMBERS, PORT COMMISSION
Hon. Gail Gilman, President
Hon. Stephen Engblom, Vice President
Hon. Willie Adams
Hon. Steven Lee
Hon. Ken McNeely

FROM: Michael Martin
Acting Executive Director

DocuSigned by:
Michael Martin
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SUBJECT: Request approval of a proposed new lease ("Lease No. L-17378" or "Lease") with Dylan's Tours, Inc., a California corporation ("Dylan's Tours"), for approximately 1,505 square feet on the ground floor of the two-story building located at 490 Jefferson Street for a term of five (5) years with one (1) five-year option to renew.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 26-06

EXECUTIVE SUMMARY

On July 12, 2022, the Port Commission adopted Resolution No. 22-37, approving the Interim Broker Policy ("Policy"), which authorizes Port staff to engage a commercial retail broker to support the marketing and leasing of key retail locations vacated during the COVID-19 pandemic. Following the process outlined in the Policy, Port staff selected Maven Commercial ("Maven") to serve as the broker.

Subsequently, on June 13, 2023, the Commission adopted Resolution No. 23-29, authorizing staff to pursue new tenants for several retail vacancies in Fisherman's Wharf, including 490 Jefferson Street, and establishing formal selection criteria. In accordance with the Policy, Maven launched a marketing campaign for the vacant retail space at 490 Jefferson.

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Despite a broad outreach effort, Maven faced challenges due to the building's deteriorated condition and outdated layout. Initial marketing did not yield viable prospects. Maven continued outreach and responded to inquiries as received.

Maven expanded its marketing efforts and identified four additional prospects, including Dylan's Tours, two retail operators and a bicycle rental storefront. Port staff concluded that additional retail – particularly another clothing shop with competing offerings – was not in the best interest of the Port.

Port staff concluded that Dylan's Tours offered the most dynamic and complementary use for the area. Their focus on local tours and bicycle rentals is expected to attract visitors who are likely to linger and patronize nearby Port tenants.

Dylan's Tours expressed interest in relocating their operations from 782 Columbus Avenue in North Beach to the ground floor of 490 Jefferson, seeking greater visibility and expanded space.

Port staff believe Dylan's Tours will be a strong addition to the Jefferson Street retail corridor. The proposed lease is expected to generate an average of $76,452 per year in base rent, totaling approximately $328,258 over the initial five-year term, excluding percentage rent.

The second-floor office space at 490 Jefferson remains available, and Maven continues to actively market that space.

STRATEGIC PLAN ALIGNMENT

A new retail store offering bicycle rentals and local tours at 490 Jefferson Street will support the Port's following Strategic Objectives:

Economic Recovery:
The 490 Jefferson building has been vacant for approximately 15 years. Successful activation of this space by an experienced retail merchandiser will generate a new, stable income for the Port.

Economic Growth:
A Port investment of $320,000 for tenant improvements at 490 Jefferson will address not only significant deferred maintenance (approximately $100K, including hazardous materials remediation and dry rot repairs) but also an upgrade to the functionally obsolete space. The combined landlord and tenant improvements will add value to the property, increase the likelihood of success for the new operator, capture foot traffic to the area, and support nearby businesses, including Capurro's.

Engagement and Public Awareness:

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Leasing the ground floor of 490 Jefferson to Dylan's Tours will positively improve the immediate area and eliminate the use of the overhang area that is commonly used by people to camp, who create unsightly and unsanitary conditions.

BACKGROUND

490 Jefferson Street is located on Jefferson Street between Leavenworth and Hyde Streets, a prime pedestrian corridor connecting Pier 39 and Ghirardelli Square. The site is surrounded by hotels, tourist attractions, local businesses, and residential neighborhoods. *(See vicinity map with premises outlined in red.)*

The property includes a 3,359 sq. ft. two-story building, previously used as an insurance office:

- Ground floor: 1,505 sq. ft.
  - (plus a 692 sq. ft. separate annex)
- Second floor: 1,268 sq. ft. of office space (NOT INCLUDED IN THIS LEASE)
- Parking: Up to two spaces available; Dylan's Tours may lease these at standard rates

The wood-framed building requires significant maintenance and remediation. It contains hazardous materials (mold, non-friable asbestos, lead paint), which the Port is addressing through a licensed remediation contractor.

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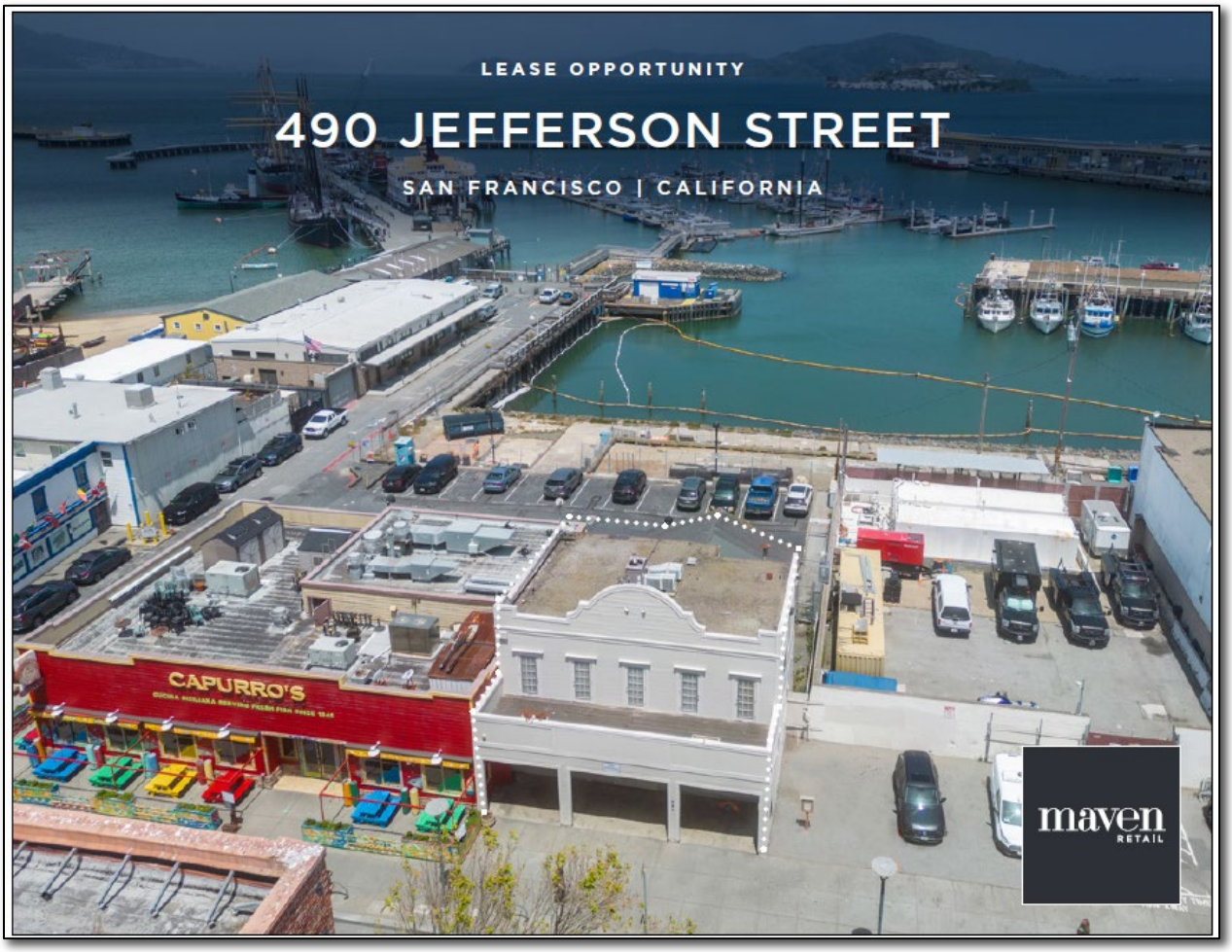
Representative photo of 490 Jefferson Street used by Maven for marketing



An Agreement for Brokerage Services for 490 Jefferson between the Port and Maven was executed on November 21, 2023. Maven's leasing efforts for 490 Jefferson included:

- Social media exposure with a listing on CoStar, Crexi (an online listing site), and others, along with the Maven website, including an Instagram advertisement marketing the facility for lease.
- Contacting approximately 2,000 people, 300 brokers, and approximately 250 retailers through emails, flyers, phone calls, and network outreach.
- Making calls to more than 50 prospective tenants interested in the property and conducting more than 25 tours.
- Contacting various parties who had previously indicated an interest in Port locations.

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OUTCOME

This marketing effort did not achieve the same results as the effort to lease 300 and 340 Jefferson Street restaurant locations (Lou's Crab Shack and Pompeii's, respectively), which received multiple bids. This property received offers on a rolling basis with four since April 2025.

Dylan's Tours is expected to attract visitors who linger and enliven the area and patronize other Port tenants. Tours will start and end at this location and there are plans to engage the local restaurants and hotels to drive business. Dylan's Tours may also look to provide service to connect Fisherman's Wharf with Union Square by shuttling tourists from that area to the Wharf. For these reasons as well as the strength of the financial proposal Port staff and Maven agreed that Dylan's Tours was the best choice for the Port's ongoing effort to re-energize Jefferson Street.

DYLAN'S TOURS

Dylan's Tours, a well-established San Francisco-based company with over 20 years of successful operation, is seeking to relocate its headquarters to 490 Jefferson Street. The company consistently earns 5-star ratings on both TripAdvisor and Google, underscoring its reputation for delivering exceptional guest experiences.

Founded and operated by Dylan David, a San Francisco native with community roots, Dylan's Tours has become an ambassador for the city's culture and neighborhoods.

Each day, between 40 and 100 guests gather at the current North Beach location before embarking on guided tours. These visitors contribute significantly to the local economy by dining at nearby restaurants, utilizing parking facilities, and spending additional time in the neighborhood.

Relocating this daily activity to Fisherman's Wharf should bring measurable economic benefits to the area, increasing foot traffic and supporting surrounding businesses. Dylan also maintains a longstanding relationship with the Capurro family, prospective neighbors at the Wharf. He plans to collaborate with them on tailored lunch and dinner offerings for tour guests, while actively promoting the diverse dining options throughout Fisherman's Wharf.

To further enhance visibility and visitor access, Dylan's Tours will offer a complimentary shuttle service from Union Square to Fisherman's Wharf, bringing new guests directly to the area.

LEASE TERMS

The proposed business terms for Lease No. L-17378 between Port and Dylan's Tours for the ground floor of the 490 Jefferson Street space follows:

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Premises

1,505 sq. ft. of Ground Floor area (the balance remaining available for lease)

Term

Five Years starting on the Rent Commencement Date, which is the earlier of the date that Tenant opens for business or one hundred and eighty (180) days following the Commencement Date

Options

One five-year option to extend at the Port established market rent.

Staging Space

One 12' x 20' space adjacent to the Premises for no less than $375/mo. (inclusive of parking tax) to stage and use a tour van

Base Rent

- Base Rent will commence the earlier of the date that Tenant opens for business or 180 days following the Commencement Date.
- Year 1 – Base Rent of $6,000/month; $3.99 psf/mo.; $48.88 psf/yr.
- Three percent (3%) annual increases

Option Period Base Rent

Monthly Base Rent during the first year of the Option Term is to be established by an impartial market assessment by Port in its sole and absolute discretion; provided, however, that Market Rate during the first year of the Option Term shall increase by a minimum of 3.00% over the Monthly Base Rent payable at the expiration date of the Lease.

After the prevailing Market Rate is established for the Option Period, the Monthly Base Rent will increase three percent (3.00%) annually.

Percentage Rent

Percentage Rent is five percent (5.00%) of Gross Revenues over a breakpoint of $900,000, payable monthly.

For clarity, "Gross Revenues" excludes, in addition to standard exceptions, online bookings fulfilled or staged elsewhere; multi-location tours originating off-site; pass-through partner ticketing revenue; affiliate sales not materially dependent on the Premises; and any revenue unrelated to transactions conducted at or from the Premises.

Port staff believe the Percentage Rent in the proposed Lease will not immediately generate additional monthly revenue due to the exclusions from Gross Revenue as discussed above.

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Tenant Improvement Allowance

The Port proposes a Tenant Improvement (TI) Allowance of $320,000, plus a 10% contingency of $32,000, for a total of $352,000 ($234 per square foot).

Other than the Landlord Work, all work to the Premises will be the Tenant's responsibility, including any unforeseen conditions encountered during the TI. The TI allowance may be applied toward such work, but the expectation is that all improvements and related issues and cost of work remain a Tenant obligation.

Port staff recommend approving the 10% contingency to address unforeseen landlord-related repairs that may arise. This contingency is not intended to expand the TI allowance.

Dylan's Tours will oversee and manage all work once Port's hazardous materials remediation work is complete. Draw requests may be submitted once per month, and funds will be disbursed after work is completed and paid for, supported by a standard draw package that includes paid invoices, progress schedule, lien releases, and certification of completion.

Any improvements outside the scope of the TI Allowance will be the sole financial responsibility of Dylan's Tours.

A copy of the proposed Lease No. L-17378 is on file with the Port Commission Secretary.

RECOMMENDATION

Port staff recommend that the Port Commission affirm Dylan's Tours as the successful applicant and tenant for the ground floor of 490 Jefferson, approve the financial terms of the Lease and approve the attached resolution authorizing the Acting Executive Director to forward the Lease to the Board of Supervisors for approval and upon the effectiveness of such approval, authorize the Acting Executive Director or his designee to execute the Lease.

Prepared by:	Don Kavanagh, Senior Property Manager Real Estate and Development
For:	Scott Landsittel, Deputy Director Real Estate and Development

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PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 26-06

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

WHEREAS, The Port Commission adopted Resolution Nos. 23-28 and 23-29 on June 13, 2023, which authorized the payment of Broker Commissions under the Broker Payment Policy ("Policy") and authorized Port staff to pursue tenants for certain space in a broker-assisted competitive bidding process, respectively; and

WHEREAS, Port hired Maven Commercial ("Maven") in November 2023 to pursue a new tenant for 490 Jefferson Street under a broker-assisted competitive bidding process; and

WHEREAS, After approximately two years, Maven found limited interest in the property and most recently found Dylan's Tours, Inc., a California corporation ("Dylan's Tours"), for the ground floor of 490 Jefferson Street (the "Premises"). Port staff negotiated a letter of intent, which was used as the basis for the financial structure and terms of Lease No. L-17378 (the "Lease"); and

WHEREAS, The financial terms of the Lease are consistent with current market conditions for retail leases in Fisherman's Wharf; and

WHEREAS, Port staff believe Dylan's Tours' use will activate a long-standing blighted vacant building on Jefferson Street, and cause customers to linger in the area who otherwise walk by; and

WHEREAS, The proposed terms for Lease No. L-17378 ("Lease") at 490 Jefferson Street with Dylan's Tours are described in the staff report accompanying this Resolution and set forth in the Lease, a copy of which is on file with the Port Commission Secretary; now, therefore be it

RESOLVED, The Port Commission hereby approves the terms of the Lease at 490 Jefferson Street, ground floor, with Dylan's Tours as described in the staff report accompanying this Resolution and as set forth in the Lease; and be it further

RESOLVED, That the Port Commission authorizes the Acting Executive Director or his designee to forward the Lease to the Board of Supervisors ("Board")

Docusign Envelope ID: 8FB47D8B-85B9-4568-8312-66F7C0C56BA6

for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and be it further

RESOLVED, That the Port Commission authorizes the Acting Executive Director or his designee, to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, and are necessary and advisable to complete the transaction and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Acting Executive Director of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 10, 2026.

DocuSigned by:
Jenica Liu
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Secretary

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 · Fax: 415.252.3112

Filing Information

Record Number

SFEC126F0001137

Status

BOS Legislative Clerk Acceptance

SFEC126f Form Type

126f4 BOS

File Number (BOS)

260194

Type of Filing

Original

Contractor Information

Contractor Name

Dylan's Tours - David Dylan

Contractor Email

dylantdavid@gmail.com

Contractor Phone #

(415) 932-6992

International Address?

No

Contractor Address (US)

782 Columbus Avenue

Contractor City and State

San Francisco - CA

Contractor Zip Code

94133

Country

United States of America

Contract Information

Contract Amount

$825,400.00

Description of Amount of Contract

Base rent received per the terms of the lease over the five year initial term plus revenue from the five-year option (assumed exercised).

Contract Description

Lease for Port property.

City Agency - Departmental Contact Information

Departmental Contact

Don Kavanagh

Departmental Contact Phone #

+14152740501

Full Department Name

PRT - Port Commission

Contract Approval

Mayoral Approval Not Required

false

Affiliates and subcontractors

Entity Type	First Name	Last Name	Entity or Sub/Contractor Name
CEO	David	Dylan	Dylan's Tours

MEMORANDUM

June 9, 2023

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of strategies to address food & beverage and retail vacancies including adopting new broker policy, adopting criteria for competitive leasing or licensing for new food and beverage and retail/attraction vacancies, and adopting participation rates and rent abatement terms for short-term activations of such sites while the competitive leasing process is underway.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution Nos. 23-28 and 23-29

On May 9, 2023, Port staff presented this staff report as an informational item. Substantive changes to that staff report are formatted underline or ~~strike-through~~ for ease of review.

EXECUTIVE SUMMARY

Vacant and shuttered businesses in Fisherman's Wharf are of concern to the Port, nearby Port tenants, adjacent businesses, and local and out-of-town visitors. Port staff prepared this staff report to describe activities currently underway and recommended actions to address these concerns.

THIS PRINT COVERS CALENDAR ITEM NO. 7D

As background, Port staff have taken several actions since the end of the COVID pandemic to assist operating tenants and to work with tenants who have not reopened to reopen or end their tenancy with the Port. While developing a deliberate visitor experience and business attraction action plan, Port staff have also focused on how to successfully and efficiently tenant three vacant properties in the Wharf. The Port typically issues Request for Proposals for long-term tenancies but has limited success in re-tenanting vacant property which has led to delays in restarting the solicitation process resulting in ongoing vandalism and maintenance costs for untenanted properties. In addition, a particularly challenging market for food and beverage (F&B) and retail/attraction uses suggests the need for a responsive and flexible solicitation process.

This staff report (a) summarizes ongoing Port work on F&B and retail/attractions tenanting (supervising two broker-managed solicitations and working with a consultant team on a Fisherman's Wharf Retail Strategy) and (b) proposes a solicitation strategy for four existing vacancies in Fisherman's Wharf and upcoming opportunities that reduces barriers for new businesses, is open-ended and opportunistic, and relies on the assistance of retail/attraction and F&B specialists.

Port staff recommend the Port Commission approve the attached resolutions which:

- Adopts a broker policy that allows payment of broker commissions for F&B and retail/attraction leases;
- Adopts criteria for consideration of proposals to lease F&B and retail/attraction vacancies;
- Authorizes Port staff to issue a request for proposals for short-term activations up to 2 years for vacant F&B and retail/attraction sites; and
- Authorizes Port staff to enter into form licenses (or leases) for short terms so long as the license or lease provides not less than 6% participation in sales, less abatement for "significant start-up costs" for sites that have been vacant for more than three years.

STRATEGIC OBJECTIVE

This staff report supports the Productivity (attract and retain tenants) and Evolution (evolve waterfront for changing needs) objectives of the Port's Strategic Plan.

BACKGROUND

The COVID-19 pandemic has had a significant impact on F&B and retailer/attraction businesses in San Francisco. According to a report by the Golden Gate Restaurant Association, nearly half of San Francisco's restaurants permanently closed their doors due to the pandemic. The surviving restaurant and retailer/attraction businesses have had to adapt by offering "to go" options, investing in technology to improve their online ordering systems, and implementing creative marketing strategies to attract customers.

Figure 1 illustrates gross sales for restaurants and retailers fiscal year to date at the Port between 2019 and 2023. It shows a trending rebound in sales in parts of the waterfront,

with sales at Fisherman's Wharf standing out in terms of experiencing a slower recovery back to pre-pandemic sales.

Figure 1. Comparison of Gross Sales FY 2019-2021-2023, Fiscal Year to Date

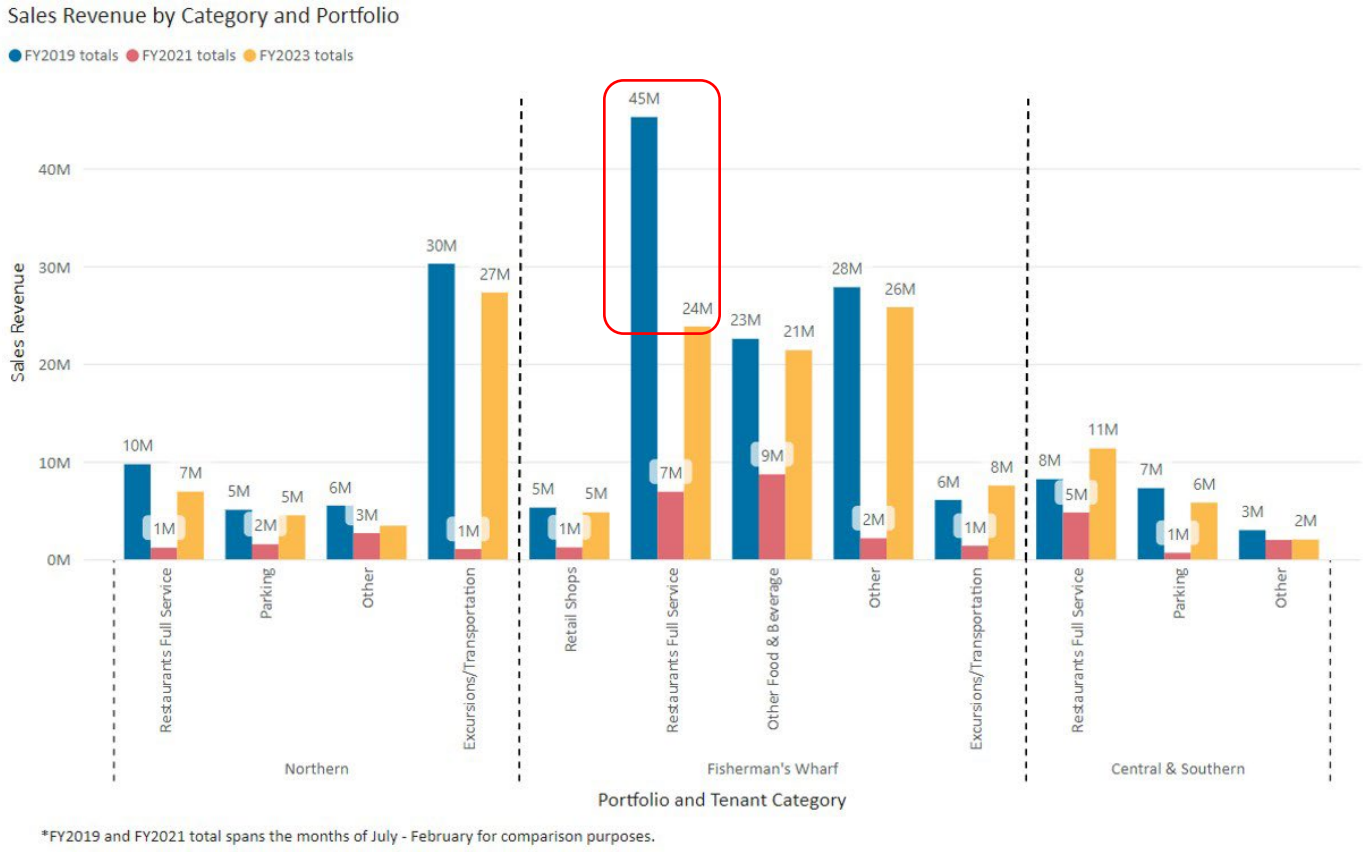
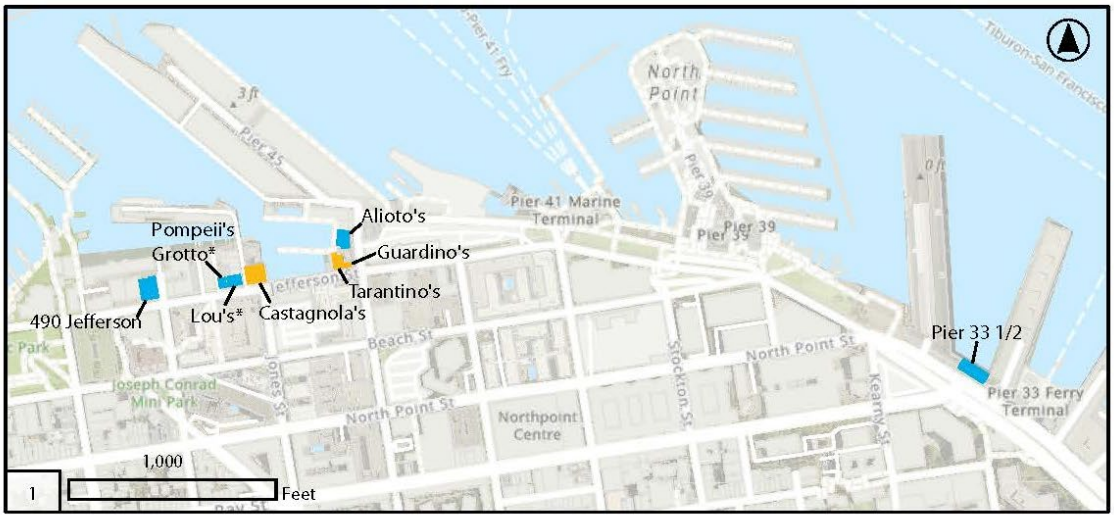
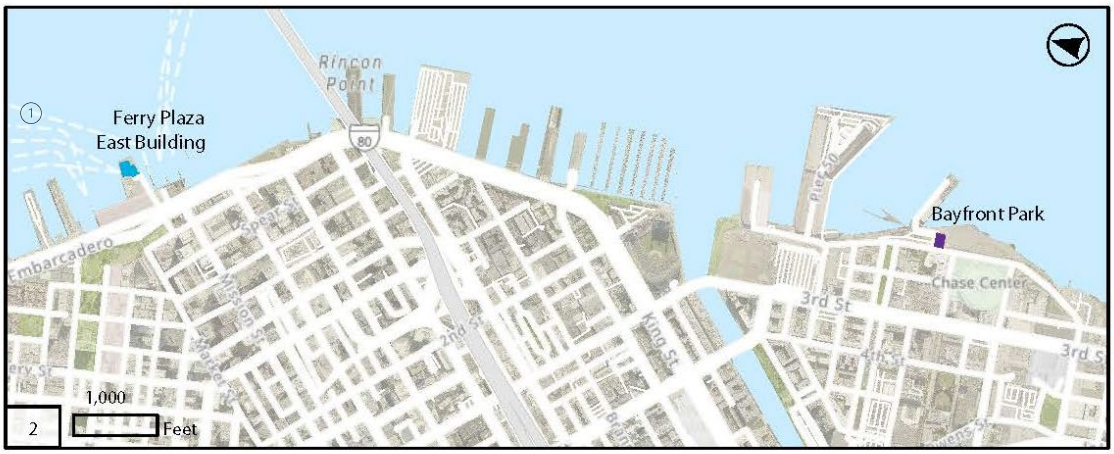


Figure 2 illustrates the locations of vacant (i.e., no tenant in place), shuttered locations (i.e., a tenant in place but operations are closed), and upcoming opportunities. As shown, the Port currently controls four sites (two are being marketed, two are being assessed); three more sites are expected to come to the Port this year; and three businesses are tenanted but have been closed since 2020.

Figure 2. Locations of Vacant, Closed, or Upcoming Sites Requiring New Retail or F&B Tenants (excluding 10 Lombard and 50 Lombard Street)





Status of Locations Requiring New Tenant Solicitation

- Future F&B/Retail
- Port Controlled
- Tenant in Place - Closed

*Port will control Pompeii's Grotto and Lou's if mutual termination agreements are approved by Board and signed by Mayor.

Port of San Francisco
5/3/23

STRATEGIES AND ACTIONS TO DATE

The Port has implemented several strategies over the last three years to manage retail/attraction and restaurant tenancies and position vacant properties for leasing.

1. **Base rent relief.** Offered base rent relief between March 2020 and April 2021 to tenants who opened for business.

2. **Tenant workouts.** Port staff in constant communication with tenants, asking for plans to reopen and negotiating mutual termination agreements (four since 2021).

3. **Legal notifications and action.** As required, Port staff have sent notices of default and 3-day notices when necessary and are pursuing possession of the property and rent through court action.

4. **Two broker-managed solicitations** underway began marketing in January 2023.
    a. Pier 33 ½: Broker developed and sent marketing materials to a variety of industry organizations[1] and nearly 1,000 restaurant operators and has conducted 9 tours of the site.

    b. Ferry Plaza East Building: Broker developed and sent marketing materials to 1,030 recipients including San Francisco brokers, restaurants, and restaurant/hospitality groups, has taken 6 groups on tours of the site, and will host an open house on site in June.

    Port staff meet with the broker team bi-weekly to monitor interest, identify any concerns that prospective tenants raise that Port staff may be able to address to reduce barriers to a tenancy, and determine when a site has sufficient interest to issue a request for proposals for long-term tenancies. After receipt of competitive proposals, the Port staff and broker team will score respondents against the adopted criteria and bring successful proposals to the Port Commission for consideration.

5. **Tenant improvement budget.** As part of federal stimulus funds, the Port has approximately $8 million in funds that must be spent on tenant improvements for an economic return to the Port by 2026. The Port may also seek to draw upon other economic recovery funds currently on budget reserve.

6. **Clarity on exemption on Chapter 6 public contracting rules for tenant-led projects.** This exemption for tenant-led projects approved by the Port Commission in February 2023 was approved by the full Board of Supervisors on May 2, 2023.

CHALLENGE AHEAD

[1] San Francisco Chamber of Commerce, Chinese Real Estate Association of America, African American Regional Educational Alliances, San Francisco African American Chamber of Commerce, Hispanic Chambers of Commerce, San Francisco Filipino American Chamber of Commerce, and San Francisco Black Wallstreet.

The Port has possession of three vacant restaurant properties and one other building with frontage on Jefferson Street (former office space). Two are in marketing (Pier 33 ½ and Ferry Plaza East) and Port staff are analyzing the others (Alioto's and 490 Jefferson Street) for near and mid-term activations and leases. If approved by the Board of Supervisors, the Port will also gain possession of two other restaurants (Pompeii's Grotto and Lou's Blues) in the coming months. In addition, the Port will control an F&B pad upon acceptance of Bayfront Park late in 2023. This means the Port will be conducting up to seven competitive solicitations for properties that have been vacant for three to 10 years, in a very unfavorable economy for F&B and retailer/attraction businesses.

APPROACH

The competitive landscape for F&B and retail/attraction leasing is challenging. The City has approximately 3.1 million square feet of F&B and retail/attraction space available[2] and private landlords are offering substantial leasing incentives (turnkey spaces, free rental periods, generous tenant allowance budgets, and percentage rent-only periods, among others). Port staff is taking strategic steps to position Port sites and be nimble to market dynamics. Specifically, the staff is supervising the two broker-managed solicitations and developing a Fisherman's Wharf Retail Strategy with a consultant team. The solicitation strategy, described below, reduces barriers to new businesses for these vacancies, is open-ended and opportunistic, and relies on the assistance of retail and F&B specialists.

Port Staff Ongoing Work

Learn from Ongoing Broker-Managed Solicitation Process

In January 2023, Port staff entered a contract with Cushman & Wakefield, after a competitive process among three brokerage firms for the work. After developing marketing materials and facility assessments and conducting tours, Port staff has learned that F&B and retail/attraction businesses:

- *Are risk averse.* Unrenovated facilities that require capital upgrades, as well as tenant improvement costs, are too expensive for many potential tenants and present time-to-open risks that most operators cannot or are not willing to manage.
- *Prefer longer-term leases.* 10 years or more, depending on the capital investment needed.
- *Have many options for the property and can be selective.*
- *Recognize* that the Port has premier waterside locations along the waterfront.

Port staff anticipates receiving broker-managed proposals for at least one site in the coming months and bringing ranked and qualified responses to the Port Commission for consideration.

[2] See Cushman & Wakefield Q1 2023 San Francisco retail report. This is a 6% vacancy rate, the highest vacancy since 2016. https://www.cushmanwakefield.com/en/united-states/insights/us-marketbeats/san-francisco-marketbeats

Enhance Understanding of the Context & Market at Fisherman's Wharf

Specific to Fisherman's Wharf, Port staff are taking the time to make strategic moves, with an appropriate level of urgency as several spaces have been shuttered since the pandemic. Port staff began work in May with a consultant team on an intensive, two-month scope to enhance our understanding of the visitor experience (attractions, activities, public realm) and business attraction opportunities for the Wharf. The strategies will consider the current offering for visitors and recommend complementary offerings and new experiences. The work will include interviews, case studies, and property analysis and will result in near-, mid-, and long-term strategies for the Wharf. Port staff will connect this work to the proposed near-term investment in activation and clean and safe work described in the Fisherman's Wharf Community Benefit District grant staff report.

Solicitation Strategy for Multiple Vacant Locations

Based upon the work to date, the state of the market for F&B and retail/attraction leasing, and the Port's previous experiences with traditional Requests for Proposals, Port staff recommend the following solicitation strategy for multiple vacant locations:

1. ***Seek short-term activations.*** Port staff will market vacant sites for short-term licenses or leases to attempt to reactivate shuttered sites while marketing the sites for new tenants. Adoption of the attached resolution will allow Port staff to seek proposals for activations by issuing a request for proposals for short-term activations up to 2 years including indoor areas of vacant F&B and retail/attraction locations. Pursuant to the resolution, Port staff will offer proposers with minimum qualifications (duly organized entities, with experience successfully managing an activation like the one proposed) a short-term license (or lease) on Port's form document. The resolution provides for rental rates equal to no less than 6% participation in gross sales, with abatement periods allowed that are equal to significant start-up costs. "Significant start-up costs" include building system repairs (i.e., plumbing, lighting, HVAC, etc.), infrastructure improvements, life safety improvements, and improvements needed to obtain a certificate of occupancy. Bidders will be encouraged to include in their proposals a plan to meet Port's LBE and Diversity, Equity, and Inclusion goals. Possible examples are through the ownership structure, a commitment to LBE vendors, or with a program or menu which caters to local communities.

2. ***Reduce barriers for businesses to open at the Port.*** Provide clear and informative marketing materials so businesses are aware of the benefits of the Port's property (e.g., foot traffic & vibrancy, views, and access to low-cost and streamlined ABC permits); market broadly and deliberately reach out to associations representing local and small businesses; revamp the RFP process with specialized consultants or brokers that businesses are accustomed to relying upon; and offer tenant improvement allowances from stimulus source, so long as there is an acceptable return on the investment. Port staff anticipates these marketing efforts will provide opportunities to bring minority businesses to the Waterfront, advancing the Port's Diversity, Equity, and Inclusion goals.

3. ***Use specialized, professional support including brokers.*** Expand broker usage beyond the two current locations (Piers 33 ½ and Ferry Plaza East). Port staff may also use hourly consultant assistance to prepare marketing materials, track and respond to prospects, tour the facilities, analyze potential tenant entities and concepts for financial feasibility and financial capacity, and complete facility assessments, among other tasks. Using this professional expertise is critical both from a competitive lens (as the method by which nearly all landlords find tenants and tenants identify leasing opportunities) and from a staff capacity viewpoint (existing staff resources cannot manage multiple competitive processes).

4. ***Provide clear guidance on desired outcomes via criteria.*** **Attachment 1** contains an amended version of the criteria approved by the Port Commission for Piers 33 ½ and Ferry Plaza East (including additional points for the plan to advance Diversity, Equity, and Inclusion goals and fewer for project design). These approved criteria effectively represent the Port's mission and values in tenant selection and Port staff recommend them, with tailored language for each site's physical conditions, for other vacant sites.

5. ***Integrate flexibility into process.*** Consulting with outside professionals, flexibly assess and respond to how the market receives each site. For example, if a site is oversubscribed with interest, call for tenant offers and move to score against criteria. Alternatively, if a site receives little interest, delay any planned request for proposals, but be prepared to start again with a revised outreach plan and marketing materials.

6. ***Feedback loop with Port Commission***. Provide updates to Port Commission as Port staff sign short-term activation licenses or leases and, as part of any recommended new lease, including in the staff report a summary of requests for proposals, proposals received scores for proposals and proposed lease/license terms.

CONCLUSION

The Port is challenged with vacancies since Covid-19. This staff report summarizes the staff's ongoing and proposed actions to meet these challenges with near- and mid-term solutions for attracting and retaining new tenants. **Attachment 2** illustrates how these steps may occur over time.

REQUESTED ACTION

Port staff seek Port Commission approval of the attached resolutions to facilitate solicitations that reduces barriers for new tenants, are open-ended and opportunistic, and rely on the assistance of retail/attraction and F&B specialists, as other landlords do. The attached resolutions include:

1. Resolution 23-28, Broker Fees and Commissions: Allows the payment of broker fees and commissions for vacant F&B and retail/attraction spaces under the Broker Policy attached to the resolution. Note, this Broker Policy is similar to the one adopted in July 2023 (Resolution 22-37, for Piers 33½ and Ferry Plaza Building East).[3]

2. Resolution 23-29.

    a. Authorizes Port staff to either directly or jointly with a broker or a consultant issue multiple solicitations, subject to the criteria for new tenants for vacant retail/attraction and F&B spaces (see **Attachment 1**). Potential tenants identified through this method will be brought to the Port Commission for consideration and Port staff will provide updates on the solicitation process through the monthly leasing report Port Commissioners receive from the Port's Real Estate & Development Division. Under the resolution, Port staff are authorized to solicit for a new tenant through this process for the sites listed in this staff report and for other F&B and retail sites (such as Kneass Building and the former deli and dry cleaner sites at 10 Lombard and 50 Lombard respectively or other restaurant sites that are vacated in the future).

    b. Authorizes Port staff to enter short-term licenses or leases (for up to two years) for activations of F&B and retail/attraction properties, subject to the following process and conditions:

        i. *Issuance of* a request for proposals, similar to the Pop Up Request for Qualifications issued in 2019, but specifically for indoor vacant F&B and retail/attraction locations.
        ii. Similar to the Pop Up RFQ, Port staff will review responses for minimum qualifications (i.e., duly organized entity with experience successfully managing an activation similar in nature to the one proposed).
        iii. Port staff will enter into standard form license (or lease) agreements, with the following financial terms: (1) Not less than 6% participation in gross sales from activation and (2) Abatement of such participation for a period commensurate with licensee or tenant's "significant start up" costs for the activation.
            1. "Significant start up" costs for the activations that warrant participation rent or fee abatement include building system repairs, (i.e. plumbing, lighting, HVAC, etc.), infrastructure improvements, life safety improvements, or improvements needed to obtain a certificate of occupancy. Port staff anticipate activating buildings that have been vacant for several years may have significant start-up costs.

Prepared by: Jennifer Gee, Senior Property Manager

[3] Changes to the policy include: (i) edits to tenant registration process wherein brokers provide Port information about tenant prospects; (ii) clarification of responsibility for commission payments for current tenants or potential tenants identified by the Port.

Don Kavanagh, Senior Property Manager
Sandra Oberle, Senior Property Manager
Real Estate & Development

For: Kimberley Beal, Acting Deputy Director
Real Estate & Development

Attachments:
Attachment 1 - Criteria
Attachment 2 - Potential Process for Short-Term Activation and New Lease Solicitations
Attachment 3 - Prior RFP Processes & Result

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 23-28

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

WHEREAS, Between December 1993 and April 2007, the Port Commission allowed payment of brokers' commissions pursuant to Resolutions 93-151, 95-80, and 97-98. In April 2007, the Port Commission rescinded the ability to pay brokers' commissions based on the low property vacancy rates at the time and overall market conditions under Resolution 07-29. In July 2022, the Port Commission adopted Resolution 22-37, rescinding Resolution 07-29's prohibition on payment of brokers' commissions and adopting a broker commissions policy for Piers 33½ and Ferry Plaza East Building; and

WHEREAS, The COVID-19 pandemic has impacted the San Francisco commercial real estate market in many aspects, including significant declines in office commuters and leisure, business convention, and tourist populations, which has led to increased retail and restaurant vacancies and reduced gross sales for such businesses, particularly in visitor-serving districts, as described in the staff report accompanying this resolution; and

WHEREAS, The Port has a large number of vacant restaurants and retail sites, limited staff capacity, and must compete with landlords offering an array of incentives to lease space and would benefit from specialized retail and restaurant professional services including from brokers to assist in marketing, vetting, and negotiating with new tenants; and

WHEREAS, Based on continued weak market conditions, vacancies to lease relative to Port's staff capacity, and the advantages of broker assistance to the Port by way of increases in marketing, analysis of tenant proposals, and access to relevant market data among other benefits, Port staff recommend allowing the payment of broker commissions and fees for any retail or restaurant site at the Port, subject to the conditions and limitations set forth in Attachment A to this Resolution (the "Broker Policy"); now, therefore, be it

RESOLVED, That the Broker Policy attached to this Resolution as Attachment A is hereby adopted.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 13, 2023.

DocuSigned by:
Jenica Lin
Secretary
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ATTACHMENT A
Broker Policy

In order that the Port may compete more effectively in the commercial leasing market, the Port Commission desires to establish a Broker Policy to fill vacancies at restaurant and retail/attraction properties and for payment of brokers' commissions and fees to licensed brokers hired directly by the Port or hired indirectly through other departments or divisions of the City, for services in procurement of tenants to lease Port properties as set forth below.

1. **Valid Contract Required.** A fully executed City-Broker contract is required. Submission of a letter of interest from a prospective tenant or any other expression of interest by a prospective tenant to lease or license Port property does not qualify for payment of broker's commission or fee. Any obligation by Port to pay the broker's commission arises only when a lease or license is signed, any applicable deposit is made, and sufficient rent is clearly achievable to cover a substantive portion of the brokerage commission as negotiated.

2. **Sole Determination of Port to Lease**. The determination of when and if a property of the Port should be leased or licensed, and the terms thereof, are decisions to be made solely and exclusively by the Port and no obligation is imposed upon the Port to pay any commission because a broker presents to the Port a proposal for the lease or license of Port property. The Port's decision to enter into a lease may be based on the proposed use, the financial offer, the creditworthiness of the prospective tenant, and any other factors deemed relevant in the Port's sole discretion.

3. **Prerequisite of Valid Broker Contract.** There must be a valid City Attorney-approved broker contract either (a) between the Port and the broker or brokerage firm or (b) between the City and broker or brokerage firm, should the Port elect to participate in that department's contract with the approval of that department.

4. **Prerequisite requiring submittal of written confirmation of brokerage signed by both Broker and Prospective Tenant**. At the time a broker presents a prospective tenant to the Port, both the broker and prospective tenant must submit to the Port written confirmation stating that the broker is the prospective tenant's sole and exclusive agent concerning the subject property. If the prospective tenant leases or licenses property when the Port does not call for bids or proposals, a commission computed in accordance with Sections 6 and 7 below shall be paid to the broker if otherwise allowed pursuant to this policy. A broker is entitled to a commission for the lease or license of Port property only if both the broker and the prospective tenant have previously submitted the confirmation required by this Section 4 and a fully executed broker contract is in place.

5. **Broker Commission Payment Structure:** Broker commissions will be paid up to and through the initial term of the lease only, excluding any lease renewals or option terms, and will be established at competitive market rates, as affirmed by

the City's Real Estate Division. Broker commission rates are expected to be between approximately 4% to 7% of the total base rent due for the initial term of the lease or license.

6. **Manner of Payment and Payment Sources.** Broker commissions are intended to be paid from rents the Port collects under the applicable lease the broker helped procure and/or any other funds the Port authorizes to pay Broker commissions and fees. Port may pay broker commissions monthly or quarterly basis or as negotiated.

7. **Limitations on the Payment of Commissions.**

   (a) No commission shall be payable for leases or licenses awarded pursuant to a Port Commission request for bids or proposals for long-term tenancies.

   (b) No commission shall be payable in any case where a prospective tenant of Port property is identified in the broker contract as a party previously identified by the Port as a prospective tenant.

   (c) No commissions shall be payable for renewals or extensions of leases, licenses, or other new lease or license agreements with current Port tenants.

   (d) No commission shall be payable in any case where the broker has a direct or indirect proprietary interest in the prospective tenant, as determined by Port.

   (e) If a lease or license is granted by the Port to a prospective tenant represented by a third-party broker not affiliated with the Port, and the lease or license grants to the tenant:

      (1) An option to expand the premises, the commission shall be calculated only on the rentals for which the tenant has an absolute obligation and shall not include rentals that may become due if the tenant exercises its option; or

      (2) An option to extend its term, the commission shall be calculated only on the term prior to the time when such term may be extended; or

      (3) A right to cancel or terminate the lease or license at the tenant's discretion at some time during its term, the commission shall be calculated only on the term prior to the time when the lease or license may be canceled or terminated.

   (f) If a prospective tenant has previously contacted the Port regarding the lease or license of the property in question, the right is reserved and retained by the Port, in the Port's sole discretion, to identify the party in the broker contract and decline to pay a commission to a broker allegedly representing such party.

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 23-29

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

WHEREAS, The Port has several vacant retail and food and beverage properties today and anticipates more in the near future and wants to offer properties for lease through a competitive solicitation process in recognition of the recent market changes brought on by the COVID-19 pandemic; and

WHEREAS, The Port Commission rescinded Resolution 07-29 (prohibiting payment of brokers' commissions) and adopted a new broker policy allowing payment of brokers' commissions and fees (the interim "Broker Policy") as detailed Resolution No. 22-37 and on June 13, 2023, the Port Commission adopted Resolution No. 23-28, a Broker Policy allowing payment of broker fees and commissions to find tenants to fill vacancies at food and beverage, restaurant, and retail locations; and

WHEREAS, Under City and Port policy, retail leasing opportunities must be publicly bid, including for the sites listed in the staff report accompanying this resolution; and

WHEREAS, Port staff wishes to request bids to lease or license on a short-term basis, the sites listed in the staff report accompanying this resolution through a broker-assisted, competitive solicitation process using the criteria described in the staff report; and

WHEREAS, Prospective tenants or bidders will be encouraged to include in their proposals a plan to meet the Port's LBE and Diversity Equity and Inclusion goals; and

WHEREAS, The proposed offerings and the submission of proposals to lease any Port property do not commit the Port Commission to approve a lease;

WHEREAS, Port Commission approval of any lease or license of Port property will require the completion of applicable environmental review in compliance with the California Environmental Quality Act; and

WHEREAS, Ongoing concerns due to vandalism and maintenance costs for untenanted properties, combined with the economic costs that vacant properties exact on neighboring businesses, the Port would benefit from reactivation of sites as quickly as feasible, and

WHEREAS, The Port wishes to encourage the near-term activation of vacant food and beverage and retail sites by issuing a request for proposals for short-term activations up to two years; now, therefore, be it

RESOLVED, That the Port Commission has reviewed the criteria in the accompanying staff report to this resolution and authorizes Port staff to issue and/or pursue new tenants using a broker-assisted, competitive solicitation process in accordance with the Broker Policy in order to lease the subject properties as described herein and in the staff report accompanying this Resolution, and be it further

RESOLVED, That the Port Commission authorizes Port staff to issue a request for proposals for short-term activations up to two years, to review proposals, and to offer those proposers meeting minimum qualifications standard form license (or lease) agreements, with the following financial terms: (1) Not less than 6% participation in gross sales from activation and (2) Abatement of such participation for a period commensurate with the licensee or tenant's "significant start-up" costs for the activation; and now be it further

RESOLVED, That the Port Commission authorizes Port staff to take further actions in connection with the offering as necessary to achieve the purposes described in this Resolution, and be it further

RESOLVED, That Port staff is directed to return to the Port Commission to report on the progress of these offerings as described in the staff report accompanying this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 13, 2023.

DocuSigned by:
Jenica Liu
Secretary
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Attachment 1 – Criteria

Port staff recommends the following criteria for evaluating the proposals:

Proposed Concept – 20 points

- Overall appeal of proposer's concept to meet Port objectives
- Proposer's plan for marketing to increase patronage and drive sales/revenues
- Proposed operations plan, including hours of operation, menu, pricing, staffing, sourcing of products and services, and how to maintain customer satisfaction

Proposed Design –10 points

- Overall appeal, interior design, exterior design if applicable, signage, floor plan, front elevation, and images depicting interior and exterior

Experience and Financial Strength – 25 points

- Documented experience operating the type of operation proposed
- Annual gross revenue for calendar years 2018 through 2022 of operation, as applicable
- Balance Sheet and Credit Rating
- Capital investment plan, including sources of capital funding

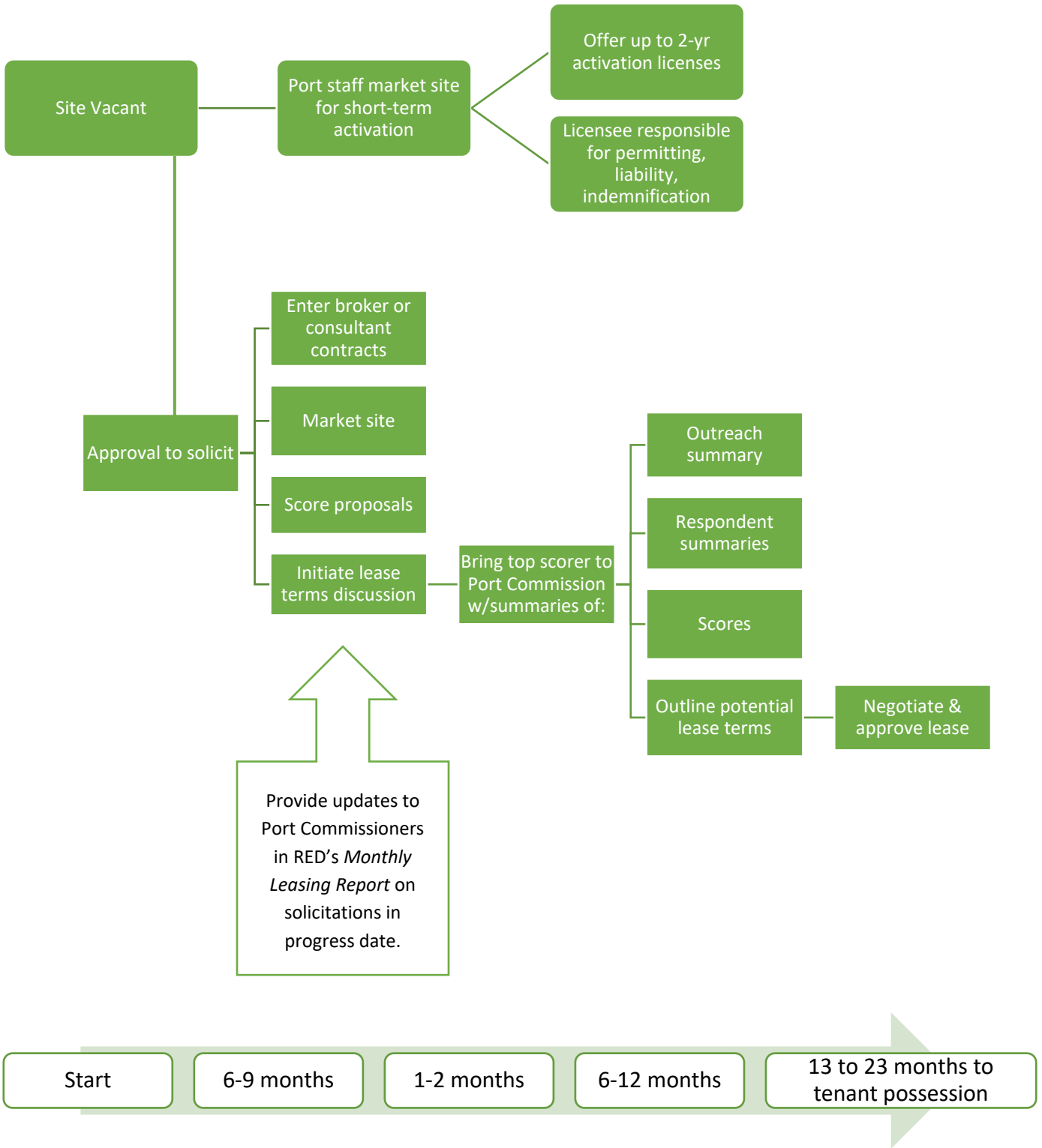
Proposed Rent and Business Plan – 25 points

- Proposed base rent
- Proposed percentage rent
- Five-year financial pro forma with projected sales, revenue to the Port, expenses, and net income, with a demonstrated ability to fund continuing operations from the cash flow generated by the operation

Local Business Participation & Diversity Equity Inclusion Program –20 points

- Proposed plan to meet Port's LBE and Diversity Equity Inclusion goals

Attachment 2 – Potential Process for Short-Term Activation and New Lease Solicitations



Attachment 3 – Prior F&B and Retail RFP Processes & Result

Year Issued	Site	Result
2021	Building 49	Lease approved by Port Commission
2021	Kneass Building	No respondent selected
2017	Pier 33 ½ (former Butterfly space)	Respondent selected, no lease
2017	Pier 40 restaurant (former Carmen's space)	No respondent selected
2016	Pier 29 Bulkhead	Respondent selected, no lease
2012	295 Terry Francois Blvd	Respondent selected, failed to come to terms; Negotiations successful with the second bidder, lease approved and in operation as Atwater Tavern

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 · Fax: 415.252.3112

Filing Information

Record Number

SFEC126F0001137

Status

BOS Legislative Clerk Acceptance

SFEC126f Form Type

126f4 BOS

File Number (BOS)

260194

Type of Filing

Original

Contractor Information

Contractor Name

Dylan's Tours - David Dylan

Contractor Email

dylantdavid@gmail.com

Contractor Phone #

(415) 932-6992

International Address?

No

Contractor Address (US)

782 Columbus Avenue

Contractor City and State

San Francisco - CA

Contractor Zip Code

94133

Country

United States of America

Contract Information

Contract Amount

$825,400.00

Description of Amount of Contract

Base rent received per the terms of the lease over the five year initial term plus revenue from the five-year option (assumed exercised).

Contract Description

Lease for Port property.

City Agency - Departmental Contact Information

Departmental Contact

Don Kavanagh

Departmental Contact Phone #

+14152740501

Full Department Name

PRT - Port Commission

Contract Approval

Mayoral Approval Not Required

false

Affiliates and subcontractors

Entity Type	First Name	Last Name	Entity or Sub/Contractor Name
CEO	David	Dylan	Dylan's Tours

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- [ ] 2. Request for next printed agenda (For Adoption Without Committee Reference)
  (Routine, non-controversial and/or commendatory matters only)
- [ ] 3. Request for Hearing on a subject matter at Committee
- [ ] 4. Request for Letter beginning with "Supervisor _____ inquires…"
- [ ] 5. City Attorney Request
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget and Legislative Analyst Request (attached written Motion)
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Sauter

Subject:

Real Property Lease - 490 Jefferson

Long Title or text listed:

Resolution approving Port Commission Lease No. L-17378 with Dylan's Tours, Inc., a limited liability company, for approximately 1,505 square feet on the ground floor of a two-story building located at 490 Jefferson Street for a term of five years with one five-year option to renew

Signature of Sponsoring Supervisor: