



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

AMENDED AND RESTATED LEASE NO. L-17134

BY AND BETWEEN

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

AND

**YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN FRANCISCO, A
CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

CRANE COVE PARK BUILDING 49

XXXXX, 2024

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
ED HARRINGTON, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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SCHEDULE 6 IMPROVEMENTS AND ALTERATIONS REMOVAL REQUEST FORM

BASIC LEASE INFORMATION

<i>Lease Date:</i>	XXXXXXXX , 2024.
<i>Lease Number:</i>	L-17134 ; this Lease amends and restates in its entirety, Lease No. L-16997, and this Lease hereby supersedes Lease No. L-16997.
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN FRANCISCO , a California Nonprofit Public Benefit Corporation
<i>Tenant's Main Contact Person and Mailing Address:</i>	Jamie Bruning-Miles, President and CEO YMCA of San Francisco 169 Steuart St. San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (415) 932-9990 Email: JBruning-Miles@ymcasf.org
<i>Tenant's Billing Contact and Address:</i>	Mittie Grigsby, CFO YMCA of San Francisco 169 Steuart Street San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (510) 566-1215 Email: Mgrigsby@ymcasf.org
<i>Tenant's Emergency Contact and Address:</i>	Chris McComic, VP YMCA of San Francisco 169 Steuart Street San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (415) 688-9726 Email: Cmccomic@ymcasf.org

<p><i>Tenant's Insurance Contact and Address (not broker):</i></p>	<p>Jackie O'Brien YMCA of San Francisco 169 Steuart Street San Francisco, CA 94105 Telephone: (415) 777-9622 Cell: (617) 990-2757</p> <p>Email: JObrien@ymcasf.org</p>
<p><i>Contact Information for Tenant's Agent for Service of Process:</i></p>	<p>CT Corp 330 N. Brand Blvd. Glendale, CA 91023-2366</p>
<p><i>Premises:</i></p>	<p>The Premises is comprised of Building 49 (the "Building"), the existing improvements thereon of approximately 8,000 square feet with a rentable area of approximately Six Thousand Eight Hundred Seventeen (6,817) square feet, located within Crane Cove Park (the "Park"), in the City and County of San Francisco as more particularly shown on <i>Exhibit A</i> attached hereto, and all Improvements hereafter constructed in, on or around the Building.</p> <p>The address of Building 49 is 701 Illinois Street San Francisco, California 94107</p>
<p><i>Effective Date; Commencement Date; Rent Commencement Date; Expiration Date; Initial Term; Partial Base Rent:</i></p>	<p>This Lease is amended and restated in its entirety as of the Lease Date, and is effective retroactively as of August 1, 2023 (the "Commencement Date" or the "Effective Date").</p> <p>Provided that there is no existing Event of Default and except as set forth in the immediately following, Rent shall be abated during construction of the Initial Improvements (as defined below) starting on the Commencement Date until the earlier of (i) the date Port issues a Temporary Certificate of Occupancy related to all of the Initial Improvements; or (ii) October 1, 2024 ("Construction Term"). Tenant shall pay Base Rent payments starting on the earlier of the date Port issues a Temporary Certificate of Occupancy related to all of the Initial Improvements or October 1, 2024 regardless of the status of completion of the Initial Improvements ("Rent Commencement Date"). Notwithstanding the foregoing, and subject to compliance with the terms and conditions of the Work Letter, Tenant must pay rent in the amount required by the then-current Port Commission-adopted parameter rates for any uses in the Building other than construction during the Construction Term.</p> <p>Notwithstanding the foregoing, if, prior to the Rent Commencement Date, the Subtenant under the Dogpatch Paddle Sublease takes occupancy of all or a portion of Sublease Premises A pursuant to a Temporary Certificate of Occupancy that allows for such occupancy, then Tenant shall commence partial payment of Base Rent under this Lease from the date of occupancy (the "Partial Base Rent Date") in the amount equal to (i) the Base Rent payable under the Dogpatch Paddle Sublease if the Temporary Certificate of</p>

	<p>Occupancy allows for occupancy of all of Sublease Premises A, or (ii) a pro-rated amount of the Dogpatch Paddle Sublease’s Base Rent if the Temporary Certificate of Occupancy allows for occupancy of only a portion of Sublease Premises A (in either case, “Partial Base Rent”). For purposes of determining the Sublease Rent Commencement Date under the Dogpatch Paddle Sublease, the “Rent Commencement Date” under the Master Lease (as defined in the Dogpatch Paddle Sublease) is the earlier of the Partial Base Rent Date or the Rent Commencement Date; provided, in no event will any percentage rent be owed by such Subtenant for any period prior to the Rent Commencement Date.</p> <p>This Lease shall expire on the date that is the last day of the tenth (10th) year after the Rent Commencement Date (“Expiration Date”).</p> <p>The “Initial Term” shall be from the Rent Commencement Date to the Expiration Date.</p> <p>Notwithstanding anything to the contrary in this Lease, if, despite Tenant’s commercially reasonable efforts, the Building Permit for the Initial Improvements has not been issued and Finally Approved on or before the date that is 330 days after the Commencement Date (“Upset Date”) for any reason whatsoever, then Tenant may terminate this Lease by written notice to Port given within five (5) business days of the Upset Date. The termination notice shall immediately terminate this Lease as of the date of such notice; shall automatically terminate any other use agreements, including any licenses then in effect between the parties for the Building or the Park; and shall be irrevocable. Port shall return any unused portion of the Security Deposit as provided in Section 9. Except for provisions that survive the expiration or earlier termination of this Lease, the parties shall have no further obligations under this Lease as of the date of Tenant’s notice.</p> <p>Promptly following each of the Commencement Date and Rent Commencement Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as Exhibit B, confirming the actual Commencement Date, Rent Commencement Date, Upset Date, and Expiration Date, but either party’s failure to do so shall not affect the commencement or expiration of the Term or the actual Rent Commencement Date.</p>
<p><i>Permitted Use:</i></p>	<p>Operation of a wellness center featuring fitness and wellness programming and classes and community events; an aquatics center which includes sales, rentals and lessons related to human-powered vessels such as kayaks and stand-up paddleboards; and a food and beverage concession. The Permitted Uses are more fully described in the Operations Plan.</p>
<p><i>Subtenant Space:</i></p>	<p>There shall be two (2) spaces in the Building designated for Subtenants as more particularly shown on Exhibit A attached hereto, as follows:</p> <p>(1) “Sublease Premises A”: of approximately 2,289 square feet located in the eastern area of the Building to be used as an aquatics center; and</p>

	<p>(2) “Sublease Premises B”: of approximately 455 square feet located in the southwestern area of the Building to be used for retail food and beverage operations.</p>																																	
<p><i>Initial Subtenants: Dogpatch Paddle and Daily Driver:</i></p>	<p>As of the Effective Date, Port consents to the following Subleases on the terms and conditions of the Port’s Consents attached hereto as follows:</p> <p>(1) For Sublease Premises A: A Sublease to Dogpatch Paddle, LLC. Port’s Consent is attached as <i>Exhibit C</i> (the “Dogpatch Paddle Sublease”); and</p> <p>(2) For Sublease Premises B: A Sublease to Daily Driver LLC. Port’s Consent is attached as <i>Exhibit D</i> (the “Daily Driver Sublease”).</p> <p>Further subleasing is subject to the provisions of <i>Section 23.5</i>.</p>																																	
<p><i>Initial Term Monthly Base Rent and Annual Adjustments:</i></p>	<p>Tenant is responsible for the payment of Rent. Tenant shall pay monthly base rent in an amount equal to Seven Thousand Seven Hundred Thirty-Four Dollars and Fifteen Cents (\$7,734.15) (“Monthly Base Rent”). Base Rent is based on a blended rate of \$1.1345/square foot (“Blended Monthly Base Rent”).</p> <p>On each Anniversary Date during the Initial Term, Monthly Base Rent (including the Monthly Base Rent Allocation for each Subtenant as defined below) will increase by three percent (3%) (regardless of the CPI) (the “Annual Adjustment”).</p> <p>The table below sets out the Base Rent payable in each Lease Year inclusive of each Annual Adjustment.</p> <table border="1" data-bbox="542 1100 1284 1478"> <thead> <tr> <th>Lease Year</th> <th>Annual Base Rent</th> <th>Monthly Base Rent</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>\$92,809.80</td> <td>\$7,734.15</td> </tr> <tr> <td>2</td> <td>\$95,594.09</td> <td>\$7,966.17</td> </tr> <tr> <td>3</td> <td>\$98,461.92</td> <td>\$8,205.16</td> </tr> <tr> <td>4</td> <td>\$101,415.77</td> <td>\$8,451.31</td> </tr> <tr> <td>5</td> <td>\$104,458.25</td> <td>\$8,704.85</td> </tr> <tr> <td>6</td> <td>\$107,591.99</td> <td>\$8,966.00</td> </tr> <tr> <td>7</td> <td>\$110,819.75</td> <td>\$9,234.98</td> </tr> <tr> <td>8</td> <td>\$114,144.35</td> <td>\$9,512.03</td> </tr> <tr> <td>9</td> <td>\$117,568.68</td> <td>\$9,797.39</td> </tr> <tr> <td>10</td> <td>\$121,095.74</td> <td>\$10,091.31</td> </tr> </tbody> </table>	Lease Year	Annual Base Rent	Monthly Base Rent	1	\$92,809.80	\$7,734.15	2	\$95,594.09	\$7,966.17	3	\$98,461.92	\$8,205.16	4	\$101,415.77	\$8,451.31	5	\$104,458.25	\$8,704.85	6	\$107,591.99	\$8,966.00	7	\$110,819.75	\$9,234.98	8	\$114,144.35	\$9,512.03	9	\$117,568.68	\$9,797.39	10	\$121,095.74	\$10,091.31
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<p><i>Percentage Rent; Participation Rent:</i></p>	<p>In addition to the Monthly Base Rent, in any month in which the amount under clause (i) below exceeds the Monthly Base Rent Allocation as further described in <i>Section 5.2</i>, Tenant shall pay to Port, as calculated on a monthly basis and paid quarterly, for each for-profit Tenant (for example, a Transferee that is a for-profit entity) and Subtenant, the difference between: (i) six percent (6%) of Gross Revenues generated by that Subtenant; and (ii) the respective monthly Base Rent allocation as shown below, subject to adjustments (“Monthly Base Rent Allocation”) (collectively, “Percentage Rent”).</p>																																	

	<p>Initial Monthly Base Rent Allocation for Sublease Premises A: \$2,918.48</p> <p>Initial Monthly Base Rent Allocation for Sublease Premises B: \$1,353.63</p> <p>The Restroom Rent Credit, as defined below, shall not be taken into account when calculating Percentage Rent. There shall be no deductions from Percentage Rent for costs associated with subletting, including for broker commissions, attorneys’ fees or costs for improvements, fixtures or equipment.</p> <p>In the event that Tenant seeks consent to amend a Sublease or enter a new Sublease with sublease base rent in excess of the then-current Monthly Base Rent Allocation (including as a result of increased square footage in the sublease), then, in addition to the monthly Base Rent and Percentage Rent, Tenant shall pay to Port, as Additional Rent, fifty percent (50%) of such rent or other sums paid or payable to Tenant under such Sublease as rent (excluding utility pass-through costs, a commercially reasonable property management fee, and the like) (allocated on a square footage basis in the case of increased square footage) in excess of the then-current Monthly Base Rent Allocation (“Participation Rent”) as further described in <i>Section 5.3</i>. Participation Rent shall be in addition to Base Rent and Percentage Rent and shall not be taken into account when calculating Percentage Rent.</p> <p>Further, Tenant agrees that as a condition of Port’s consent to a Sublease or Transfer to a tenant or Subtenant with a substantially different business model (such as alcohol sales) or if Tenant becomes a for-profit entity, Port may elect to increase the monthly Percentage Rent amount above six-percent (6%) or require Tenant to pay Percentage Rent in a commercially reasonable amount consistent with other Port tenants with similar operations, as determined by Port in its reasonable discretion.</p>
<p><i>Extension Options:</i></p>	<p>Subject to the terms and conditions described below and in <i>Section 7</i>, Tenant shall have: (i) four (4) options to extend the term for a period of five (5) years each; (ii) followed by one (1) option to extend the term for a period of two (2) years; and (iii) followed by one (1) option to extend the term for a period of one (1) year. Each extension option and each extension term, whether for five (5), two (2), or one (1) year(s), is referred to in this Lease as an “Extension Option” and an “Extension Term.” Tenant may exercise an Extension Option by providing Port with written notice to exercise an Extension Option (each an “Option Notice”) no less than Three Hundred Sixty-Fifty (365) days prior to the relevant expiration date (each an “Option Notice Deadline”), except in the case of the two (2) year and one (1) year Extension Options, in which case the Option Notice shall be given no less than six (6) months prior to the relevant expiration date and such 6-month date shall be the Option Notice Deadline.</p> <p>Tenant may include in the Option Notice, a request to continue to use the Interim Power Line during the applicable Extension Term. Port will include in its written confirmation of the Extension Term</p>

	<p>Rent whether Tenant may access the Interim Power Line during the applicable Extension Term. If Port’s written confirmation is silent on whether Tenant may use the Interim Power Line, then it will be deemed as if the Interim Power Line is unavailable for Tenant’s use during the applicable Extension Term.</p> <p>If Port confirms, or is deemed to have confirmed, that the Interim Power Line is unavailable for Tenant’s use during the applicable Extension Term, then Tenant may revoke its Option Notice upon written notice to Port given within ninety (90) days after Port’s confirmation or deemed confirmation.</p> <p>If Port confirms that the Interim Power Line is available for Tenant’s use but only for a portion of the applicable Extension Term or such use is subject to a new limitation (e.g., available but at a lesser capacity), then Tenant may elect to revoke its Option Notice entirely or revoke and provide a modified Option Notice for an Extension Term that is only for the period of availability or only for such period of time as the Interim Power Line is available without being subject to the new limitation. Tenant shall provide such revocation (or revocation and modified Option Notice) within ninety (90) days after receipt of Port’s confirmation.</p>
<p><i>Rent During an Extension Term:</i></p>	<p>On the commencement date of an Extension Term (if any) and on each Anniversary Date of an Extension Term, Monthly Base Rent shall be increased by an amount equal to the product obtained by multiplying the average of any annual (over-the-year) changes in the CPI for the five (5) years immediately preceding the Option Notice Deadline by the Monthly Base Rent, but subject to a minimum for such average of one percent (1%) and maximum of such average of four percent (4%) (the “Extension Term Annual Adjustment”).</p> <p>For the final 2-year and 1-year options, the Extension Term Annual Adjustment will be calculated in the same manner and subject to the same minimum and maximum, except that the average of any changes in the CPI for the two years preceding the Option Notice Deadline will be used.</p> <p>For any Extension Term for which Tenant has given an Option Notice, no later than the date that is Two Hundred Seventy (270) days (or ninety (90) days in the case of the 2-year option and the 1-year option) prior to the commencement date of the relevant Extension Term, Tenant shall provide a calculation showing the applicable Extension Term Annual Adjustment and resulting Base Rent (including to the Monthly Base Rent Allocation for any Subtenants) and Restroom Rent Credit, for Port’s review and written confirmation, which Port will provide within thirty (30) days after receipt. Port will include in its written notice whether Tenant may access the Interim Power Line during the applicable Extension Term. If Port’s written notice is silent on whether Tenant may use the Interim Power Line, then it will be deemed as if the Interim Power Line is unavailable for Tenant’s use during the applicable Extension Term. Tenant shall have the right to revoke, or revoke,</p>

	<p>modify and re-submit, its Option Notice as set forth above in the “Extension Option” section of this Basic Lease Information.</p> <p>The parties agree that such calculation is a straightforward and objective process; however, if Port rejects Tenant’s calculation, then Port shall provide a written explanation of why it disagrees and shall provide its own calculation. The parties shall negotiate in good faith and use commercially reasonable efforts to reach agreement on the applicable Extension Term Annual Adjustment within sixty (60) days after the expiration of the 30-day period, including the schedule for Tenant to make payment of any amounts due or receive a credit for any overpayment.</p> <p>For illustrative purposes only:</p> <p>If the Rent Commencement Date is November 1, 2023, then the first Extension Term will commence on November 1, 2033 and the Option Notice Deadline is October 31, 2032 and Tenant will perform the calculations in the following manner and submit to Port no later than January 4, 2033.</p> <table border="0"> <tr> <td>October 2027 – October 2028:</td> <td>6.3%*</td> </tr> <tr> <td>October 2028 – October 2029:</td> <td>5.6%</td> </tr> <tr> <td>October 2029 – October 2030:</td> <td>6.4%</td> </tr> <tr> <td>October 2030 – October 2031:</td> <td>0.6%</td> </tr> <tr> <td><u>October 2031 – October 2032:</u></td> <td><u>3.8%</u></td> </tr> <tr> <td>Total:</td> <td>21.5%</td> </tr> <tr> <td>Annual Average:</td> <td>4.3%</td> </tr> <tr> <td>Extension Term Annual Adjustment:</td> <td>4.0% (capped)</td> </tr> </table> <p>*The percentage represents the annual (over-the-year) percentage change in the CPI measured based on the CPI publication date closest to the adjustment date. If CPI is published on a bimonthly basis, the calculation will be made using the most current CPI numbers published previous to the start and end dates of the relevant 12-month calculation period. For example, if the calculation requires numbers published in September and CPI is not published in that month but is published in August, then the calculation will be performed using the August CPIs immediately preceding the applicable Septembers of the 12-month determination period (e.g., August 2027 and 2028)).</p>	October 2027 – October 2028:	6.3%*	October 2028 – October 2029:	5.6%	October 2029 – October 2030:	6.4%	October 2030 – October 2031:	0.6%	<u>October 2031 – October 2032:</u>	<u>3.8%</u>	Total:	21.5%	Annual Average:	4.3%	Extension Term Annual Adjustment:	4.0% (capped)
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<p><i>Security Deposit:</i></p>	<p>Fifteen Thousand Four Hundred Sixty-Eight Dollars and 30/100 (\$15,468.30)</p>																
<p><i>Initial Improvements:</i></p>	<p>Tenant must Complete the following Initial Improvements as more fully described in the Scope of Development attached to the Work Letter (Exhibit E):</p> <p>(1) tenant improvements generally including</p> <p>(A) improvements necessary for Tenant to operate fitness areas, group exercise spaces, restrooms and an office area,</p> <p>(B) infrastructure improvements to Sublease Premises B to support</p>																

	<p>cooking, cleaning, refrigeration and food delivery at a retail coffee/bagel shop, (C) infrastructure improvements to Sublease Premises A to support operation of, and storage in, a water sports retail shop and aquatics center, including drainage for rinsing of human-powered watercraft, (D) electrical, IT, HVAC, water and sewer facilities, including a new topping slab and radiant heat, and (E) improvements to the exterior of the Building, including store front egress doors, window glazing, roll up access doors, repaired siding, connections between exterior and interior slabs, paint and exterior signage and lighting (“Initial Tenant Improvements” or “Initial Improvements”); and</p> <p>(2) The Initial Improvements shall be constructed at Tenant’s sole cost and expense and in accordance with the Work Letter and Section 14 below.</p> <p>Tenant agrees that it will invest a minimum of Five Million Dollars (\$5,000,000) in hard and soft costs in the Initial Tenant Improvements including for the fees and costs of design professionals, engineers, and construction management; internal management costs; landscaping and planters; costs of obtaining LEED or similar green building or environmental certifications; costs of complying with applicable Laws; inspection and testing (such as geotechnical, lead paint and asbestos testing); surveying costs; legal fees; building permit fees; insurance premiums and costs; costs of signage; costs of built in or fixed personal property, such as a lobby desk and built-in cabinets and lockers; kitchen equipment; water fountains; and security services and systems.</p> <p>Tenant must Complete the Initial Improvements no later than the Initial Improvements Completion Date as set forth in the Work Letter. Tenant’s Completion of the Initial Improvements by the Initial Improvements Completion Date is material consideration for this Lease and Port would not have entered into this Lease absent such terms.</p> <p>Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements including without limitation the Initial Improvements and agrees that it will not seek additional term for the purpose of amortizing any improvements.</p>
<p><i>Park License:</i></p>	<p>In connection with this Lease, the parties are entering into a license agreement attached hereto as Exhibit F (the “License”).</p>
<p><i>Operations Plan:</i></p>	<p>All Permitted Uses must be performed in compliance with the attached Operations Plan (Exhibit G), as approved by the Port and amended from time to time as necessary. The Operations Plan is supplemental to the Lease; in the event of any conflict or inconsistency between the Lease and the Operations Plan, the Lease will control unless explicitly provided otherwise in this Lease. Tenant must prepare and maintain the Operations Plan to document procedures consistent with Laws, industry standards, best management practices and good housekeeping under this Lease and</p>

	<p>the License. The Operations Plan must address the following operations and components by Tenant and any Subtenants on or about the Premises or License Area as defined in the License (<i>Exhibit F</i>):</p> <ul style="list-style-type: none"> (A) Hours of Operation, Security, Staffing and Safety Plan; (B) List of required and obtained Regulatory Approvals; (C) Fitness class and aquatic activities safety measures (e.g., participant safety gear; participant/instructor ratio; instructor qualifications); (D) Reporting Accidents; (E) Noise Control; (F) Equipment Washing Protocols (G) Park Usage Areas (including paths of travel for staff and patrons). <p>Failure to comply with the Operations Plan after notice and an opportunity to cure as provided in <i>Section 26</i> is a material breach of this Lease. Port and Tenant may, from time to time, review the Operations Plan and make recommendations for revisions. All revisions to the Operations Plan, whether initiated by Port or Tenant, are subject to Port and Tenant approval, each in its reasonable discretion.</p>
<p><i>Obligations Regarding Public Restrooms:</i></p>	<p>Except as explicitly provided by this Section, all terms, conditions, obligations and liabilities of this Lease apply to the public restrooms (“Restrooms”). In addition, specifically, commencing on the date that is the earlier of (a) five (5) days after the date a Temporary Certificate of Occupancy for all or a portion of the Building is issued, or (b) July 1, 2024 (the “Restroom Opening Date”), Tenant must: (i) regularly clean, stock, and equip the Restrooms so that the Restrooms remain useable during their hours of operation; (ii) maintain clearly visible signage that the Restrooms are open to the public; (iii) ensure Restrooms are open from 9:00 a.m. – 6:00 p.m. Monday through Friday, 9:00 a.m. – 5:00 p.m. on weekends, and 9:00 a.m. – 2:00 p.m. on holidays (other than holidays when Tenant is not open at the Premises); (iv) provide Port with at least fifteen (15) days prior written notice of its intention to close the Restrooms to the public for any period longer than necessary to address any health or safety concerns or to perform routine maintenance and repair and obtain Port’s written consent to do so prior to closing the Restrooms. Subject to <i>Section 14.11</i>, Tenant may install signage in the Restrooms that Tenant considers necessary or appropriate to limit Tenant’s liability for their use.</p> <p>Tenant’s obligations with respect to the Restrooms are material and Port would not have entered into this Lease absent such terms.</p> <p>Provided Tenant opens the Restrooms on the Restroom Opening Date, and provided that Tenant complies with this section titled “Obligations Regarding Public Restrooms” in this Basic Lease Information and subject further to the terms and conditions of</p>

	<p>Section 5.11(a), starting on the Restroom Opening Date, Port will contribute financially to the cost of capital expenses and repairs for the Restrooms by providing a monthly rent credit of Two Thousand Dollars (\$2,000) against Base Rent, which amount shall be adjusted annually by the Annual Adjustment or the Extension Term Annual Adjustment as the case may be (“Restroom Rent Credit”). If the Restrooms are opened to the public on a date after the Restroom Opening Date, then the Restroom Rent Credit will be reduced as set forth below.</p> <p>If Rent (including Partial Base Rent) in the amount of the Restroom Rent Credit is not yet payable as of the Restroom Opening Date, then the Restroom Rent Credit shall accumulate, and Port shall apply such accumulated amount to each subsequent Rent payment until the accumulated amount has been applied in full (i.e., the amount of such accumulated Restroom Rent Credit shall be applied in full at once against any Rent then due and against any subsequent Rent amounts until fully exhausted).</p> <p>Notwithstanding any remedies that otherwise may be available to Port under this Lease, if Tenant does not open the Restrooms by the Restroom Opening Date, then (i) there will be no application of the Restroom Rent Credit until the later of the Rent Commencement Date or the date the Restrooms are open to the public, and (ii) the Restroom Rent Credit will be reduced by \$175.00 for each day after the Restroom Opening Date until the Restrooms are opened to the public (subject to temporary closures, as permitted under this Lease), up to a maximum reduction of \$6000.</p> <p>The Parties agree that the Restroom Rent Credit as established in this Lease is reasonable irrespective of whether Tenant’s costs increase or decrease over the Term.</p>
<p><i>Additional Prohibited Uses:</i></p>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 10.2 below, the following are prohibited:</p> <ul style="list-style-type: none"> (a) No discharges to the Bay; (b) Use of the Premises for operation of a night club, underage parties, raves, pay at the door events or other similar activities. <p>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.</p>
<p><i>Maintenance and Repair:</i></p>	<p>Tenant is solely responsible for maintenance and repair of the Premises including without limitation, the Building and all Building Systems including the structure, substructure, roof, core, shell, Utilities and other infrastructure, windows and interiors.</p> <p>Port will have no maintenance or repair obligations with respect to the Premises or the Interim Power Line.</p>

<p><i>Utilities; Services:</i></p>	<p>Port and Tenant acknowledge that as of the Effective Date, the electricity to the Premises is by means of a power line from outside the Premises (“Interim Power Line”). The location of the Interim Power Line is generally depicted on the attached <i>Exhibit A</i> and originates from areas outside the Premises and within Port’s jurisdiction. Tenant has been unable to determine the financial feasibility of designing and constructing a direct connection from the Premises to an electrical power distribution line (“Direct Power Connection”) for the Permitted Uses before the Effective Date.</p> <p>Subject to the terms and conditions set forth herein, without limiting Tenant’s obligations under <i>Section 15.1</i>, Port agrees that Tenant may connect to the Interim Power Line in order to connect to and receive electrical power supplied by the SFPUC (i) while Tenant diligently works to determine the financial feasibility of a Direct Power Connection, (ii) if applicable, if Tenant concludes the Direct Power Connection is financially feasible, during construction of the Direct Power Connection until it is able to receive SFPUC electrical power, and (iii) if applicable, after Tenant reasonably concludes that a Direct Power Connection is financially infeasible.</p> <p>If Tenant reasonably concludes that a Direct Power Connection is financially infeasible, Tenant will promptly provide notice of such conclusion to Port, along with evidence to support such conclusion. The Parties agree that it will be reasonable for Tenant to conclude that a Direct Power Connection is financially infeasible if the cost to Tenant of such connection exceeds \$150,000. Reasonable evidence supporting such cost calculation shall constitute sufficient evidence to support such conclusion. Tenant will cease use of the Interim Power Line once a Direct Power Connection is constructed and SFPUC electrical power flows through the Direct Power Connection to the Premises.</p> <p>Tenant must contract directly with SFPUC and install a separate meter or sub-meter for the actual supply and metering of all electrical power to and at the Premises. Port has no obligation to pay for or reimburse any party, for any electrical power (including any infrastructure) supplied to or used at the Premises.</p> <p>Tenant agrees and acknowledges that (i) if it elects to connect to the Interim Power Line, it will connect to the Interim Power Line in its as-is condition, (ii) the current as-is condition of the Interim Power Line is capable of carrying an adequate supply of electricity for the Permitted Use (“Power Baseline”), and (iii) Port has no obligation to maintain, repair, or replace the Interim Power Line at any time during the Term. Port has made no representation or warranty about the condition or life-span of the Interim Power Line, the feasibility of Tenant using the Interim Power Line for the Permitted Uses throughout the Term, or whether the Power Baseline is sufficient for the Permitted Uses.</p> <p>Notwithstanding the foregoing, during the period when there is no Direct Power Connection, if all of the Premises is without electrical power due solely to the inability of the Interim Power Line to carry electricity (as opposed to the SFPUC’s inability to supply</p>
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electricity) to the Premises in the amount of the Power Baseline, then Tenant will notify Port. If, within thirty (30) days after receipt by Port of such notice, Port has not restored or repaired the Interim Power Line such that it is once again capable of carrying electricity in the amount of the Power Baseline to the Premises, then, from and after such date, all of base Rent shall be abated until the date that is three (3) days after the date on which the Interim Power Line is once again capable of carrying the Power Baseline to the Premises provided Tenant also proportionately reduces the base rent for its Subtenants for the period of Tenant's Rent abatement. The Parties further acknowledge that any Rent abatement will have no effect on the application of the Restroom Rent Credit or any other rent credit.

If, notwithstanding the inability of the Interim Power Line to carry the Power Baseline, Tenant or any subtenants determine that they are able to use part of the Premises (e.g., by using mobile generators), then if the Power Baseline is not restored within thirty (30) days after receipt by Port of Tenant's notice that only a portion of the Power Baseline is being met, Port may, in its sole discretion provide a partial abatement of Rent based on the partial use of the Premises contemplated in the notice.

Provided Tenant has made the determination (and the Port has concurred) that the Direct Power Connection is financially infeasible in accordance with the foregoing provisions in this "Utilities; Services" section of the Basic Lease Information and Tenant has been using the Interim Power Line but the Interim Power Line has not been able to carry the Power Baseline, if Port is unable to complete the restoration or repair of the Interim Power Line sufficient to allow it to carry the Power Baseline within two hundred seventy (270) days after the date of the cessation, then Tenant may terminate the Lease without penalty by giving Port not less than ninety (90) days' prior written notice. Other than the Rent abatement and termination right without penalty permitted under this section of the Basic Lease Information, Tenant's release of Claims set forth in *Sections 22.4 and 22.5* includes the release of all Claims related to the inability of the Interim Power Line to carry the Power Baseline.

For the avoidance of doubt, Tenant shall not be entitled to any Rent abatement if the Interim Power Line ceases to carry electricity as a result of (a) a failure of equipment owned or leased by Tenant or SFPUC, (b) a failure by Tenant to pay SFPUC, (c) an outage at SFPUC, or (d) a SFPUC act, omission, negligence or failure.

Commencing on the Rent Commencement Date, as compensation to Port for Tenant's use of the Interim Power Line, Tenant will pay monthly to Port a "Capacity Charge" in the amount of One Thousand Three Hundred Sixty-Three and 40/100 Dollars (\$1,363.40)(which is equal to \$0.20 per rentable square foot of the Premises (6,817 x \$0.20 = \$1,363.40 per month)). Tenant will pay the Capacity Charge as and when Monthly Base Rent is due. On each Anniversary Date during the Initial Term, the Capacity Charge will increase annually by three percent (3%). On the commencement date of an Extension Term (if any) and on each

	<p>Anniversary Date of an Extension Term, the Capacity Charge will be increased by the same percentage as Monthly Base Rent is increased following calculation of the Extension Term Annual Adjustment.</p> <p>If at any time the Interim Power Line is no longer able to carry the Power Baseline to the Premises and such inability is not the result of (a) a failure of equipment owned or leased by Tenant or a failure by Tenant to pay SFPUC or (b) an outage at SFPUC, then the Capacity Charge shall be abated from and after such date until the date that is three (3) days after the date on which the Interim Power Line is once again capable of carrying the Power Baseline to the Premises (and provided that Tenant provides a similar abatement to any subtenants if applicable).</p> <p>At any time during the Term (including any Extension Term) on not less than thirty (30) days prior written notice, Tenant may terminate use of the Interim Power Line, whereupon Tenant shall cease using such connection and shall no longer be obligated to pay the Capacity Charge. If the date this Lease terminates or the day before the date Tenant no longer requires use of or has use of the Interim Power Line occurs on a date other than the last day of a calendar month, then any payment of the Capacity Charge shall be pro-rated based on the number of days in such month, and Port shall refund any overpayment to Tenant within thirty (30) days after the applicable date.</p> <p>Except as set forth above in this section of the BLI, Tenant’s sole responsibility, as further described in Section 15. Port makes no representation regarding the availability of existing or new Utilities or capacity for the use of the Premises. Port will cooperate with Tenant at no cost to Port to obtain necessary Utilities.</p>
<p><i>Development Project:</i></p>	<p>Events in the Park, including general public events, special events, activation, vending programs, and other uses, including potential future improvements to the Park; redevelopment of the Kneass Building.</p>
<p><i>Port’s Participation in Transfer Proceeds:</i></p>	<p>As detailed in Sections 23.3 and 23.4, Tenant and all subsequent assignees must pay to Port twelve percent (12%) of Tenant’s Net Sale Proceeds or Net Financing Proceeds from each Transfer concurrently with and as a condition to the Transfer closing (“Transfer Participation Rent”).</p>
<p><i>Facility Conditions Reports:</i></p>	<p>No later than the date that is six (6) months prior to the fifth (5th) Anniversary Date of this Lease and no later than the date that is six (6) months prior to the relevant expiration date during any Extension Term, Tenant, at its sole cost, shall assess the Building’s structural elements and key Building Systems (including without limitation, the roof, substructure, HVAC system, Restrooms and fire protection systems) and provide a report in a form acceptable to Port prepared by qualified, California registered structural engineer, including, at a minimum, the following: (i) a narrative description of the current conditions and expected useful life of each element; (ii) relevant photographs; (iii) a list of the immediate and longer term maintenance, repair and replacement needs and estimated cost</p>

	to address them; (iv) recommendations for further investigation by engineers or construction specialists; and (v) an explanation of cost estimating methodologies and assumptions (“ Facility Conditions Report ”). In addition, Tenant must provide a Facility Conditions Report as reasonably requested by Port as to any element of the Building or Building Systems.
<i>Construction Warranties:</i>	<p>Notwithstanding any other provision of this Lease, Tenant shall not take any action that might impair the construction and associated manufacturing warranties listed in Schedule 5 (“Construction Warranties”) associated with Port’s recent construction work at the Building or Port’s ability to enforce the Construction Warranties, including without limitation, in performing Tenant’s maintenance and repair obligations under this Lease. Tenant represents and warrants to Port that Tenant has received and reviewed the Construction Warranties listed in Schedule 5.</p> <p>Port and Tenant agree to cooperate as needed in order to enforce the Construction Warranties. At Tenant’s request, Port will use commercially reasonable efforts to cause the applicable contractor or subcontractor to perform its obligations under the applicable Construction Warranty including assignment of the warranty to Tenant (if requested by Tenant and at Tenant’s sole cost and expense and by a commercially reasonable form of assignment and assumption agreement with respect to any such warranty(ies)).</p>
<i>California Environmental Quality Act; Mitigation Measures and Reporting Program (“MMRP”):</i>	In order to mitigate any potential significant environmental impacts, Tenant agrees that its development and operation will be in accordance with the MMRP attached as Exhibit H and fully incorporated herein. Tenant is responsible for implementation and compliance with all required measures relating to Tenant’s activities. As appropriate, in addition, Tenant will incorporate the MMRP into any contract for the development and/or operation of the Premises. Failure to comply with the requirements of the MMRP Section shall be a default of this Lease; provided that, for any requirement for which Port is the enforcing agency, Port will provide notice and an opportunity to cure as provided in Section 26 .
<i>Diversity, Equity & Inclusion Plan:</i>	Tenant on behalf of itself, its Subtenants and any Transferees, acknowledges the importance of furthering the values of diversity, equity, and inclusion. Tenant agrees to abide by the “ DEI Plan ” generally described in Exhibit L attached hereto, which may be reasonably amended, updated, and clarified by Tenant from time to time at its own initiative or at Port’s suggestion. Tenant will promptly provide Port with a copy of any amended DEI Plan.
<i>Prior Licenses:</i>	The Parties agree that as of the Commencement Date, License 16931, dated June 3, 2022 for reference purposes, and License 16906, dated April 27, 2022 for reference purposes (the “ Prior Licenses ”) between Tenant and Port expired by their terms. The Parties shall continue to be liable for any obligations under the Prior Licenses which have accrued prior to the date of termination

	and any obligations which by their terms survive the termination or expiration of the Prior Licenses.
<i>Lease Prepared By:</i>	James Hurley, Development Project Manager

LEASE AGREEMENT

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

Port and Tenant previously entered into that certain Lease No. L-16997, dated July 14, 2023 (the “**Original Lease**”), which included provisions for Tenant to perform certain seismic related improvement work in return for a rent credit for a portion of such seismic related cost from the Port. The Parties desire to (i) eliminate the requirement to perform such seismic related work and provide such rent credit and (ii) make other changes to the Original Lease, and accordingly, the Parties have agreed to amend and restate the Original Lease in its entirety and enter into this Lease, which replaces and supersedes the Original Lease, all as more specifically set forth in this Lease.

1. DEMISE.

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

2. DEFINITIONS.

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

“**ACMs**” means asbestos-containing materials (“**ACMs**”) as defined in the Cal-OSHA General Industry Safety Order for Asbestos.

“**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.

“**Adjusted Basis**” means the amount of the Certified Construction Costs of the Initial Improvements or Subsequent Alterations that constitute capital improvements to the extent unamortized on a Sale Closing date. If Tenant Completed the Initial Improvements and any Subsequent Alterations that constitute capital improvements, Tenant’s Adjusted Basis for such improvements may be deducted if Tenant previously complied with **Section 23.3(c)**.

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

“**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.

“**Alterations**” means any alterations, installations, improvements, or additions to any Improvements or to the Premises and includes Subsequent Alterations.

“**Anniversary Date**” means the first and each subsequent anniversary of the Rent Commencement Date and the first and each subsequent anniversary of the commencement date of an Extension Term as the case may be.

“**Annual Adjustment**” is defined in the Basic Lease Information.

“**Annual Statement**” is defined in *Section 5.2(a)*.

“**Arbitration Notice**” is defined in *Section 20.8(b)*.

“**Arbitrator**” is defined in *Section 20.8(b)*.

“**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 Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

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

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

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

“**Books and Records**” means all of Tenant’s or a Subtenant’s, as applicable, books, records, and accounting reports or statements relating to its business operations under this Lease or a Sublease, and the operation and maintenance of the Premises or subleased premises including construction activities, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises or subleased premises and any other bookkeeping documents used in Tenant’s or a Subtenant’s business operations on the Premises or subleased premises, whether maintained by Tenant, a Subtenant or a third-party contractor.

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

“**Building Permit for the Initial Improvements**” means the permit issued by Port pursuant to the Port Building Code permitting construction of the Initial Improvements.

“**Building Systems**” means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, and communications systems of the Building and includes Utilities.

“**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.

“**Casualty**” is defined in *Section 20.1(a)*.

“**Casualty Notice**” is defined in *Section 20.1(b)*.

“**CEQA**” means the California Environmental Quality Act.

“**Certified**” means a written representation by a manager of the entity whose financial statements or costs reports are the subject to the Certification who is authorized and competent to make such a representation that, to the certifying party’s knowledge based on reasonably diligent inquiry, the information submitted is current, accurate, and complete.

“**Certificate of Final Completion and Occupancy**” is provided by the Port’s Chief Harbor Engineer or his or her designee through a signature on the back bottom of a permit card after all special inspections have been completed and a final affidavit has been issued by all necessary special inspections testing agencies as required by the Port Building Code.

“**Certified Construction Costs**” are Construction Costs that Port has approved through the procedures described in *Section 23.3(e)*.

“**Change in Laws**” is defined in *Section 11.2*.

“**Changes**” is defined in *Section 12.2*.

“**CHE**” is defined in *Section 16*.

“**CHE Determination**” is defined in *Section 16*.

“**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.

“**Class Life**” means thirty-four (34) years (in recognition that Tenant is not subject to the classification of and amortization period applicable to the Initial Improvements under Internal Revenue Code section 168(e)).

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

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

“**Completion**” in reference to the Initial Improvements is defined in the Work Letter; “**Completion**” in reference to any Subsequent Alteration means the issuance of a Final Certificate of Completion and Occupancy.

“**Concession**” is defined in *Section 36.16 below*.

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

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

“**Condemned Land Value**” is defined in *Section 21.4(b)*.

“**Construction Costs**” means actual costs paid by Tenant for all categories of costs for the Initial Improvements or Subsequent Alterations as the case may be, without interest, and subject to the limitations set forth in the Work Letter as to the Initial Improvements, and amortized on a straight line basis over the Class Life of the Initial Improvements or Subsequent Alterations as the case may be, at an annual interest rate of eight percent (8%).

“**Construction Costs Report**” means a report Certified by a financial officer of Tenant or other accountant retained by Tenant prepared in accordance with sound accounting principles consistently applied specifying the Class Life of and verifying Tenant’s actual Construction

Costs for the Initial Improvements or Subsequent Alterations as the case may be, accompanied by copies of documentation substantiating all expenditures, such as: (a) executed contracts; (b) invoices for labor, services, goods, and materials, bills of lading, and other bills or receipts marked "Paid" or similarly indicating payment in full; (c) canceled checks or other written evidence of payment; and (d) other documents reasonably requested by Port.

"Construction Term" is defined in the Basic Lease Information.

"Consumer Price Index" or **"CPI"** means the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (1982-84=100)(Series Id: CUURS49BSA0), published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the prior Anniversary Date, the Index will be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued during the Term, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued; provided, however, if there is no replacement government index or computation, then Port will select another similar published index, generally reflective of increases in the cost of living, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

"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.

"Costs of Sale" means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable (as determined by the Port in its reasonable discretion) brokerage commissions; (b) customary closing fees and costs, including title insurance premiums, survey fees, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys' fees; and (d) new tenant improvements made solely in connection with the Transfer and performed in compliance with **Section 14**. Costs of Transfer exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

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

"Daily Driver Sublease" is defined in the Basic Lease Information.

"Disability Laws" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto ("**ADA**"), 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.

"Disputed Amount" is defined in **Section 20.8(a)**.

"disturbed or removed" is defined in **Section 14.7**.

"Dogpatch Paddle Sublease" is defined in the Basic Lease Information.

"Early Termination Date" is defined in **Section 11.2**.

"Early Termination Notice" is defined in **Section 11.2**.

"Effective Date" is defined in the Basic Lease Information.

“**Encroachment Area**” is defined in *Section 3.3*.

“**Encroachment Area Charge**” is defined in *Section 3.3*.

“**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 each to the extent adopted under Environmental Laws affecting any portion of the Premises. Environmental Laws include the Risk Management Plan for Pier 70 (Treadwell & Rollo, 7/25/13) as amended and as interpreted by Regulatory Agencies with jurisdiction (“**RMP**”).

“**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.

“**Estimator**” is defined in *Section 20.8(a)*.

“**Event of Default**” is defined in *Section 26*.

“**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.

“**Expiration Date**” means the date on which the Term expires as specified in the Basic Lease Information or the last date of a relevant Extension Term, if any.

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

“**Extension Term**” is defined in the Basic Lease Information.

“**Extension Term Anniversary Date**” means the first and each subsequent anniversary of the commencement date of an Extension Term.

“**Extension Term Annual Adjustment**” is defined in the in the Basic Lease Information.

“**Exterior Improvements**” means any improvements, furnishings, fixtures, or equipment including any mechanical equipment, photovoltaic panels, satellite dishes, antennae or other communication equipment, public art, statues, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, signs, kiosks, flagpoles, canopies,

awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, other street furniture, paint, paving or other surface treatments.

“**Facility Conditions Report**” is defined in the Basic Lease Information.

“**Finally Approved**” means that all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of the (i) approval of the Lease by the Port Commission or San Francisco Board of Supervisors or (ii) issuance of the Building Permit for the Initial Improvements shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Lease or Building Permit for the Initial Improvements shall have been upheld by a final decision in each such appeal without material adverse effect on the applicable approval and the final judgment, order or ruling upholding the applicable approval has been entered.

“**financial statements**” mean a current balance sheet and profit and loss statements that have been prepared and reviewed or examined by the management of the entity to which such statements relate.

“**Financing**” means a Transfer affecting ownership of the beneficial interests in or business assets of Tenant including without limitation through a mortgage, deed of trust, or similar security instrument using Tenant’s leasehold interest in the Premises or this Lease as collateral.

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

“**Financing Reinvestment**” means any portion of Gross Financing Proceeds that are dedicated to be used for the benefit of the Building, including such proceeds that are designated for investment in building improvements or resiliency improvements, as approved by Port.

“**Flood Protection Measures**” is defined in *Section 16*.

“**Force Majeure**” means events that cause delays due to causes beyond a party’s control and not caused by the acts or omissions of such party (excluding, in any case, Tenant’s performance of the payment of money required under the terms of this Lease), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of Regulatory Approvals (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by Section 12); fires; floods; tidal waves; epidemics; pandemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Premises that would not have reasonably been discovered through due diligence and that would actually delay or materially and adversely impair or delay Tenant’s ability to construct the Initial Improvements; archeological finds on the Premises; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between Tenant and its contractors or work performed on behalf of Tenant); inability to obtain materials or reasonably acceptable substitute materials (provided that Tenant has ordered such materials on a timely basis and Tenant is not otherwise at fault for such inability to obtain materials). The following are excluded from the definition of Force Majeure: (1) Tenant’s failure to secure anticipated financing for the Initial Improvements unless caused by a direct result of some other event of Force Majeure; (2) sea level rise; and (3) any event that does not cause an actual delay.

“**goodwill**” means the value assigned to Tenant’s intangible business assets in connection with a Transfer, but only if the Transferee will continue to operate substantially the same

operation or use that Tenant operated at the Premises and Port reasonably agrees with the valuation.

“**Gross Financing Proceeds**” means all sums actually disbursed in connection with a financing or refinancing.

“**Gross Revenues**” means the following: all payments, revenues, fees, or amounts received by Subtenant or by any other party for the account of Tenant or a Subtenant from any Person for any Person’s use or occupancy of any portion of the Premises (excluding security or other deposits to be returned to such Person upon the termination of such use or occupancy), or from any other sales, advertising, concessions, licensing, or programming generated from the Premises. Without limiting the foregoing, “**Gross Revenue**” also includes any and all payments made to Tenant from its or a Subtenant’s business interruption or delayed opening insurance proceed to the extent such payments are made to compensate for lost revenue. “**Gross Revenue**” does not include any of the following: (i) proceeds from any Sale or Financing, or (ii) proceeds from any Condemnation; (iii) insurance proceeds arising from a Casualty at the Premises.

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 or a Subtenant. 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 the exclusions and separate notations are made for same on Tenant’s Quarterly and Annual 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 or a Subtenant; (ii) sales by redemption of gift certificates or like vouchers, but only to the extent previously reported as part of Gross Revenues; and (iii) sums collected for any tax or imposition imposed directly upon Tenant or a Subtenant under any 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. As used in this definition, references to “Tenant” shall mean any Tenant that is a for-profit entity.

“**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 at least two (2) notices of monetary 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 13.3 below*.

“**Hazardous Material**” means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACM and presumed asbestos-containing materials (“**PACMs**”) (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), 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, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, claims or 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, or other Port property, the loss or restriction of the use or any amenity of the Premises, 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, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees use during Tenant’s occupancy of the Premises.

“HEPA” is defined in *Section 14.7*.

“Historic Fabric” means the distinctive architectural design of any materials, features, or finishes of the Building and considered important in defining a building’s historical character, as described in the Historic Resource Evaluation, Crane Cove Park, San Francisco, California, prepared for Port of San Francisco, prepared by Architectural Resources Group, San Francisco, California, revised August 2015, and attached to the Historic Resource Evaluation Response, San Francisco Planning Department, Case No. 2015-001314ENV, dated September 15, 2015.

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

“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 22.1 below*.

“Indemnify” means to indemnify, protect, defend, and hold harmless forever.

“Indemnification” and **“Indemnity”** have correlating meanings.

“Initial Improvements” means the improvements more particularly described in the Basic Lease Information and Scope of Development attached as Attachment 1 to the Work Letter.

“Initial Improvements Completion Date” is defined in Work Letter.

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

“Interim Power Line” is defined in the **“Utilities; Services”** section of the Basic Lease Information.

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

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

“**Invitees**” means Tenant’s clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them.

“**Late Charge**” means a fee equal to the higher of (a) five percent (5%) of all Rent or any portion thereof that remains unpaid following the date it is due (or with respect to a failure by Tenant to deliver the Quarterly Percentage Rent Statement or Annual Statement to Port on the due date, five percent (5%) of Percentage Rent due for the period of the Quarterly Percentage Rent Statement or Annual Statement), or (b) fifty dollars (\$50.00).

“**Law**” means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, the Waterfront Land Use Plan and any successor 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 Premises, 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; provided that each of the foregoing has the force of law and applies non-discriminatorily to Tenant or the Premises.

“**Lease**” is defined in the preamble to this Lease.

“**Lease Quarter**” means a calendar quarter or portion thereof starting on the Rent Commencement Date.

“**Lease Year**” means each year of the Term starting on the Rent Commencement Date.

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

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

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

“**Major Casualty**” is defined in *Section 20.4(a)*.

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

“**Monthly Percentage Rent Statement**” is defined in *Section 5.2*.

“**Net Awards and Payments**” is defined in *Section 21.4*.

“**Net Financing Proceeds**” means Gross Financing Proceeds after subtracting the following items, as applicable: (i) amounts necessary (a) to pay all actual lenders’ costs of such Financing paid by Tenant including application fees, closing costs, points, and other customary lenders’ fees such as lenders’ attorneys’ fees and costs and title insurance costs paid at close of escrow; and (b) to pay down the amount of outstanding indebtedness by an amount, if any, desired by Tenant or required by any lender; (ii) any Financing Reinvestment; (iii) all of Tenant’s reasonable and documented cash equivalent costs of the Initial Improvements and any Subsequent Alterations that were not paid with outstanding indebtedness; and (iv) to pay Tenant’s costs including reasonable attorneys’ fees and costs associated with the Financing.

“**Net Sale Proceeds**” means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made Initial Improvements or Subsequent Alterations that constitute capital improvements at the Premises, Tenant’s Adjusted Basis may be deducted if Tenant previously complied with *Section 23.3(c)*.

“**Notice to Cease Prohibited Use**” is defined in *Section 10.3 below*.

“**Notice of Request to Sublease**” is defined in *Section 23.5(b)* .

“**Notice to Vacate**” is defined in *Section 3.3*.

“**OEWD**” means the City’s Office of Economic Workforce and Development.

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

“**Operations Plan**” is attached as *Exhibit G* to this Lease.

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

“**Option Notice Deadline**” is defined in the Basic Lease Information.

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

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

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

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

“**Partial Condemnation**” is defined in *Section 21.3(b)*.

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

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

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

“**Permitted Use**” and variations thereof is defined in the Basic Lease Information.

“**Permitted Mortgagee**” means a mortgagee approved by Port under the terms and conditions of *Section 23.1*.

“**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 any development, removal or renovation, by public and/or private parties, of a 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) and the Seawall Earthquake Safety Program.

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

“**Port Work**” is defined in *Section 14.12*.

“**Port’s Financing Participation**” means the amount due to Port in connection with a Financing as described in *Section 23.4*.

“**Port’s Sale Participation**” means the amount due to Port in connection with a Sale as described in *Section 23.3*.

“**Power Baseline**” is defined in the “**Utilities; Services**” section of the Basic Lease Information.

“**Premises**” means the real property described in *Section 3.1* and depicted on *Exhibit A*.

“**Prior Licenses**” is defined in the Basic Lease Information.

“**Prevailing party**” is defined in *Section 28.1 below*.

“**Prohibited Use(s)**” is defined in *Section 10.2 below*.

“**Public Trust**” is defined in *Section 6.3*.

“**Quarterly Percentage Rent Statement**” is defined in *Section 5.2*.

“**Regulatory Agency**” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port’s Chief Harbor Engineer, the 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 each to the extent 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.

“**Rehabilitate**” and “**Rehabilitation**” means the repair or alteration of an historic building that does not damage or destroy the Historic Fabric.

“**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, 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.

“**Rent**” means the Base Rent, Percentage Rent, Participation Rent, Transfer Participation Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest.

“**Restoration**” and “**Restore**” means the restoration, replacement, renovation, reconstruction, repair, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws (including the Secretary’s Standards and any conditions or requirements resulting from review under the California Environmental Quality Act) then applicable. All Restoration shall be conducted in accordance with the provisions of *Section 14.2* (Subsequent Alteration). “**Restored**” has a correlative meaning.

“**Restoration Cost**” is defined in *Section 20.8(a)*.

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

“**Rules and Regulations**” means any reasonable or typical landlord requirements or restrictions applicable to the Premises, as may be amended from time to time.

“**Sale**” means Tenant’s Transfer of its entire interest in this Lease or the entire leasehold estate, including the sale to any other Person or entity.

“**saltwater immersion**” is defined in *Section 34.12*.

“**Scope of Development**” means the Scope of Development attached to the Work Letter (*Exhibit E*) as Attachment 1.

“**Secretary’s Standards**” is defined in *Section 14.3(d) below*.

“**Security Deposit**” means the amount specified in the Basic Lease Information and as further described in *Section 9 below*.

“**SHPO**” means the State’s Historic Preservation Officer.

“**Sublease**” means the following events or proposed events: (a) a proposed or actual sublease, sublicense or agreement of similar effect with a subtenant, sublicensee, manager, vendor, concessionaire, for all or any part of the Premises as defined in a lease or similar agreement that has a term of more than thirty (30) days; (b) any person other than Tenant uses, occupies or claims a right of possession to any part of the Premises; or (c) any further sublease, sublicense or agreement of similar effect with a subtenant of any of its interest in its sublease or premises.

“**Sublease Premises A**” is defined in the Basic Lease Information.

“**Sublease Premises B**” is defined in the Basic Lease Information.

“**Subletting Expenses**” as pertains only to the calculation of Participation Rent, means verifiable and reasonable expenses such as brokerage commissions and attorney fees incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

“**Subtenant**” is a person with a Sublease.

“**Subsequent Alteration**” means all alterations, installations, Improvements, repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following Completion of the Initial Improvements pursuant to the Work Letter.

“**Substantial Condemnation**” is defined in *Section 21.3(a)*.

“**Subtenant’s Property**” means all furniture, trade fixtures, office equipment, fitness equipment, and articles of property included therein and any Improvements or Alterations constructed on or affixed to the Premises by or on behalf of a Subtenant.

“**SWPPP**” is defined in *Section 18.8(a) below*.

“**Temporary Certificate of Occupancy**” may be issued by the Port’s Chief Harbor Engineer or his or her designee only if requested by Tenant and the Building or a portion of the Building is approved for occupancy prior to issuance of the Certificate of Final Completion and Occupancy.

“**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 property included therein and any Improvements or Alterations constructed on or affixed to the Premises by Tenant and Subtenant’s Property.

“**Term**” is the Construction Term, the Initial Term and any Extension Term.

“**Termination Fee**” is defined in *Section 11.2*.

“**Threat Determination**” is defined in *Section 16*.

“**Threat Determination Notice**” is defined in *Section 16*.

“**Total Condemnation**” is defined in *Section 21.2*.

“**trade fixtures**” means those items of personalty, furniture, equipment, machinery used in trade by Tenant or a Subtenant 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 or any Subtenant 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 (other than in connection with a Financing), or other transfer of any of Tenant’s interest in this Lease or in the Premises (other than a Sublease or Financing); (b) any Person other than Tenant occupies or

claims a right of possession to any part of the Premises other than under a Sublease; (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 assignee, or other Transferee of Tenant's interest in the Lease or premises is sold, assigned, encumbered, or otherwise Transferred (other than a Sublease). For the purpose of this Lease, references to "this Lease" and "the Premises" in the context of a Transfer mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer.

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

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

"**Transfer Date**" means the effective date of a Transfer including a Sale Closing or Financing Closing.

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

"**Transfer Participation Rent**" is defined in the Basic Lease Information and includes Port's Sale Participation and Port's Financing Participation.

"**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.

"**Uninsured Casualty**" is defined in *Section 20.4(a)*.

"**Upset Date**" is defined in the Basic Lease Information.

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

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

"**Waiving Party**" is defined in *Section 19.5 below*.

"**Work**" when used in reference to construction is defined in *Section 14.3(c) below*.

"**worth at the time of award**" is defined in *Section 27.10*.

3. PREMISES; AS-IS CONDITION.

3.1. Premises. Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on *Exhibit A* attached hereto and incorporated herein by reference. Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of 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. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in **Section 11** (Compliance with Laws), Tenant further understands and agrees that it is Tenant’s obligation, at no cost to Port, to cause the Premises, and Tenant’s use thereof to be conducted in compliance with the Disability Laws and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. No Right to Encroach.

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

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the

Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in **Section 22** (Indemnity and Exculpation) shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

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

3.5. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, conducted in the vicinity of the Premises. Tenant is aware that such project(s) and the activities associated with such projects 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. To the extent a Port program or project or Development Project is undertaken by Port, 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, but Port will have no obligation to minimize inconvenience or disturbance to Tenant if a Port program or project Development Project is necessary, in Port's sole and absolute discretion, to maintain Port property in a safe, hazard-free condition.

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

3.7. Unique Nature of Premises. Tenant acknowledges that: (a) the Premises is located along the waterfront; (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the waterfront location of the Premises; and (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise.

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 FEMA disclosure notice attached as *Schedule 2* and a copy of the report(s), if any, relating to the substructure and/or structure of the Building, as further described in *Schedule 3* 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, 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. 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 Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the development of the Improvements and the Permitted Uses, (iii) any Laws applicable thereto, including Environmental Laws as of the Effective Date, (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 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.

3.10. Port's Rights Regarding Premises. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Premises and Tenant agrees to be bound by any such Rules and Regulations upon prior written notice by Port. 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.

4.1. Term. The Term of this Lease includes the Construction Term, Initial Term and any Extension Term as defined in this Lease.

4.2. Delivery. 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.

4.3. Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided in this Lease.

5. RENT.

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

5.1. Base Rent; Annual Base Rent Adjustment. Throughout the Initial Term and any Extension Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information. Base Rent shall not be reduced due to subtenant vacancies. Tenant shall make the first payment of Base Rent from no later than the Rent Commencement Date and thereafter shall pay the Base Rent, in advance, on or before the first day of each calendar month throughout the Initial Term and during any Extension Term. If the Expiration Date is other than the last day of the month, the Base Rent for that month shall be apportioned based on a thirty (30) day month.

5.2. Percentage Rent. As described in the Basic Lease Information and subject to Port's consent to each Sublease as required in **Section 23.5**, 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 in the amount described in the Basic Lease Information in the following manner:

(a) Percentage Rent shall be calculated monthly and shall be paid by Tenant quarterly for each Lease Quarter within thirty (30) days after the end of the prior Lease Quarter, except that in the event this Lease expires or terminates on a day other than the last day of a Lease Quarter, Percentage Rent for such Lease Quarter shall be paid within thirty (30) days after such expiration or termination date. On the date Percentage Rent is determined and due, Tenant shall furnish a complete statement (the "**Quarterly Percentage Rent Statement**") in a form approved by Port. In addition, Tenant shall furnish to Port, within sixty (60) days after the expiration of each applicable Subtenant's fiscal year as stated in the relevant Sublease, a complete statement, showing the computation of the Percentage Rent for the immediately preceding Lease Year ("**Annual Statement**") in a form approved by Port. The Annual Statement is for verification and certification of Quarterly Percentage Rent Statements only and shall not result in any averaging of monthly Percentage Rent. Each Quarterly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding Lease Quarter or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding Lease Quarter or Lease Year, as applicable.

(b) Each Quarterly Percentage Rent Statement and Annual Statement shall be Certified. Tenant must submit payment of the balance owing together with any Annual Statement showing that Tenant has underpaid Percentage Rent. At Port's option, overpayments may be refunded to Tenant, applied to any other amount then due under the Lease and unpaid, or applied to Rent due at the first opportunity following Tenant's delivery of any Annual Statement showing an overpayment.

(c) If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Quarterly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees reasonably incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Quarterly Percentage Rent Statement or Annual 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 thirty (30) 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 Percentage Rent due under this Lease 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 Quarterly Percentage Rent and Annual 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 Quarterly Percentage Rent Statement or Annual Statement, shall not be an admission of the accuracy of said Quarterly Percentage Rent Statement or Annual Statement or the amount of such Percentage Rent payment.

(e) Tenant agrees to submit Quarterly Percentage Rent Statements on a monthly basis if requested by Port with no less than twelve (12) months prior written notice, in which case, all references in this Lease to Quarterly Percentage Rent Statements will be changed to "Monthly Percentage Rent Statements" and all requirements pertaining to Quarterly Percentage Rent Statements shall apply to Monthly Percentage Rent Statements.

5.3. Participation Rent. As described in the Basic Lease Information and subject to Port's consent to each Sublease as required in *Section 23.5*, Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to *Section 5.1*, and the Percentage Rent pursuant to *Section 5.2*, Tenant agrees to pay to Port immediately upon receipt all Participation Rent, less Subletting Expenses in the amounts and manner approved by Port in its reasonable discretion, as Additional Rent.

5.4. Books and Records. Tenant agrees that the business of Subtenants upon the Premises shall be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method 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 at a convenient location in San Francisco 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**").

5.5. Audit.

(a) Tenant on its own behalf and on behalf of its Subtenants agrees to make all 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 thirty (30) business days prior written notice to Tenant, for the purpose of examining said Books and Records 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, or at such other location in San Francisco where the Books and Records are kept, and no books or records shall 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 (other than Port), 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 promptly deliver a copy of the audit report to Tenant.

(b) If an audit reveals that Tenant has understated Gross Revenues for said audit period, Tenant shall pay Port, promptly upon demand, 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 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 Gross Revenues for any audit period by three percent (3%) or more (subject to a minimum understatement of five thousand dollars (\$5,000), increased annually by three percent (3%)), Tenant shall pay the cost of the audit. 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; provided that such Late Charge shall be imposed with respect to the first two (2) occurrences of such a delinquency in any twelve (12)-month period only if Tenant fails to cure such delinquency within five (5) days after written notice from Landlord thereof. 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: 15* (Utilities), *18.3* (Tenant's Environmental Condition Notification Requirements), *18.8* (Storm Water Pollution Prevention), *34.1(d)* (CMD Form), and *38* (Estoppel Certificate) or to provide evidence of the required insurance coverage described in *Section 19 below*, then within twenty (20) days after 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 (which shall not be less than fifteen (15) days under this Lease) 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*.

5.11. Rent Credits.

(a) Conditions for All Rent Credits.

(i) Tenant agrees and acknowledges that any right or claim Tenant may have to any rent credit that has not yet been actually applied against Rent shall, upon the earlier to occur of (i) Tenant's failure to submit to Port within ninety (90) days adequate evidence of expenditures (if submission is required under this Lease); or (ii) the expiration or earlier termination of this Lease, be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.

(ii) Rent credits cannot be applied retroactively.

(iii) Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive any rent credit during any existing Event of Default. Upon the occurrence of an Event of Default during the period Tenant is eligible for rent credits, Tenant's right to receive any rent credit shall cease and shall not be reinstated until the Event of Default is cured. If an Event of Default occurs on a day other than the first day of the calendar month or an

Event of Default is cured on a day other than the last day of the calendar month, Base Rent due to Port shall be apportioned based on a thirty (30) day month. In no event shall the cessation in the application of any rent credit extend the rent credit period or amount.

6. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

6.1. *Operating Standards/Covenants.* Tenant will maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with (i) the maintenance and operation of other YMCA of San Francisco locations in San Francisco, California or, if YMCA of San Francisco is no longer the Tenant, then consistent with the maintenance and operation of similar fitness facilities in San Francisco and (ii) with respect to all other uses, consistent with the maintenance and operation of a similar first-class development of the same or similar use located in the Dogpatch neighborhood of San Francisco, and in, in all cases, in accordance with this Lease. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will provide (or require Subtenants or others to provide), services as necessary and appropriate for the use of the Improvements, including (a) repair and maintenance of the Improvements, as more fully described in **Section 13**; (b) utility and telecommunications (including internet/Wi-Fi) services; and (c) cleaning, janitorial, pest extermination, recycling, composting, and trash and garbage removal.

6.2. *Continuous Operations.* Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the opening hours set forth in this Lease including in the Operations Plan 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 reasonable discretion. Notwithstanding the foregoing, the Port shall not withhold its consent to any cessation of operations of any portion of the Premises for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises or a portion thereof becomes untenable due to fire or other Casualty, (b) as may be necessary in connection with performing Improvements, Alterations or major maintenance activities that materially impact the ability to use the Premises or a portion thereof, (c) while conducting periodic inventory of Tenant's goods and merchandise, or (d) during re-subtenanting. Notwithstanding anything to the contrary, the Restrooms shall remain open on the terms and conditions stated in the Basic Lease Information at any time that Tenant is operating at the Premises.

6.3. *Subleasing Program.* Consistent with the purpose of this Lease to support maritime recreation and promote public access to the Bay and shoreline, Tenant will make every reasonable effort to obtain and retain desirable Subtenants that are consistent with the tidelands public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act as set forth in the Burton Act ("**Public Trust**"). In the event of vacant subleasable space, Tenant shall first market to Public Trust-consistent users offering similar retail goods and services as the original Subtenants (i.e. aquatics center; food and beverage). Nothing in this section is intended to require Tenant to enter into any Sublease that represents a below market rate or that will materially reduce the economic return to Tenant from the Sublease or require Tenant to enter into an agreement with someone that is not otherwise qualified. Tenant agrees to meet with Port from time to time, and, to consider in good faith whether to implement such steps as the Port may recommend to increase usage for Public Trust-related uses. In the event of any subtenant vacancies, Tenant will provide Port with quarterly reports on the status of its subleasing efforts (the "**Leasing Activity Report**") and maintain accurate records as to space leased, optioned, and available to lease to ensure the best placement of tenants taking into consideration options to extend and to expand. The Leasing Activity Report is due by the twentieth (20th) day of each Lease Quarter for the immediately preceding quarter and will be submitted concurrently with the applicable Quarterly Percentage Rent Statement.

6.4. Restaurant/Retail Businesses Open to the General Public. Any restaurant and/or retail operation (other than trade-only showrooms) on the Premises must be open to the general public and operated in a manner consistent with *Section 6.1* and *Section 10* and the Operations Plan.

6.5. Flags. Throughout the Term, a Port flag will fly on the Building. At Port's sole cost, Port will provide the Port flag to Tenant and will promptly replace worn Port flags. Tenant will promptly, at no charge, install, raise, lower, and remove Port flags at Port's request. The dimensions of Port flags will be similar to the dimensions of Port flags flown on the roofs of Port buildings. Tenant also may fly other flags on the Building, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag and Port must first reasonably approve the dimensions, color, text, design, and materials for each flag. If Port determines that Tenant's response to Port's request to raise or lower Port flags is inadequate, then at Port's election, Port may exercise its rights to access the Flagpoles as further described in *Section 29*.

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

6.6. Exterior Improvements. Tenant will not install any Exterior Improvements without Port's prior consent. Tenant will provide to Port the size, height, design, color, dimensions, text (if any), materials, location, and method of installation of the Exterior Improvements to enable Port to evaluate the proposed Exterior Improvement. Within thirty (30) days following Port's receipt of the proposed Exterior Improvement, Port will notify Tenant if Port requires the proposed Exterior Improvement to be reviewed by the WDAC or another Port advisory body, in Port's sole discretion, and Tenant will incorporate Port's requested changes, if any, into the proposed Exterior Improvement so long as such changes do not materially increase Tenant's cost or materially delay installation of the proposed Exterior Improvement. Construction of the Exterior Improvements will be in accordance with *Section 14*.

7. EXTENSION OPTIONS.

7.1. Options to Extend Term. Provided that (i) Tenant has invested a minimum of \$5,000,000 in the Initial Improvements by the Initial Improvements Completion Date (as may be extended as provided in the Work Letter) as set forth in a summary that Tenant provides to Port of the amounts Tenant has spent, along with reasonably satisfactory evidence of Tenant's payment of such amounts) and (ii) Tenant provides a timely Option Notice, Tenant shall have the Extension Options described in the Basic Lease Information. Any Option Notice by Tenant shall be irrevocable by Tenant. The lease for an 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 Extension Term.

If any Event of Default by Tenant is outstanding either at the time of Tenant's Option Notice or at any time prior to the first day of an Extension Term and remains uncured after notice and the expiration of all applicable cure periods, 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. If Tenant fails to exercise any Extension Option or Port rejects Tenant's exercise of any Extension Option in accordance with this Section, then all successive Extension Options shall be null and void and this Lease will terminate as of the original or relevant Expiration Date. The Parties acknowledge and agree that the prerequisite conditions to Tenant's extension option right set forth for in this Section are a material part of the bargained-for consideration under this Lease.

7.2. *Rent During Extension Term(s).* During any Extension Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information as adjusted on each Extension Term Anniversary Date by the Extension Term Annual Adjustment as provided in the Basic Lease Information. Percentage Rent, Participation Rent and Transfer Participation Rent will remain the same during any Extension Term.

7.3. *Other Terms.* The lease for an 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 Extension Term.

8. TAXES AND ASSESSMENTS.

8.1. *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 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.

8.2. *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 Effective 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.

9. SECURITY DEPOSIT.

Tenant shall pay to Port upon execution of this Lease, 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. At all times, the Security Deposit shall equal the amount that is twice the current Monthly Base Rent and Tenant shall increase the amount of the Security Deposit on the same date that any increase in Base Rent is first due, including with respect to any Annual Adjustment and upon the commencement date of any Extension Term to maintain such ratio.

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.

10. USE OF THE PREMISES.

10.1. 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.

10.2. Prohibited Use. Tenant agrees that the following activities, by way of example only and without limitation, (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 will in any way materially increase the existing rate of, or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

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

(c) 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 in a manner inconsistent with Laws;

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

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

(f) 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;

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

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

(i) except during periods of permitted construction, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;

(j) except as provided in the Operations Plan, the washing of any vehicles, vessels or equipment; or

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

10.3. Notice of Prohibited Use Charge. In the event Port determines after inspection that Prohibited Uses are occurring, then Tenant shall 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.

11. COMPLIANCE WITH LAWS; CHANGE IN LAWS.

11.1. Compliance with Laws. 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 Premises 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 including the activities and operations conducted thereon, to be in compliance with the Disability Laws. 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 Disability Laws. If Tenant's use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any Port property outside of the Premises to comply with the Disability Laws, then, 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 11** 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 11** shall comply with the provisions of **Section 14**. 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.

11.2. Change in Laws. Notwithstanding **Section 11.1**, if, during an Extension Term, an existing Law is amended or a new Law is enacted (regardless of its effective or implementation date) for reasons unrelated to: (i) Tenant's violation of any Laws; (ii) an unpermitted use, Prohibited Use or change in Permitted Uses; (iii) a Law affecting the License Area or the Park (unless such Law materially and adversely affects access to the Premises); or (iv) temporary health protection measures during a pandemic or other health emergency, and such amended or new Law is effective during the Extension Term, would require Tenant to comply during the Extension Term and either (x) materially impacts Tenant's ability to operate the Premises as generally contemplated under the Lease; or (y) would present a demonstrable financial hardship to Tenant if Tenant had to comply with amended or new Law (each a "**Change in Law**"), then Tenant may terminate this Lease; provided that there is no existing Event of Default (as further described in **Section 11.2(c)**) and in accordance with the following:

(a) Within four months after the date on which a Change in Law becomes effective (e.g., becomes law following expiration of any time period in which to challenge such law or if challenged, following the final, unappealable judgment upholding such law, as opposed to the deadline under such Change in Law by which Tenant must comply with the Change in Law), Tenant must provide written notice to Port ("**Early Termination Notice**") with the following information:

(i) details about how Tenant anticipates such change will materially impact Tenant's ability to operate the Premises as generally contemplated under the Lease;

(ii) an analysis of the costs associated with the Change in Laws and the financial hardship to Tenant;

(iii) Tenant's intention to terminate the Lease as of the date specified in the notice ("**Early Termination Date**"), which shall not be less than one hundred eighty (180) days from the date of Tenant's Early Termination Notice unless: (1) the Change in Law requires Tenant to achieve compliance in less than 180 days, in which case, Tenant shall propose an earlier termination date; (2) if the Change in Law is a new or updated life safety requirement and Tenant reasonably anticipates that the failure to comply therewith would materially impact Tenant's continuous use of the Premises (or a material portion thereof) for the Permitted Uses, starting at any time earlier than 180 days and continuing for the remainder of the Term, then (x) the 180-day notice period shall not apply and, at Tenant's election, the Early Termination Date may be a date sooner than 180 days, and (y) Tenant shall implement such temporary

safeguards as Tenant reasonably believes are necessary to address any imminent threat to life or property that the life safety non-compliance under the Change in Law may present; or (3) if the date by which Tenant needs to commence the work necessary in order to be in compliance with the Change in Law by the required deadline is more than one hundred eighty (180) days from the date of Tenant's Early Termination Notice, then Tenant's Early Termination Date shall not be earlier than the date that is one hundred eighty (180) days prior to the date on which Tenant needs to commence the compliance work; and

(iv) the amount of the termination fee which shall be fifty percent (50%) of the Base Rent payable (excluding any then-applicable rent credits) from the termination date to the last day of the Extension Term ("**Termination Fee**").

(b) Within ninety (90) days (or such shorter period as may be necessary under sub-clauses (1) or (2) of **Section 11.2(a)(iii)** of Tenant's Early Termination Notice, Port shall either (i) accept Tenant's Early Termination Notice in which case, Tenant shall promptly pay the Termination Fee and this Lease will expire on the Early Termination Date without further action by the parties or (ii) object in writing stating the basis of its objection (which shall only be based on the criteria in this **Section 11.2** including without limitation the Early Termination Date or the calculation of the Termination Fee). If Port states an objection, Port and Tenant will work in good faith to resolve such objection within a reasonable time period, and Tenant may resubmit its Early Termination Notice, subject again to Port's acceptance.

(c) If any Event of Default by Tenant is outstanding either at the time of Tenant's Early Termination Notice or at any time prior to Early Termination Date and remains uncured after notice and the expiration of all applicable cure periods, then Port may reject Tenant's Early Termination Notice. The Parties acknowledge and agree that the termination right provided by this **Section 11.2** provides an extraordinary remedy for Tenant, will be interpreted narrowly and that the prerequisite conditions to Tenant's termination right as set forth for in this Section are a material part of the bargained-for consideration for this termination right.

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

12.1. 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.

12.2. 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 future

use or occupancy of the Premises 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 12.1* and *12.2*, 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 Premises 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 Premises. 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.

12.3. *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 or Subtenants' use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

13. MAINTENANCE AND REPAIRS.

13.1. *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, or upon use of the Premises by Tenant under a Prior License to the extent required under the Prior License, 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 (provided that, no consent shall be required for any minor or routine repairs to the Initial Improvements or any Subsequent Alterations for which Port consent was previously obtained) 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.

13.2. Port's Right to Inspect. Without limiting *Section 29 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.

13.3. 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 Premises or the Building Systems caused by Tenant or its Agents within the cure period provided by this Lease, but in no event for more than thirty (30) days after Port's written notice to Tenant, then Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. 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) (increased annually by three percent (3%)), 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 13* ("**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 13*, 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 in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease.

13.4. 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 20* in the event of any damage or destruction of the Premises.

14. IMPROVEMENTS.

14.1. Initial Improvements. Tenant will construct the Initial Improvements in accordance with, and subject to all the terms, covenants, conditions, and restrictions of this Lease

including the Work Letter. Port, in its proprietary capacity, has consented to the Initial Improvements.

14.2. Subsequent Alteration.

(a) Tenant shall not make nor cause or suffer to be made, any Subsequent Alteration 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 Building or Building 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) At least thirty (30) days before commencing any Subsequent Alterations, Tenant shall notify Port. Tenant's notice shall be accompanied by final construction documents for the Subsequent Alterations, if applicable. Port shall have the right to object to any of the Subsequent Alterations 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 Subsequent Alterations.

(c) As a condition to giving consent to any Subsequent Alteration the estimated cost of which (per project) is reasonably expected to exceed \$1,000,000 (increased annually by three percent (3%)), 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 ten percent (110%) but not less than one hundred percent (100%) of the estimated costs of the Subsequent Alteration, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices, and to ensure Completion of work.

(d) None of the following will constitute Subsequent Alterations requiring Port's consent, unless the installation will affect the Building Systems or the structure of the Building: (i) the installation, repair, or replacement of furnishings, fixtures, equipment, or decorative improvements within the interior of the Building that does not materially affect the Historic Fabric of the Building and otherwise complies with the Secretary's Standards, (ii) recarpeting, repainting, altering the wall coverings or window treatments, or similar alterations within the interior of the Building that do not materially affect the Historic Fabric of the Building and otherwise complies with the Secretary's Standards.

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

(a) All Alterations and Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by Port in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with Disability Laws, 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, and subject to any conditions that Port may reasonably impose.

(c) Tenant, while performing any Subsequent Alteration or maintenance or repair of the Improvements (for purposes of this Section only, “**Work**”), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work.

(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, 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.

14.4. Construction.

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

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

(c) Construction Fencing and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner, and shall post the signs on the Premises during the period of construction to the extent reasonably necessary to minimize the risk of hazardous construction conditions. Tenant will obtain a building permit from Port before the placement of any construction fencing, signage and/or barriers.

14.5. Port of San Francisco Union Iron Works Historic District. Tenant expressly acknowledges that the Building is a contributing resource to the Port of San Francisco Union Iron Works Historic District at Pier 70 which is listed on the National Register of Historic Places. Accordingly, all interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the Building) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior’s Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the “**Secretary’s Standards**”) and summarized in the attached *Exhibit I*. Tenant expressly agrees to comply with the Secretary’s Standards for all current and future interior and exterior repair, alteration, improvement or construction.

14.6. Asbestos-containing Materials. Without limiting *Section 18 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.

14.7. Lead-Based Paint. 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 14**, 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.

14.8. Title to Improvements; Removal of Improvements. Provided that no Event of Default then exists, Tenant shall not be obligated to remove at the end of the Term, (a) any of the Initial Improvements that are listed on **Attachment 3** to the Work Letter, (b) any Subsequent Alteration where Port has agreed in writing (in the form of Schedule 6 or its written equivalent) that the applicable Subsequent Alteration may remain on the Premises at the end of the Term in the form of Schedule 6 or its written equivalent, or (c) Tenant's replacement of any of the items listed in the immediately foregoing sub-clauses (a) and (b) in connection with Tenant's obligation to maintain and repair as further described in **Section 13.1**. During the Term, without limiting Tenant's obligations to maintain, repair and replace the Premises, Tenant will own the Initial Improvements, Subsequent Alterations and all Tenant's Property (except for any Subtenant's Property, which shall be owned by the applicable Subtenant). Tenant has the right at any time during the Term to remove Tenant's Property from the Premises; provided, however, that if the removal of Tenant's Property causes damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to Port. Unless Port has agreed that Tenant's Improvements and Alterations may remain on the Premises in the form of **Schedule 6** or its written equivalent and other than as set forth on Attachment 3 to the Work Letter, prior to the Expiration Date or earlier termination of this Lease, Tenant, at its own expense, must remove all Improvements and Alterations it constructed from the Premises in accordance with **Section 30**. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. 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 expiration or earlier 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. At the expiration or earlier termination of this Lease, title to any Improvements or Alterations that are allowed to remain on the Premises will vest in Port without further action of any party, and without compensation or payment to Tenant.

14.9. Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with this Section, 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 this Section shall survive the expiration or earlier termination of this Lease.

14.10. 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.

14.11. 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.

14.12. Port's Alterations. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Building, Building 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 a 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.

15. UTILITIES.

15.1. Utility Services. Subject to the terms in the Basic Lease Information regarding the Interim Power Line and the Capacity Charges, Tenant, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use the Premises, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate for the uses (it being acknowledged that City (including its San Francisco Public Utilities Commission ("**SFPUC**")) is

the sole and exclusive provider to the Premises of certain public utility services), and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant agrees and acknowledges that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. Tenant also must coordinate with the respective utility service provider with respect to the installation of utilities, including providing advance notice to appropriate parties of trenching requirements. Tenant will purchase all electrical service (to the extent not provided by a PV System, if any) for the Improvements and the Premises from SFPUC unless SFPUC first determines that such service is not feasible for the Premises.

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

15.2. Photovoltaic Panels. Tenant shall have the right but not the obligation to install or cause to be installed on the roof(s) of buildings a photovoltaic energy generation facility for the generation and delivery of electrical energy to the Premises and if excess energy is available, potentially to other sites (the "PV System"). Before commencing installation of a PV System, Tenant must obtain Port's consent and all required permits and Regulatory Approvals for the PV System, which may include, among other things, approval by SHPO and requirements to strengthen the roof of the applicable building(s). The design, construction and installation of any PV System will be done in accordance with *Section 14.2*.

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

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

16. FLOOD RISK AND SEA LEVEL RISE.

16.1. Sea Level Rise. The City's current sea level rise capital planning guidance can be found at https://onesanfrancisco.org/sites/default/files/inline-files/San_Francisco%20SLR_Guidance%20SLRTC%20REV%20TO%20CPC%20Jan%202020.pdf (the "SLR Guidance").

16.2. Flood Protection Measures. In addition to Tenant's obligations to comply with Laws under *Section 11* (Compliance with Laws) and to repair and maintain the Premises (including, but not limited to the structure and substructure under *Section 13* (Maintenance and Repairs)), if, at any time during the Term of this Lease, and subject to compliance with CEQA, the Chief Harbor Engineer ("CHE") determines in his or her regulatory capacity in accordance with applicable Laws that there is a need for temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with flooding ("**Flood Protection Measures**") at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety ("**CHE Determination**"), Tenant shall be responsible at no cost to Port for permitting, constructing and implementing any such Flood Protection Measures in the manner described in this Section. Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Flood Protection Measures and agrees that it will not seek additional term for the purpose of amortizing the cost of any Flood Protection Measures. Port and Tenant agree that a CHE Determination under this *Section 16* shall not be a Condemnation for purposes of this Lease.

If Tenant fails to implement any required Flood Protection Measures within the time required in the CHE Determination, Port shall provide Tenant with thirty (30) days written notice and the right to cure such failure. If Tenant fails to cure within the 30-day period, Port shall have the right but not the obligation to implement the measure(s) on Tenant's behalf following an additional thirty (30) days' written notice of Port's intent to do so (unless Tenant's failure to cure gives rise to an emergency which creates an imminent danger to public health or safety as determined by the CHE) and Tenant shall reimburse Port for its actual costs as Additional Rent.

16.3. Required Flood Protection Improvements for Other Port Property. If the CHE determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing in this *Section 16* shall imply any duty upon the part of Port to perform any work that under this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises.

16.4. Limitations; Waiver.

(a) No occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations under this *Section 16*, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in *Section 11.2* (Change in Laws), *Section 20* (Damage and Destruction) or *Section 21* (Condemnation). Without waiving the right to terminate as provided in *Section 11.2* (Change in Laws), *Section 20* (Damage and Destruction) or *Section 21* (Condemnation), Tenant waives any rights now or later 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 or on account of any such occurrence or situation.

(b) If the CHE determines that there is a need for Flood Protection Measures, the rights and obligations of the Parties shall be as set forth in this *Section 16*. Accordingly, Port and Tenant each waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the prior sentence, Port and Tenant do not intend to waive their rights under *Section 11.2* (Change in Laws), *Section 20* (Damage and Destruction) or *Section 21* (Condemnation).

16.5. Additional Improvements To Address Sea Level Rise. At any time during the Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option in Tenant's sole discretion and at its cost that (i) are beyond the scope of the potential Flood Protection Measures contemplated in this Section; and (ii) are not otherwise Tenant's obligation under this Lease (including under **Section 11** (Compliance with Laws) and **Section 13** (Maintenance and Repairs)). Tenant acknowledges that additional Regulatory Approvals will be required for such improvements.

17. 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 or the Premises, 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 or Port's interest therein or under this Lease.

18. HAZARDOUS MATERIALS.

18.1. Requirements for Handling. Subject to **Section 18.2(b)**, 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, 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, disinfectant, pest control, office, and other supplies and equipment in amounts customarily used for the Permitted Uses and subject to the Operations Plan.

18.2. Tenant Responsibility.

(a) Generally. Subject to **Section 18.2(b)**, 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:

- (i)** will not permit any Hazardous Materials to be present in, on, under or about the Premises, or other Port property except as permitted under **Section 18.1**;
- (ii)** will not cause or permit any Hazardous Material Condition; and
- (iii)** 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, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

(b) Other Port Property. Port agrees that with respect to "other Port property" only (in other words, on Port property other than the Premises) as such term is used under **Sections 18.1 and 18.2(a)**, (i) without limiting any other agreement Tenant may have with Port, Tenant has no obligations to or for Tenant's Invitees on other Port property, and (ii) Tenant's

obligations with respect to Tenant's Agents on other Port property arise only to the extent such Agent is performing work on Tenant's behalf or otherwise acting on Tenant's behalf in furtherance of the Permitted Uses under this Lease.

18.3. 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 18.1*, Handled, in, on, or about the Premises, 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, 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, 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, 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.

(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.

18.4. Requirement to Remediate.

(a) Tenant's Remediation obligations under this subsection are subject to *Sections 18.4(b) and 18.4(c)*.

(i) After notifying Port in accordance with *Section 18.3(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, 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 in any manner related directly or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, and subject further to *Section 18.4(c)*, 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 under the Prior Licenses, whichever is earlier.

(c) Tenant will not be obligated to Remediate any Hazardous Material Condition on other Port property (in other words, on Port property other than the Premises) (i) caused by Tenant's Agent's acts, omissions or negligence on other Port Property, unless at the time such Hazardous Material Condition was caused or Exacerbated, such Agent was performing work directly or indirectly on Tenant's behalf or otherwise acting directly or indirectly on Tenant's behalf in furtherance of the Permitted Uses under this Lease; or (ii) caused by Tenant's Invitee's acts, omissions or negligence on other Port Property.

18.5. 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 29** (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.

18.6. 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 4** 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 4** 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 18.6** hereof and the notice or report attached as **Schedule 4** 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 22** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises 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 Improvements and Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and the removal or non-removal by Port of all or a portion of the asbestos, 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.

18.7. Notification of Lead. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises. 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 22** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises 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 the removal or non-removal by Port of all or a portion of the lead, whether in the Premises, 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.

18.8. 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.

18.9. 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: , 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 25359.7 and related Laws. Tenant must disclose the information contained in this *Section 18.9* to any subtenant, licensee, transferee, or assignee of Tenant’s interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

18.10. Survival. Tenant’s obligations under *Section 18* shall survive the expiration or earlier termination of this Lease.

For purposes of this *Section 18*, the term “**Commencement Date**” shall mean the commencement date of the Prior Licenses.

19. INSURANCE.

19.1. Required Insurance Coverage. Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, starting on the earlier of Tenant’s occupancy under this Lease or the Commencement Date, the following insurance:

(a) **Builders Risk Insurance.** At all times during construction before Completion of the Initial Improvements, and during any period of Subsequent Alteration costing more than Five Hundred Thousand Dollars (\$500,000) (increased annually by three percent (3%)), Tenant shall maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance (or its equivalent for any Subsequent Alteration, which may include coverage under a

property insurance program as referenced under *Section 19.1(b)* in the amount equal to the 100% replacement cost value of any existing structures being Rehabilitated or Restored, and 100% of all new construction, including all materials and equipment to be used/incorporated on or about the Premises, and in transit or storage off-site, against all risk or “special form” hazards, and earthquake and flood insurance (subject to *Section 19.1(b)*) including risks from any and all testing of any equipment, including as named insureds, Port and Tenant, with any deductible not to exceed Two Hundred Fifty Thousand (\$250,000) (except as to earthquake and flood insurance for which the deductible will be in accordance with the requirements of *Section 19.1(b)*). Such builders risk insurance also shall extend to cover soft costs and loss of business income for any delayed completion period as caused by any of the perils or hazards set forth in and required to be insured pursuant to *Section 19.1(a)*, for a delay period of not less than two (2) years with a limit of not less than One Million Dollars (\$1,000,000). If available at commercially reasonable rates, such builders risk insurance also shall extend to cover the peril of terrorism.

(b) Property Insurance; Earthquake and Flood Insurance.

(1) Upon Completion of the Initial Improvements, and upon Completion of Subsequent Alteration of any additional Improvements, Tenant will maintain all risk property insurance policies, in an amount not less than 100% of the then-current full replacement cost of the Premises, including the Building and any Improvements thereon, foundations, pilings, excavations, and footings, including soft costs and increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). Such property insurance shall name Port as loss payee as its interest may appear. If available at commercially reasonable rates, such insurance shall extend to cover the peril of terrorism.

(2) Earthquake Insurance.

(A) During construction of the Initial Improvements, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Initial Improvements or, (ii) the maximum amount that is available at commercially reasonable rates from recognized insurance carriers (with a deductible of up to but not to exceed ten percent (10%) of the then-current, full replacement cost of the Initial Improvements without sublimits for excavations and footings; provided that earthquake coverage is available at commercially reasonable rates, except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates). “**Probable Maximum Loss**” means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined before Completion of the Initial Improvements and thereafter not less frequently than every ten (10) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to Port; and

(B) From and after the issuance of a Certificate of Final Completion and Occupancy for the Building, earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate.

(3) Flood Insurance.

(A) During construction of the Initial Improvements, flood insurance will be in an amount, to the extent available at commercially reasonable rates from recognized insurance carriers (or through the NFIP if available) equal to the maximum amount of the then-current, full replacement cost of the Initial Improvements (including building code upgrade coverage and without any deduction being made for depreciation), with a deductible of up to but not to exceed ten percent (10%), except that a greater deductible will be permitted to

the extent that flood coverage is not available from recognized insurance carriers (or through the NFIP) at commercially reasonable rates; and

(B) From and after the issuance of a Certificate of Final Completion and Occupancy for the Building, flood insurance will be in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers or through the NFIP, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

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

(c) Commercial General Liability Insurance. Tenant will maintain, or require to be maintained "Commercial General Liability" insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) that includes coverage extending to the Indemnity in **Section 22**, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence and annual aggregate, and Ten Million Dollars (\$10,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant will maintain or require to be maintained liquor liability coverage with limits not less than Three Million Dollars (\$3,000,000) and Tenant will require any Subtenant or operator who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage. If applicable, then comprehensive or commercial general liability insurance must include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence.

(d) Workers' Compensation Insurance. During any period in which Tenant has employees, as defined in the California Labor Code, Tenant will maintain or require to be maintained policies of workers' compensation insurance providing statutory limits, including employer's liability coverage with limits not less than One Million Dollars (\$1,000,000) each accident, disease or illness.

(e) 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, and shall require each of its Subtenants to procure and maintain, 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/Subtenant'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 or Subtenant's Property, Alterations, or any Improvements regardless of cause of loss.

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

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

(h) Business Income Insurance. From and after the issuance of a Certificate of Final Completion and Occupancy, Tenant will maintain business income insurance, including loss of rents and extra expense caused by any of the perils or hazards set forth in and required to be insured pursuant to **Section 19.1(b)** covering an interruption period of not less than two (2) years, with a limit of not less than twenty-four (24) months' of Gross Revenues.

(i) Contractor's Pollution Legal Liability Insurance. Tenant will cause to be maintained during the period of construction of the Initial Improvements and during any periods of Subsequent Alteration, Contractor's Pollution Legal Liability Insurance for any and all Claims caused by pollution conditions, that are sudden, accidental or gradual, resulting from the contractor's operations, or for which contractor is legally liable, in connection with the construction of the Initial Improvements or Subsequent Alteration, whether such operations be by Tenant or Tenant's contractors, subcontractors, consultants or suppliers of the contractor. The foregoing policy will contain minimum liability limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate with a deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Initial Improvements or any Subsequent Alteration; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Initial Improvements or any Subsequent Alteration, including transportation of any Hazardous Materials to or from the project site, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Initial Improvements or any Subsequent Alteration under this Lease or in connection with any Remediation obligation of Tenant pursuant to **Section 18** is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a

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

(j) **Professional Liability.** Tenant will maintain or require to be maintained, professional liability (errors and omissions) insurance, with limits not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate, with respect to all professional services, including architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to the construction of the Initial Improvements and any Subsequent Alteration with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each claim (the "lead policy"). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this **Section 19.1(j)**, to require that any architects, contractors and sub-contractors performing professional services in connection with the Initial Improvements or any Subsequent Alteration carry professional liability insurance (errors and omissions) in an amount not less than Five Million Dollars (\$5,000,000) each claim and annual aggregate with any deductible not to exceed Fifty Thousand Dollars (\$50,000). Such insurance will provide coverage during the period when such professional services are performed and for a period of (A) three (3) years after issuance of a Certificate of Final Completion and Occupancy for the Initial Improvements and (B) five (5) years for any Subsequent Alteration. With respect to Subsequent Alteration, Tenant will require that any architect, contractor or subcontractor performing professional services in connection with such Subsequent Alteration, carry professional liability insurance (errors and omissions) in an amount not less than One Million Dollars (\$1,000,000) each claim and annual aggregate with any deductible not to exceed Twenty Five Thousand Dollars (\$25,000).

(k) **Crime policy.** Crime policy or fidelity bond covering Tenant's officers and employees against dishonesty with respect to funds provided by Port, in the amount of Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss.

(l) **Special Events/Participants.** Tenant, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(m) **Abuse and Molestation.** Abuse and molestation coverage with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(n) **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 Premises with respect to risks comparable to those associated with the use of the Premises.

19.2. Claims-Made Policies. If any of the insurance required in **Section 19.1 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.

19.3. Annual Aggregate Limits. If any of the insurance required in **Section 19.1 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.

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

19.5. 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 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 Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

19.6. 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 COMMISSIONERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS,**” shall be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company’s liability.

(b) Tenant may satisfy the limits set forth in *Section 19.1* by any combination of primary and excess insurance policies. 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) Tenant shall provide thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to 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.

20. DAMAGE OR DESTRUCTION

20.1. General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a “**Casualty**”), the rights and obligations of the Parties shall be as set forth in this *Section 20*.

(b) Notice. If there is any Casualty (i) which would materially impair use or operation of any material portion of the Improvements for their intended purpose for a period of thirty (30) days or longer, or (ii) the repair of which would exceed in an individual instance the amount of One Hundred Thousand Dollars (\$100,000) (increased annually by three percent (3%)), or aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000) (which amount

includes both hard and soft costs of a Restoration, increased annually by three percent (3%), Tenant shall promptly, but not more than ten (10) days after the occurrence of any such Casualty, give written notice thereof to Port describing with as much specificity as is reasonable, the nature and extent of the damage from such Casualty ("**Casualty Notice**").

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

20.2. No Release of Tenant's Obligations. Except as set forth in **Section 20.4**, no damage to or destruction of the Premises or any part thereof from any Casualty event shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including the obligation to pay Rent. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant shall pay to Port all Rent at the times and in the manner described in this Lease. If this Lease shall not terminate pursuant to this **Section 20**, proceeds of rental interruption or business interruption insurance shall be applied first to unpaid Rent due or coming due before completion of the Restoration and then to costs of Restoring the Premises with any remaining balance to be retained by Tenant. If this Lease shall terminate pursuant to this **Section 20**, proceeds of rental interruption or business interruption insurance shall be applied first to unpaid Rent coming due before termination of this Lease and then such proceeds shall be distributed pursuant to **Section 20.4(b)**.

20.3. Tenant's Obligation to Restore. Except in the event of an Uninsured Casualty or Major Casualty for which Tenant elects to terminate this Lease, under **Section 20.4**, if all or any portion of the Improvements are damaged or destroyed by Casualty, Tenant shall promptly (allowing for securing necessary Regulatory Approvals), commence and diligently Restore the Improvements to the condition they were in immediately before such Casualty in accordance with then applicable Laws (including any required code upgrades, the Secretary's Standards and Port's Sign Guidelines), without regard to the amount or availability of insurance proceeds, subject to Force Majeure. All Restoration shall be performed in accordance with the procedures set forth in **Section 14** relating to Alterations and shall be at Tenant's sole expense. In connection with any Restoration, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Improvements as so redesigned (i) are at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Building as improved with the Initial Improvements and any Subsequent Alterations prior to the Casualty subject to the Permitted Uses and (ii) allow the Permitted Uses to continue without material adverse effect on such uses.

20.4. Major Casualty or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Casualty occurs at any time during the Term, or if a change in Laws has occurred which prohibits the Premises from being rebuilt for the Permitted Uses, or if an event of Uninsured Casualty occurs at any time during the Term (other than as set forth in **Section 20.4(c)**), then within ninety (90) days following Tenant's delivery to Port of the Casualty Notice, Tenant shall notify Port of Tenant's election to: (1) commence and complete Restoration of the Improvements, or (2) terminate this Lease (subject to **Section 20.4(b)**). All Restoration shall be in accordance with the procedures set forth in **Section 14** relating to Alterations and shall be at Tenant's sole expense, except as provided in **Section 20.4(c)**.

"**Major Casualty**" means a Casualty event that (i) would require the expenditure of more than Two Million Dollars (\$2,000,000) (increased annually by three percent (3%)), (ii) would require more than two hundred seventy (270) days inclusive of the time to obtain Regulatory Approvals) for completion of the Restoration, or (iii) would prohibit the Premises from being Restored to a design and condition (a) that is substantially similar to the Building (as improved

by the construction of the Initial Improvements and any Subsequent Alterations) or (b) that allows for the Permitted Uses to continue without material adverse effect thereon.

“**Uninsured Casualty**” means any of the following: (i) a Casualty event occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured or insurable under the policies of insurance that Tenant is required to carry under **Section 19** and such costs exceed Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)); or (ii) a Casualty event occurring at any time during the Term which is covered under Tenant's policies of insurance that Tenant is required to carry under **Section 19** but where the cost of Restoration (including the cost of any required code upgrades) will exceed the sum of (A) the net proceeds of any insurance payable, (B) the amount of any applicable policy deductibles, and (c) Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)). Any Casualty event not insured due to Tenant's failure to maintain the requisite insurance policies under **Section 19** shall not be considered an Uninsured Casualty. As to any Casualty caused by earthquake or flood, the amount of such policy deductible shall be deemed to be the lesser of the amount of the policy deductible for non-earthquake or flood damage under Tenant's property insurance policy maintained under **Section 22** as of the date of Casualty, or the actual amount of such policy deductible.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate this Lease in accordance with **Section 20.4(a)**, there shall be no uncured Tenant Event of Default and Tenant shall do all of the following:

(i) The Casualty Notice shall include the estimated cost of Restoration and with respect to the Uninsured Casualty only, the amount by which the estimated cost of Restoration (or time needed to Restore) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's failure to maintain insurance required to be maintained hereunder); and

(ii) Pay or cause to be paid the following amounts from all insurance proceeds arising from each Casualty promptly following receipt of such proceeds, in the following order of priority:

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

(2) Second, to Port, for all accrued and unpaid amounts owed to Port, if any, by Tenant;

(3) Third, to each Permitted Mortgagee, in order of priority, a portion of the remaining casualty insurance proceeds arising out of or in connection with the Casualty causing such Major Damage or Uninsured Casualty in an amount not to exceed the aggregate amounts then owed to each such Permitted Mortgagee; and

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

(iii) Pay to Port any Rent due and payable as of the proposed termination date (to the extent any Rent due and payable remains unpaid after application of insurance proceeds pursuant to **Section 20.4(b)(ii)(2)**); and

(iv) Upon termination in accordance with this **Section 20**, Tenant shall deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements.

(c) Port's Election Upon Notice of Termination. Notwithstanding **Section 20.4(a)**, if Tenant elects to terminate this Lease solely due to an Uninsured Casualty, then within sixty (60) days after Port's receipt of the Casualty Notice, Port may elect by giving written notice to Tenant, to continue this Lease and pay the amount to Tenant by which the cost of Restoration will exceed the net proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under **Section 19** (or which would have been payable but for Tenant's failure to maintain such insurance) by more than Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)). If Port elects to continue this Lease as set forth in this **Section 20.4(c)**, then notwithstanding Tenant's election to terminate this Lease, this Lease shall not be terminated and Tenant shall be obligated to Restore the Premises in accordance with **Section 20.3**.

20.5. Date and Effect of Termination. If Tenant elects to terminate this Lease under **Section 20.4(a)**, and Port elects not to continue this Lease under **Section 20.4(c)**, then, on the date that Tenant shall have fully complied with all provisions of **Section 20.4(b)** to the reasonable satisfaction of Port, this Lease shall terminate. Upon such termination, the Parties shall be released thereby without further obligations to the other party as of the effective date of such termination; provided, however, that the Indemnification provisions and any other provisions that explicitly state they will survive expiration or earlier termination of this Lease shall survive any such termination. Any rights of Tenant or Port to receive insurance proceeds in accordance with the provisions of this Lease will survive the termination of this Lease.

20.6. Distribution Upon Lease Termination. If Tenant is obligated to and fails to Restore the Improvements as provided herein and commits an Event of Default in failing to Restore the Improvements and this Lease is thereafter terminated due to such Event of Default, all insurance proceeds held by Port, Tenant and any Permitted Mortgagee, or not yet collected, shall be paid to and retained by Port, subject to the rights of Permitted Mortgagees, if any.

20.7. Use of Insurance Proceeds. Except in the event of termination of this Lease in accordance with **Section 20.4**, all all-risk coverage insurance proceeds, earthquake and flood proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be used by Tenant for Restoration of the Premises.

20.8. Arbitration of Disputes.

(a) Estimators. In the event Port and Tenant cannot mutually agree upon the cost of Restoration (the "**Disputed Amount**"), such dispute shall be determined in the manner provided in this **Section 20.8**. Either party may invoke the provisions of this **Section 20.8** at any time there is a Disputed Amount by delivering written notice to the other party ("**Arbitration Notice**"). Within twenty (20) days after receipt of the Arbitration Notice, each party shall designate, by written notice to the other party, a professional cost estimator having at least ten (10) years' experience in estimating construction costs of major construction projects in the City, and who is competent, licensed, disinterested and independent ("**Estimator**"). Each Estimator shall make an independent determination of the Disputed Amount, in accordance with the provisions hereof. The Estimators may share and have access to objective information in preparing their estimates, but they will otherwise act independently. Each Estimator shall complete, sign and submit its written estimate of the cost of Restoration ("**Restoration Cost**") within fifteen (15) days after the appointment of the last Estimator unless the parties agree to permit a longer period of time. If the higher estimate of the Restoration Cost is not more than ten percent (10%) of the lower estimate, the Restoration Cost shall be determined for purposes of this Lease to equal the average of the two (2) determinations. If a party fails to designate an Estimator within the twenty (20) day period, then the determination made by the sole Estimator shall control.

(b) Arbitration. If the higher estimate of the Restoration Cost is more than ten percent (10%) of the lower estimate, the parties shall agree upon and appoint a third Estimator (the "Arbitrator") within thirty (30) days after the first two (2) determinations have been submitted to the parties. The Arbitrator shall have the minimum qualifications set forth in **Section 20.8(a)**, and also shall have experience acting as an arbitrator of disputes involving construction costs or construction disputes. If the parties do not appoint the Arbitrator within such thirty (30) day period, then either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent arbitrator meeting the foregoing qualifications. The Arbitrator shall consider the estimates submitted by the Estimators as well as any other relevant written evidence that the parties may choose to submit. If a party chooses to submit any such evidence, it shall deliver a complete and accurate copy to the other party at the same time it submits the same to the Arbitrator. Neither party shall conduct ex parte communications with the Arbitrator regarding the subject matter of the Arbitration. Within fifteen (15) business days after his or her appointment, the Arbitrator shall select one of the estimates as the more accurate estimate of the Restoration Cost. The determination of the Arbitrator shall be limited solely to the issue of deciding which of the estimates is closest to the actual Restoration Cost. The Arbitrator shall have no right to propose a middle ground or to modify either of the two (2) estimates.

(c) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination by the Estimators, or if applicable, the Arbitrator shall be conclusive, final and binding on the Parties. Neither the Estimators, or if applicable, the Arbitrator shall have any power to modify any of the provisions of this Lease. Subject to the provisions of this **Section 20.8**, the parties will cooperate to provide all appropriate information to the Estimators and if applicable, the Arbitrator. The Estimators, and if applicable, the Arbitrator will each report their respective determinations in writing, supported by the reasons for the determination.

(d) Conduct of Arbitration Proceeding. Any arbitration proceeding conducted pursuant to this **Section 20.8** shall be subject to California Code of Civil Procedure Sections 1280 to 1294.2 (but excluding Section 1283.05 with respect to discovery), or successor Laws then in effect relating to arbitration generally. Any such proceeding shall be conducted in the City.

(e) Fees and Costs; Waiver. Each party shall bear the fees, costs and expenses of the Estimator it selects. The parties shall share the fees, costs and expenses of the Arbitrator and the costs and expenses of the arbitration proceeding equally. The parties waive any claims against the Estimator appointed by the other party, and against the Arbitrator, for negligence, malpractice, or similar claims in the performance of the estimates or arbitration contemplated by this **Section 20.8**.

(f) Arbitration of Disputes. With respect to the arbitration provided for in this **Section 20.8**, the Parties agree as follows:

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS IN THIS LEASE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY

OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT TO NEUTRAL ARBITRATION DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION.

Port's Initials _____ Tenant's Initials _____

Any judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction of such arbitration in accordance with the terms of this Lease. This arbitration provision does not affect the rights of either party to seek confirmation, correction or vacation of the arbitration award pursuant to California Code of Civil Procedure Sections 1285 et seq.

21. CONDEMNATION.

21.1. *General; Notice; Waiver.*

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, the rights and obligations of the Parties shall be determined pursuant to this *Section 21*.

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

(c) Waiver. Except as otherwise provided in this *Section 21*, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease in accordance with this *Section 21*, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

21.2. Total Condemnation. If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released without further obligations to the other party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent, up to the Condemnation Date.

21.3. Substantial Condemnation; Partial Condemnation; Rent Abatement. If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation, this Lease shall terminate at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) in accordance with this *Section 21.3(a)*. "**Substantial Condemnation**" means a Condemnation of (A) less than the entire Premises which renders the Premises untenable, unsuitable or economically unfeasible for the Permitted Uses as reasonably determined by Tenant or (B) property located outside the Premises that substantially and materially eliminates access to the Premises where no alternative access can be constructed or made available, as reasonable determined by Port. Notwithstanding the foregoing, Tenant shall have no right to terminate this Lease under this *Section 21.3(a)* if (1) the Condemnation is for less than one year (unless such

Condemnation occurs during the last five (5) years of the Term), or (2) Tenant reasonably anticipates (i) based upon a schedule of performance for such Restoration prepared by Tenant in consultation with a licensed general construction contractor that at the time of completion of the Restoration, less than five (5) years would remain in the Term) and (ii) the cost of such Restoration is more than at least Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)), unless Port (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within thirty (30) days (subject to extension as provided below) after receipt of Tenant's termination notice that Port agrees, at its cost and expense, to pay any amount by which the cost of such Restoration exceeds by at least Three Hundred Fifty Thousand Dollars (\$350,000) (increased annually by three percent (3%)). In either such case, this Lease shall not terminate, and, upon a determination that this Lease shall continue based on amount of the Award, Tenant shall perform such Restoration, subject to the provisions of **Section 14**. Port's right to exercise the option described in clause (2) above shall be conditioned upon Port and Tenant reaching an agreement, with respect to the schedule for performance of required work, on the timing of payments of Port's contribution to the costs of such work (to the extent not available from Port's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, Port shall have no right to exercise such right, and such Condemnation shall be deemed a Substantial Condemnation for which Tenant may terminate this Lease.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises which does not result in a termination of this Lease under **Sections 21.2** or 21.3(a) (a “**Partial Condemnation**”), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation effective as of the Condemnation Date and this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such Condemnation. Tenant shall promptly commence and complete any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration shall be performed in accordance with the provisions of **Section 14**.

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

21.4. Awards. Except as provided in **Sections 21.5** and **21.6**, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including reasonable Attorneys' Fees and Costs) incurred in the collection thereof (“**Net Awards and Payments**”) shall be allocated between Port and Tenant as follows:

(a) In the event of a Partial Condemnation, first, to pay costs of Restoration, in which case, the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant and any Permitted Mortgagee;

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

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

(d) Fourth, to each Permitted Mortgagee, if any, in order of priority, for payment of all outstanding amounts of the loan secured by such mortgage, together with its reasonable out

of pocket expenses and charges in collecting the Net Awards and Payments, including without limitation, its reasonable attorneys' fees incurred in the Condemnation;

(e) Fifth, to Tenant in an amount equal to the value of Tenant's leasehold interest in this Lease, not including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term; and

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

(g) Notwithstanding anything to the contrary set forth in this *Section 21.4*, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the Condemned Land Value, the value of Port's reversionary interest in the Improvements, Tenant's leasehold interest in this Lease, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, shall be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

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

21.6. Relocation Benefits, Personal Property. Notwithstanding *Section 21.4*, Port shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the personal property of Tenant or any of its Subtenants.

22. INDEMNITY AND EXCULPATION.

22.1. 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, 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 23*, 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, or any other Port property.

22.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under *Section 22.1*, subject to *Section 22.2(b)*, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all 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) Unless Tenant or its Agents or Invitees Exacerbate a Hazardous Material Condition, Tenant's Indemnity obligations under this Lease do not include any Hazardous Material Claims that arise as a result of a Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's its Agents or Invitees occupancy of the Premises; (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises under the Prior Licenses, whichever is earlier; (3) caused by Tenant's Agent's acts, omissions or

negligence on other Port Property (in other words, on Port property other than the Premises), unless such Agent was performing work on Tenant's behalf or otherwise acting on Tenant's behalf in furtherance of the Permitted Uses under this Lease; or (4) caused by Tenant's Invitee's acts, omissions or negligence on other Port Property (in other words, on Port property other than the Premises).

(c) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (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.

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

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

Port agrees that Tenant's Indemnity for Claims that arise out of any Tenant's Invitee's acts, omissions or negligence on "other Port property" as set forth above in **Section 22.1** applies only if such Claims (i) arise directly or indirectly out of Tenant's Invitee's acts, omissions or negligence, and (ii) such act, omission or negligence occurred in, on, under, or about the Premises.

Port agrees that Tenant's Indemnity for Claims that arise out of any Tenant's Agent's acts, omissions or negligence on "other Port property" as set forth above in **Section 22.1** applies only if such Claims (i) arise directly or indirectly out of Tenant's Agent's acts, omissions or negligence, and (ii) such act, omission or negligence occurred while such Agent was performing work on Tenant's behalf or otherwise acting on Tenant's behalf in furtherance of the Permitted Uses under this Lease.

22.4. 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 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 Building Systems, (v) Building defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease 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.

Tenant's Initials

Tenant's Initials

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

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

23. TRANSFERS AND SUBLEASING.

23.1. *Financing.* Except with Port's express prior written consent, in its reasonable discretion, Tenant shall not (i) engage in any Financing or other transaction creating any mortgage, deed of trust or similar security instrument upon Tenant's leasehold interest in the Premises or Tenant's interest in the Improvements under this Lease; or (ii) place or suffer to be placed upon Tenant's leasehold interest in the Premises or interest in the Improvements any lien or other encumbrance. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the land in connection with any Financing permitted hereunder, or otherwise. Port shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Permitted Mortgagee of Tenant. Any mortgage, deed of trust, or similar security instrument, encumbrance or lien not permitted by Port shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

23.2. Transfer.

(a) 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 by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the then-remaining 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 a materially increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee is not reasonably acceptable to Port; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) the Transfer does not reflect an arm's length transaction.

(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 one hundred twenty (120) days before any Transfer, Tenant must give Port a Transfer Notice and the following: (i) Certified 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 Certified 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 reasonably 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 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, if exercised, Tenant shall be released from all further obligations under this Lease with respect to such interest (except for obligations that survive lease expiration).

(c) Unless the Transfer requires Port Commission and/or Board of Supervisors review and/or approval (as determined by Port in its sole discretion), Port will use commercially reasonable efforts to respond to the Transfer request no later than sixty (60) days after receipt of Tenant's complete Transfer Notice. If the Transfer requires Port Commission and/or Board of Supervisors review and/or approval, Port will use commercially reasonable efforts to respond to the Transfer request no later than ninety (90) days after receipt of Tenant's complete Transfer Notice. Port's failure to respond within the applicable period shall constitute Port's denial of consent. If Port does not consent to the Transfer, Port shall set forth its reasons for withholding consent upon Tenant's request. 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) Transfer Agreement Requirements. Any Transfer Agreement must include the provisions set forth below.

(i) 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, subject to any agreement between Port and Tenant to release Tenant from any obligations and liabilities accruing after the effective date of the Transfer;

(ii) The Indemnification clause and waiver of claims provisions in **Section 22** (Indemnity and Exculpation);

(iii) 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 commissioners, officers, agents, employees, and representatives*" as additional insureds and acknowledging Port's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;

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

(v) 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

(vi) A provision under which the Transferee expressly agrees to report the transfer to the County Assessor in accordance with **Section 8.1** of this Lease.

23.3. Port's Participation in Sale Proceeds. In addition to all requirements of **Section 23.2**, the following provisions apply to any Sale.

(a) Tenant and all subsequent assignees must pay to Port twelve percent (12%) of Tenant's Net Sale Proceeds from each Sale as Port's Sale Participation, concurrently with and as a condition to the Sale Closing.

(b) As soon as available after Port consents to a 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 the business day before the Sale Closing. If an escrow account is not established for the Sale, the final closing statement must be Certified and state any variances from the estimated closing statement in form and content reasonably acceptable to Port. If escrow is opened for the Sale, Port's Sale Participation will be distributed through escrow. If no escrow is opened for the Sale, Port's Sale Participation will be paid upon the Sale Closing. Within forty-five (45) days after any Sale Closing such Sale, transferor Tenant will submit to Port a Certified statement prepared by a financial officer or other accountant employed or retained by transferor Tenant in accordance with sound accounting principles consistently applied, confirming the actual amounts under (i) – (iv). At Port's option, any overpayments may be either refunded to transferor Tenant or applied to any other amount then due and unpaid or credited against Rent due. The statements delivered to Port under this Section are subject to the audit provisions of **Section 23.7** for determination of the accuracy of Tenant's reporting of the Port's share of Sale Proceeds.

(c) Port may reference in any estoppel certificate or other representation requested from Port that payment to Port of Port's Sale Participation is a material obligation under the Lease, due and owing upon the closing of any Sale hereunder, provided, however,

failure to reference such obligation will in no way negate Tenant's obligation to pay, and Port's right to receive, Port's Sale Participation.

(d) Tenant's obligation to pay Port's Sale Participation will survive the Sale Closing and the expiration or termination of this Lease.

(e) If Tenant Completed the Initial Improvements or any Subsequent Alterations that constitute capital improvements, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Construction Costs as follows. Within ninety (90) days after Completion of the Initial Improvements or any Subsequent Alterations, Tenant must deliver to Port a Certified Construction Costs Report in form and content acceptable to Port in its reasonable discretion. If Port requests, the report must be accompanied by a CPA's agreed-upon procedures report prepared in accordance with AICPA standards for compliance attestation specifying Port as an intended user, in which case Tenant shall have until the date that is one hundred twenty (120) days after the end of Tenant's fiscal year to provide the Construction Costs Report. Port will notify Tenant in writing whether Port agrees or disagrees with Tenant's Construction Costs Report (including whether Port agrees that Subsequent Alterations constitute capital improvements) within ninety (90) days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Construction Costs Report. Tenant must keep accurate Books and Records of all Construction until the later of two (2) years after Tenant's submission of any Construction Costs Report or six (6) months after any dispute regarding the Construction Costs has been resolved. Tenant's failure to submit a Construction Costs Report as and when required under this Section will be deemed a waiver of its right to make a reduction to Net Sale Proceeds.

The following example is provided for illustrative purposes only:

Gross Sale Proceeds:	\$7,000,000
Costs of Sale:	\$(500,000)
Tenant's Adjusted Basis	\$(5,000,000)
Net Sale Proceeds before distribution:	\$1,500,000
Port's Sale Participation @12% of adjusted Net Sale Proceeds:	\$180,000

23.4. Port's Participation in Financing Proceeds. In addition to all requirements of *Section 23.1*, the following provisions apply to any Financing.

(a) Tenant and all subsequent assignees must pay to Port twelve percent (12%) of Tenant's Net Financing Proceeds from each Financing as Port's Financing Participation, concurrently with and as a condition to the Financing Closing.

(b) As soon as available after Port consents to a Financing, Tenant must deliver to Port an estimated closing statement that includes Tenant's best estimate of: (i) Gross Financing Proceeds; (ii) Net Financing Proceeds; and (iii) Port's Financing Participation. The closing statement must be updated and delivered to Port the business day before the Financing Closing. If an escrow account is not established for the Financing, the final closing statement must be Certified by a financial officer or other accountant employed or retained by Tenant and state any variances from the estimated closing statement in form and content reasonably acceptable to Port. If escrow is opened for the Financing, Port's Financing Participation will be distributed through escrow. If no escrow is opened for the Financing, Port's Financing Participation will be paid upon the Financing Closing. Within forty-five (45) days after any Financing Closing such Financing, Tenant will submit to Port a Certified statement prepared by a financial officer or other accountant employed or retained by Tenant in accordance with sound accounting principles consistently applied, confirming the actual amounts under (i) – (iii). At Port's option, any overpayments may be either refunded to Tenant or applied to any other amount then due and unpaid or credited against Rent due. The statements delivered to Port under this Section are

subject to the audit provisions of **Section 23.7** for determination of the accuracy of Tenant's reporting of the Port's share of Financing Proceeds.

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

(d) Tenant's obligation to pay Port's Financing Participation will survive the Financing Closing and the expiration or termination of this Lease.

The following example is provided for illustrative purposes only:

Gross Financing Proceeds:	\$7,000,000)
Financing Costs:	\$(500,000)
Amount of outstanding indebtedness repaid:	\$0
Cost of Improvements not financed	\$(5,500,000)
Financing Reinvestment:	\$(750,000)
Net Financing Proceeds retained by Tenant:	\$250,000
Port's Financing Participation @ 12%:	\$30,000

23.5. Subleasing by Tenant.

(a) Subleases. Tenant will not Sublease any portion of the Premises without the prior written consent of Port which will not be unreasonably withheld. All Subleases must be in full compliance with all of the terms and provisions of this **Section 23.5**. A Sublease without Port's consent will be voidable by Port, in its sole discretion. Nothing in this Lease is intended to restrict or prohibit Tenant and its Subtenants from allocating costs associated with this Lease in any manner they see fit; provided however, that unless explicitly authorized under this Lease, such allocations to do not affect the amount of Rent due to Port.

(b) Request for Sublease. Tenant must give Port as much prior written notice as reasonably possible, but not less than thirty (30) days before it intends to enter into a proposed Sublease (herein "**Notice of Request to Sublease**") and provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed Subtenant, (b) reasonably adequate evidence that the proposed Subtenant's financial condition and prospects are sufficient to support all of the financial and other obligations of the proposed Sublease, (c) a full description of the terms and conditions of the proposed Sublease, including the proposed commencement date, a description of the proposed use and the material terms, including all payments to be made or other consideration to be given in connection with the Sublease, and copies of any and all proposed agreements concerning the proposed Sublease, and (d) a list of any Regulatory Approvals needed and the status of such Regulatory Approvals. Until such time as Tenant has provided to Port all information set forth hereinabove, Tenant's Notice of Request to Sublease will not be deemed to have been given. Tenant will immediately notify Port of any modifications to the proposed terms of the Sublease. Port will use reasonable efforts to respond to the Transfer request no later than thirty (30) days after receipt of Tenant's complete Transfer Notice.

(c) Port's Options. Upon receiving a Notice of Request to Sublease, Port will have the right to either (A) consent to the proposed Sublease, which consent shall not be unreasonably withheld, subject to any reasonable conditions upon such Sublease or (B) deny its consent to the proposed Sublease on the following reasonable grounds: (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) that the proposed Subtenant's financial condition and prospects are or could become

insufficient to support all of the financial and other obligations of the proposed Sublease; (3) that the use to which the Premises will be put by the proposed Subtenant is inconsistent with the terms of this Lease or otherwise will affect any City or Port interest materially and adversely; (4) the business reputation or character of the proposed Subtenant is not reasonably acceptable to Port or the proposed Subtenant is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's (or a prior Subtenant's) or otherwise reasonably acceptable to Port; (5) that the nature of the proposed Subtenant's intended or likely use of the Premises would involve an unmitigated risk of the Handling, Release or mishandling of Hazardous Materials and Port reasonably believes that the measures proposed by Subtenant are insufficient to mitigate the risk of Handling or Release of Hazardous Materials by Subtenant, or otherwise materially increase the risk of fire or other casualty; (6) that the Sublease rental rate does not reflect an arm's length transaction; (7) failure of the Sublease to contain provisions specified in this Lease.

(d) Required Provisions in Subleases. Each and every Sublease must contain all the following provisions:

- (i)** the Sublease is subject to and subordinate to this Lease;
- (ii)** the Indemnification clause and waiver of claims provisions in *Section 22* (Indemnity and Exculpation) as to the subleased premises and Subtenant's activities;
- (iii)** insurance provisions requiring that all of the Subtenant's liability and other insurance policies name "*The City and County of San Francisco, the San Francisco Port Commission, and their commissioners, officers, agents, employees, and representatives*" as additional insureds and acknowledging Port's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Subtenant's are conducted;
- (iv)** an express waiver of any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;
- (v)** a requirement that the Subtenant must pay the rent and other sums due under the Sublease directly to Port upon receiving Port's written notice that an Event of Default has occurred, a copy of which Port will deliver to Tenant;
- (vi)** a prohibition on assignment or further subleasing, in whole or in part, without Port's consent, which may be given or withheld in Port's sole discretion;
- (vii)** a provision similar to *Section 29* (Port's Entry) requiring Subtenant to permit Port to enter its subleased space for the purposes specified in that Section; and
- (viii)** a provision similar to *Section 38* (Tenant Estoppel) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as *Exhibit J*.

(e) Any Sublease that does not comply with this Section fully including without limitation Tenant's failure to seek or obtain Port's consent when such consent is required, will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Sublease will have no effect with respect to any other Sublease.

(f) Copy of Executed Sublease. Tenant shall provide Port a true and complete copy of each executed Sublease within thirty (30) days after the execution thereof. Each executed Sublease must contain substantially the same (or more favorable to the landlord) business terms as set forth in the applicable Notice of Request to Sublease.

23.6. Notice to Port. In addition to the obligations under *Section 8.1*, 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, (other than pursuant to a membership

agreement or day use pass or as a patron of Tenant or any Subtenant), 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 compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

23.7. 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 a Transfer or Sublease 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 or Sublease, until such audit or controversy is concluded. If an audit reveals that Tenant has overstated any 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.

23.8. Acknowledgement. Tenant acknowledges and agrees that Port's rights with respect to Transfers and Subleasing are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this *Section 23*.

24. APPROVALS BY PORT; FEES FOR REVIEW.

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

24.2. Fees for Review. Within ten (10) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including Attorneys' Fees and Costs, consultant's costs, and costs for Port staff time, incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed Transfer, Sublease, non-disturbance agreement, mortgage confirmation statement, mortgage, refinancing certificate, or Subsequent Alteration. Tenant will pay such costs regardless of whether or not Port consents to such proposal.

25. NO MERGER OF TITLE.

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

26. 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, (i) 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, and (ii) Tenant shall not be in default for failure to pay any Percentage Rent if such failure is solely due to the applicable Subtenant's failure to pay such amount to Tenant or provide the information necessary to calculate the Percentage Rent, provided that, in each case: (A) failure to pay Percentage Rent and failure to provide the information necessary for Tenant to calculate Percentage Rent is a default of the relevant Sublease; (B) Tenant is using demonstrable, commercially reasonable efforts to enforce the Subtenant's performance of such obligations including but not limited to enforcing the Sublease through notices of default and termination; and (C) the subject Percentage Rent is paid no later than ninety (90) days from the original due date; or

(b) failure by Tenant to deliver the Quarterly Percentage Rent Statement or Annual Statement when due and such default continues for a period of thirty (30) days following written notice from Port. Notwithstanding the foregoing, (i) Port shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12) month period shall, at the option of Port, constitute an Event of Default by Tenant hereunder without any further action by Port (including, but not limited to, notice to Tenant of such failure) or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure and (ii) Tenant shall not be in default for failure to deliver the Quarterly Percentage Rent Statement or Annual Statement when due if such failure is solely due to the applicable Subtenant's failure to deliver the Quarterly Percentage Rent Statement or Annual Statement when due or provide the information necessary to prepare the applicable statements, provided that, in each case: (A) failure to deliver the statements is solely due to the applicable Subtenant's failure to deliver the relevant statement or to provide the information necessary to prepare the applicable statements; (B) Tenant is using demonstrable, commercially reasonable efforts to enforce the Subtenant's performance of such obligations including but not limited to enforcing the Sublease through notices of default and termination; and (C) the subject statements are submitted no later than one hundred twenty (120) days from the original due date; or

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

(d) failure to comply with Tenant's covenants set forth in *Section 6.2* (Continuous Operations), as determined by Port in its reasonable discretion and such failure continues for a period of fifteen (15) days following written notice from Port; or

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

(f) failure to use the Premises solely for the Permitted Use, failure to comply with the provisions of *Section 18* (Hazardous Materials) or failure to comply with the provisions of the Operations Plan, in each case in a manner that presents a health, safety, welfare or environmental risk or hazard, 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; in all other circumstances, such failure shall be cured within ten (10) days following written notice from Port; or

(g) failure by Tenant to execute and deliver to Port an estoppel certificate within the time period and in the manner required by *Section 38 below*, and Tenant's failure to cure the foregoing default within five (5) business days following written notice from Port; or

(h) a Transfer or Sublease, or attempted Transfer or Sublease, of this Lease or the Premises by Tenant contrary to the provisions of *Section 23 above*; or

(i) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of *Section 19 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 five (5) business days following written notice from Port; or

(j) failure by Tenant to discharge any lien or encumbrance placed on the Premises 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 Premises 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

(k) 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 26*, 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

(l) 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

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

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

(o) An uncured default by Tenant under the terms of the License; or

(p) without limiting the provisions of *Subsection 26(f)* or lengthening the cure period under that subsection, 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.

27. PORT'S REMEDIES.

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

27.2. Right to Keep Lease in Effect.

(a) Continuation of Lease. Port has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations) under which Port may continue this Lease in full force and effect. In the event Port elects this remedy, Port has the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of Port's rights, including the right to collect Rent when due. Tenant will be liable immediately to Port for all reasonable costs Port incurs exercising its remedies under this **Section 27**, including reasonable Attorneys' Fees and Costs, brokers' fees or commissions, expenses of remodeling the Premises required by the reletting and similar costs.

(b) No Termination Without Notice. No act by Port allowed by this **Section 27.2**, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a Transfer or termination of a Transfer in accordance herewith, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

27.3. Right to Terminate Lease. Port may terminate this Lease at any time after the occurrence of (and during the continuation of) an Event of a Default by giving written notice of such termination. Termination of this Lease will occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon Port's initiative to protect its interest hereunder will not in any such instance constitute a termination of Tenant's right to possession. No act by Port other than giving notice of termination to Tenant in writing will terminate this Lease. Upon termination of this Lease, Port has the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including the following:

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

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

(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 have been reasonably avoided; plus

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

"The worth at the time of award" as used in **Sections 27.3(a)** and **27.3(b)** will be computed by allowing interest at a rate per annum equal to the Interest Rate. "The worth at the time of award" as used in **Section 27.3(c)** will be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

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

27.5. Continuation of Subleases and Other Agreements. Port has the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Port following an Event of Default and termination of Tenant's interest in this Lease, Tenant will execute, acknowledge, and deliver to Port such further instruments as may be necessary or desirable to

vest or confirm or ratify vesting in Port the then existing Subleases and other agreements then in force, as above specified.

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

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

27.8. *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.

27.9. *Port's Right to Cure Tenant's Default.* Port, at any time after the occurrence of an Event of Default may, at its sole option, cure the default at Tenant's cost. If Port 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.

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

28. LITIGATION EXPENSES; ATTORNEYS' FEES.

28.1. *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.

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

28.3. *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.

29. PORT'S ENTRY ON PREMISES.

29.1. *Entry for Inspection.* Port and its authorized Agents shall have the right to enter the Premises upon reasonable prior 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.

29.2. *General Entry.* In addition to its rights pursuant to *Section 29.1*, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services that 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 there is an Event of 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.

29.3. *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 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.

29.4. *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 this Section or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

29.5. *Nondisturbance.* Port shall comply with Tenant's reasonable security measures and shall use commercially reasonable efforts to conduct its activities on the Premises as allowed in this Section in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

30. SURRENDER AND QUITCLAIM.

30.1. *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 20 and 21** 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. 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 all Alterations and Improvements required to be removed as provided in **Section 14.8**. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials that Tenant is required to remove under this Lease, 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. Except for those Alterations and Improvements required to be removed as provided in **Section 14.8**, 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 30** and **Section 14.8**, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to **Section 31.2 or 31.3 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.

30.2. 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, on its own behalf and for any Subtenant, 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 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.

30.3. 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 interest 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.

30.4. Survival. Tenant's obligation under this **Section 30** shall survive the expiration or earlier termination of this Lease.

31. HOLDING OVER.

31.1. *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.

31.2. *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 greater of: (a) the Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Premises approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

31.3. *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.

32. REPRESENTATIONS AND WARRANTIES.

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

(a) **Valid Existence; Good Standing.** Tenant is a non-profit public benefit corporation duly incorporated and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

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

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

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

(f) Financial Matters. Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code. There has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations. To the best of Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

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

33. 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.

34. 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.

34.1. *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 Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of *Section 34.1(a)*. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a),

12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

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

(d) **CMD Form.** On or prior to the Lease Effective 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 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

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

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

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

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

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify 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 12Q.5 of the Administrative Code against Tenant based on the Subtenant’s, Contractor’s, or Subcontractor’s failure to comply, provided that OLSE has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the

HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

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

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

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

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

34.3. 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.

34.4. 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>.

34.5. 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.

34.6. 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.

34.7. *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.

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

34.9. *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>.

34.10. *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.

34.11. *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.

34.12. *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.

34.13. *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 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 34.13** 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.

34.14. *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.

34.15. *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.

34.16. *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.

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

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

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

34.18. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. For Covered Projects estimated to cost more than \$1,000,000, the Prime Contractor shall prepare and submit to Port and OEWD for approval a local hiring plan (“**Local Hiring Plan**”). The Local Hiring Plan is attached hereto as **Exhibit K**. The Local Hiring Plan shall be a written plan for implementation of the Local Hiring Requirements, including an approximate time frame for hiring decisions of Subcontractors, a description of the hiring processes to be utilized by Subcontractors, an estimate of numbers of Targeted Workers needed from various referral sources, qualifications needed for such Targeted Workers, and a recruitment plan detailing an outreach strategy for candidates representative of local demographics. 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 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 Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

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

34.20. 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.

34.21. *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.

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

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

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

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

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

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

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

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

34.23. Working with Minors. In accordance with California Public Resources Code Section 5164, if Tenant, or any Subtenant, is providing services at a City park, playground, recreational center or beach, Tenant shall not hire, and shall prevent its Subtenants from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant, or any Subtenant, is providing services to the City involving the supervision or discipline of minors or where Tenant, or any Subtenant, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Tenant and any Subtenant shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this Section and **Section 34.22** (Consideration of Criminal History in Hiring and Employment Decisions) of this Lease, this Section shall control.

34.24. Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Tenant shall provide community benefits and beautification measures in consideration for the use of the Premises. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Premises; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Tenant's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the Premises that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the Premises of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of truckers that are certified by the CMD as "**Local Business Enterprises**" under the City's Local Business Enterprise and Non-Discrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Tenant agrees to provide Port with documents and records regarding these activities upon Port's request.

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

Francisco Administrative Code section 4.9-1) offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

34.26. *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 34.26** 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.

34.27. *Consideration of Salary History.* Tenant shall comply with San Francisco 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 Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

34.28. *Employee Signature Authorization Ordinance.* The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant shall comply with the requirements of such ordinance, if applicable, including, without limitation, any requirements in the ordinance with respect to its Subtenants or operators.

35. 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.

36. MISCELLANEOUS PROVISIONS.

36.1. *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.

36.2. *Entire Agreement; Original Lease Superseded.* This Lease replaces and supersedes all prior written and oral agreements between Port and Tenant, including, without limitation, the Original Lease. 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.

36.3. *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.

36.4. *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.

36.5. *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.

36.6. 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.

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

36.8. 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.

36.9. 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.

36.10. No Implied Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy under this Lease, irrespective of the length of time for which such failure continues (including Port’s acceptance of full or partial Rent from Tenant) shall constitute a waiver of any breach or of either party’s rights to demand strict compliance with any Lease 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 either party 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.

36.11. *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.

36.12. *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.

36.13. *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.

36.14. *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.

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

36.16. *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.

36.17. *Force Majeure.* Except as specified in this **Section 36.17**, for all purposes of this Lease, a party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default of its obligations hereunder resulting from Force Majeure effective upon the other party's receipt of written notice describing with reasonable particularity the facts and circumstances constituting Force Majeure and citing this **Section 36.17**, and performance of the Lease obligation shall be extended on a day for day basis (unless the parties mutually agree to a longer time frame in writing) during the Force Majeure event. The provisions of this **Section 36.17** shall not apply to Tenant's obligation to pay Rent and shall not extend the Initial Improvements Completion Date.

37. LIMITATION ON DAMAGES.

37.1. *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.

37.2. *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.

37.3. Limitation on Port's Liability Upon Transfer. In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor), 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.

38. 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 J*. Upon Tenant's request, Port shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating to Port's actual knowledge (a) that this Lease is modified or unmodified and in full force and effect, (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, without investigation, there are then existing any defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting party. In addition, if requested, Port shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto.

39. 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.

[Remainder of this page left intentionally blank.]

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: _____
Kimberly Beal
Acting Deputy Director, Real Estate and
Development

Date Signed: _____

TENANT: **YOUNG MEN’S CHRISTIAN ASSOCIATION OF SAN**
FRANCISCO, A CALIFORNIA NONPROFIT PUBLIC BENEFIT
CORPORATION

By: _____
Jamie Bruning-Miles, President and CEO

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Grace Park, Deputy City Attorney

Lease Prepared By: James Hurley, Development Project Manager Initials: _____

Port Commission Resolution: [24-XXX]
Board of Supervisors Resolution: [XXXX-24]

Lease No. L-17134 Lodge File

List of Exhibits [All exhibits listed below are incorporated by reference to the Lodged Documents file and available upon request from the Port Commission Secretary as of 1/13/24]

Exhibit	Exhibit Name
Exhibit A	Description of Premises
Exhibit B	Effective Date, Commencement Date and Expiration Date Memorandum
Exhibit C	Dogpatch Paddle Consent to Sublease
Exhibit 1 to exhibit C	Dogpatch Paddle Description of Subleased Premises
Exhibit 2 to Exhibit C	Dogpatch Paddle Sublease
Exhibit D	Daily Driver Consent to Sublease
Exhibit 1 to Exhibit D	Daily Driver Description of Subleased Premises
Exhibit 2 to Exhibit D	Daily Driver Sublease
Exhibit E*	Work Letter
Exhibit E Attachment 1*	Scope of development
Exhibit E Attachment 2*	Form Of Performance Bond & Payment (Labor And Material) Bond
Exhibit E Attachment 3*	List of Improvements that do not need to be removed from Premises
Exhibit F	Crane Cove Park License No. 17011
Exhibit G	Operations Plan
Exhibit H	Mitigation Monitoring and Reporting Program
Exhibit I	Summary of Secretary's standards
Exhibit J	Estoppel Certificate
Exhibit K	Local Hiring Plan
Exhibit L	Diversity, Equity, & Inclusion Plan
Schedule 1	FEMA Disclosure Notice
Schedule 2	Substructure Report(s)
Schedule 3	Asbestos Notification and Information
Schedule 4	Hazardous Materials Disclosure
Schedule 5	List of Construction Warranties
Schedule 6	Improvements and Alterations Removal Request Form

**Included as part of Lease (other Exhibits previously approved and incorporated by reference)*

EXHIBIT E
WORK LETTER

This Work Letter sets forth Tenant's obligation to construct the Initial Improvements and shall be deemed part of the Lease. The "Initial Improvements", sometimes referred to as 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 but not 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 Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Improvements, Tenant's obligations to obtain final approvals for the Initial 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 the Lease. 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 Lease Effective Date and shall expire on the date Port issues a Certificate of Final Completion and Occupancy for the Initial Improvements, regardless of whether such date is before or after the Initial Improvements Completion Date as defined below.

1.4. Lease Provisions. The provisions of the Lease, except where clearly inconsistent or 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 of its obligations to pay Rent or release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this 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.

2. Construction Of The Initial Improvements

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to Complete the construction of the Initial Improvements. Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and 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 or successor plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease. All such requirements are sometimes 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 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**. All construction with respect to the Initial Improvements shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant, while performing any construction with respect to the Initial Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to 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 Improvements. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for construction of the Initial Improvements. Such preparation of the Premises shall include, among other things, asbestos and lead abatement investigation required for development or operation of the Initial Improvements, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

2.2. Utilities. Subject to the terms in the Basic Lease Information regarding the Interim Power Line and the Capacity Charges, 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 Improvements, including providing advance notice 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 respect to the Premises (core and shell, and tenant improvements) within sixty (60) days after Completion of the Initial 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 request therefor.

2.4. Insurance.

(a) At all times during the construction of the Initial Improvements, in addition to the insurance required to be maintained by Tenant under **Section 19** of 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.

(b) In addition, Tenant shall carry "**Builder's All Risk**" insurance covering the construction of the Initial Improvements as set forth in **Section 19** of 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). Subject to Port's consent in its reasonable discretion, Tenant may elect to require that any architects, contractors and sub-contractors performing services in connection with the Initial Improvements, carry Builders Risk Insurance in the amounts and types of coverage stated herein and with the additional insureds named as required herein.

(c) 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 Improvements or, (ii) a financial guaranty, 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 Improvements. Each bond shall be in an amount equal to one hundred percent (110%) of the estimated costs of such work on the Initial Improvements. 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 bond shall 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 (taking into account any variances or other deviations properly approved) with: (i) all Laws; (ii) all Regulatory Approvals which place requirements on the Initial Improvements; (iii) all requirements of all policies of insurance which may be applicable to the Premises as to the Initial Improvements or Tenant's 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, all additions 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 Improvements or Tenant's 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 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 12*.

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 Improvements upon reasonable 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 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 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, and shall post the signs on the Premises during the period of construction. Tenant will obtain a building permit from Port before the placement of any construction fencing, signage and/or barriers.

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 Improvements which shall generally include, without limitation, the following:

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

(2) A site plan at appropriate scale showing relationships of the Initial 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 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 Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

- appropriate scale.
- (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.
 - (7) Outline specifications for materials, finishes and methods of construction.
 - (8) Interior and Exterior Signage Plans.
 - (9) Exterior lighting plans.
 - (10) Material and color samples.
 - (11) Roof plans showing all mechanical and other equipment.

(iii) **“Final Construction Documents”** which shall include all plans and specifications required under applicable codes to be submitted with an application for a Building Permit for the Initial Improvements.

(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 Improvements and the construction of the Initial 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, the approved 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 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 Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of

Performance. 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 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 give its approval or disapproval to Tenant in writing within thirty (30) days after receipt of Tenant's request. If Port disapproves, then it shall specify in writing the reasons for its disapproval. If Port fails to approve or disapprove 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 regular 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 receive prompt and speedy consideration.

4. Completion of Construction

4.1. Completion of Construction. Tenant shall commence, prosecute and use commercially reasonable efforts to Complete the Initial Improvements by the Initial Improvements Completion Date in accordance with the dates set forth in the Schedule of Performance. During construction of the Initial Improvements, Tenant shall submit written progress reports to Port, in form and detail as may be required reasonably by Port, but at least on a monthly basis.

4.2. Port's Remedy for Tenant's Failure to Timely Complete Construction. In the event Tenant fails to complete the Initial Improvements in a manner sufficient to cause Port to determine the Initial Improvements to be Completed by the Initial Improvements Completion Date, Tenant shall pay to Port an amount equaling One Hundred Dollars (\$100.00) per day commencing on the Completion Date and shall continue at such rate until Completion in addition to the Rent that would otherwise be payable for such period.

THE PARTIES HAVE AGREED THAT PORT'S ACTUAL DAMAGES IN THE EVENT OF TENANT'S FAILURE TO COMPLETE CONSTRUCTION OF THE INITIAL IMPROVEMENTS BY THE INITIAL IMPROVEMENTS 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 Initials

Port Initials

5. Completion

5.1. Completion.

(a) Issuance Process.

(i) Before the Initial Improvements Completion Date, Tenant may not occupy the Premises except for construction purposes under this Work Letter or the Lease, unless Port consents to such use, a Temporary Certificate of Occupancy has been issued allowing such use and Tenant pays Partial Base Rent, or rent in the amount required by the then-current Port Commission-adopted parameter rates, as applicable.

(ii) After the Initial Improvements Completion Date, Tenant may request a written determination of Completion for the Initial Improvements in writing. Port shall issue or provide Tenant with notice of Port's refusal to issue the written determination of Completion for the Initial Improvements within sixty (60) days of receipt of Tenant's request. If Port refuses to issue a determination of Completion, then it shall state the reasons why in its refusal notice.

(iii) Port's determination that the Initial 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 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 Completion.** For purposes of this Work Letter and the Initial Improvements, "Completion" means completion by Tenant of all aspects of the Initial Improvements in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Initial Improvements or provision of security reasonably satisfactory to Port for Deferred Items under **Section 5.1(b)**, and issuance of a Certificate of Final Completion and Occupancy. The "Initial Improvements Completion Date" shall mean the earlier of (i) the date of the Certificate of Final Completion and Occupancy for the Initial Improvements or (ii) the date that is twenty-four (24) months after the date on which the Building Permit for the Initial Improvements was Finally Approved; provided,

however, that the Port's Executive Director, in her or his reasonable discretion, may extend the 24-month deadline in writing following Tenant's written request and provided that Tenant is working diligently toward Completion of the Initial Improvements and provided further that any such extension will not operate to relieve Tenant of its obligations to pay Rent or release any of Tenant's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this 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. The Port's Executive Director's failure to issue an extension within ten (10) days after Tenant's notice requesting an extension shall be deemed a denial of the request.

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 Improvements, Tenant shall assign and deliver to Port (without cost to Port), without any warranty or representation from Tenant and subject to the terms of any design professional's, engineer's, consultant's, or contractors agreement with Tenant, 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 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 Claims 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 Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Improvements an express agreement by the 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 and Alterations, equipment, 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.

ATTACHMENTS

ATTACHMENT 1	SCOPE OF DEVELOPMENT
ATTACHMENT 2	FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND
ATTACHMENT 3	INITIAL IMPROVEMENTS THAT DO NOT NEED TO BE REMOVED FROM THE PREMISES

Attachment 1 to Exhibit E- Scope of Development

PROJECT DESCRIPTION

Tenant improvements to Building 49 to increase the public use of Crane Cove Park. Master tenant (YMCA) to provide a wellness center for its members/public. Subtenant 1 (Daily Driver) to provide a food/beverage business to serve coffee/sandwiches/bagels to-go. Subtenant 2 (Dogpatch Paddle) to provide a water recreation business and run youth camp programming, rentals, and private events. This project is in relation to the RFP for Building 49 which was awarded to the YMCA of San Francisco and consists of a long-term lease with the Port of San Francisco. YMCA of SF to operate and maintain the public restrooms that were built in Building 49 by the Port of San Francisco.

SCOPE OF WORK

Core and shell improvements for three tenants include new storefront windows, entries, and overhead coiling doors. Tenant improvements for YMCA of SF include interior partition walls and finishes.

TENANT IMPROVEMENTS

AT TENANT 1 AND 2 SPACES, COLD GREY SHELL SHALL INCLUDE THE FOLLOWING:

1. FRAMED WALLS AND CEILING (IF APPLIES), NO FINISHES EXCEPT FOR INTERIOR FINISHES SURROUNDING STOREFRONT AT EXTERIOR WALLS.
2. OPENINGS AND DOORS AS INDICATED ON DWGS
3. TOPPING SLAB AS INDICATED ON DWGS
4. RADIANT FLOOR SLAB NOT INCLUDED.
5. PLUMBING AND ELECTRICAL CONNECTIONS TO BE STUBBED OUT AT PERIMETER OF SPACE
6. EGRESS LIGHTING PROVIDED AT REQUIRED EXITS.
7. ACCESSIBLE EGRESS/INGRESS FOR SPACE

CIVIL DETAILS

1. Drainage connections as needed for washdown of equipment from Dogpatch Paddle space
2. Utility connections for Fire Sprinklers
3. Any additional utility upgrades needed for service

ARCHITECTURAL DETAILS

CONCRETE

1. Provide concrete curbs at building perimeter for securing existing metal siding, see drawings for location and size.
2. Provide concrete curbs at shower stalls
3. Provide new concrete footings at demising walls and studio walls and other locations so noted in structural basis of design section.
4. Trench where required for new footings, plumbing, and electrical/data runs to floor boxes. Patch and repair to match adjacent.
5. Fill existing cracks in existing slab. See structural basis of design section.
6. Provide unbonded concrete topping slab for leveling the floor (where necessary) and for radiant flooring (where provided)

- a. Thickness of radiant topping slab (minimum - max)
 - i. Minimum is 2-inches, with rigid insulation of 3-inch total 5-inch combined system; thickest tube will be 5/8-inch thick
 - ii. Provide WWR at bottom of topping slab.
 - iii. Maximum thickness of concrete is 3-inch for sizing standard system; making slab thicker will increase size of tubing and amount of water in system
 - iv. Minimum rigid insulation is 1.5-inch polyurethane, will be increased as necessary (tapered) to create level surface for topping slab
- b. Control joints max. 6' o.c. and at all changes in elevation.
- c. Allow for movement and expansion joints in topping slab and radiant floor tubing system. Crane Cove soils experiences on-going settlement.
- d. Where exposed and as scheduled, grind and polish topping slab to a Class A cream finish and Level 2 Satin honed gloss.

METALS

- 1. Provide metal handrails at interior ramps, walkways, and stairs
- 2. Provide equipment (mechanical) screens at ductwork and equipment visible on top of the restroom and studio room "roof" areas (inclusion pending mechanical design)
- 3. All partitions and framing to be metal stud framing.
- 4. Use G60 metal stud framing, track and backing plates and ceiling framing at showers.

WOODS AND PLASTICS

- 1. Breakroom: custom plastic laminate-faced casework with base and upper cabinets.
- 2. Breakroom: open shelves as indicated

OPENINGS

- 1. Provide factory pre-primed A90 galvanized hollow metal doors and frames at restrooms, to be field painted with epoxy
 - 2. Provide HM door to public restroom hallway from YMCA space.
 - 3. Provide HM frames at all interior wood doors
 - 4. Provide stainless steel hardware for all new doors
 - 5. Provide panic hardware at door to public restroom
-
- 1. Provide interior wood doors with full lite at Office and Studio: straight grain hardwood veneer, factory stained and finished
 - 2. Provide interior flush wood doors at Accessible Changing Room, Storage and Breakroom, straight grain hardwood veneer, factory stained and finished.
 - 3. Provide tempered glass panel where occurs.
 - 4. Provide SS hardware for all new doors and privacy latches at restroom/showers and changing areas
-
- 1. Provide one 10' overhead coiling doors with Powderguard Max finish (standard color)

2. Provide one 16'1"W x 19'1"H overhead coiling door with Powerguard Max finish (standard color). Product TBD AmericanDoor Roll Up Door Man Door, Overhead Door Corp, or Wanye Dalton commercial Doors

3. Provide Motorized Operating Hardware, tracks and support.

1. Kawneer thermal windows and storefront;
2. Dark Anodized finish.
3. Awning window with crank operation and screens
4. 1" insulated low e clear glass and tempered as indicated
5. Provide panic hardware with Bronze finish.

1. See storefront and window sections for glazing associated with those openings
2. Provide full height mirrors at Free Weights and Studio walls. Product TBD
3. Provide frameless mirrors at restrooms over the lavatory. Product TBD
4. Provide 3x6' frameless mirror at accessible changing room. Product TBD
5. Provide tempered glass panels at full lite in Studio and Office doors. Product TBD

FINISHES

1. Provide plaster ceiling at All Gender restroom/shower rooms

- a. Backer board: Durock or equal
- b. STO Corporation Stolit Acrylic Finish
- c. Provide all components of manufacturer's system

3. Ceiling framing G90 galvanized metal stud framing

1. Provide 5/8" thick type X gypsum board throughout.
2. Provide moisture and mold resistant gypsum board in Break Room kitchenette area and toilet rooms
3. Cement backer board for tile at showers.
4. Quietrock EZ-SNAP Type X gypsum board at Studio walls and YMCA side of demising wall at Tenant 1.

1. Provide new ceramic tile at all gender restroom and shower rooms, both walls and floors (over radiant sub floor)

- a. Floor tile at shower stall: 1x1 mosaic porcelain with double grit for slip resistance
- b. Floor tile at restrooms and lavatory: 1x2 mosaic porcelain with double grid for slip resistance
- c. Wall tile: Glazed porcelain tile 12x24 with bullnosed corners and cove base as indicated.

1. Above reception desk at Lobby: Wood grille ceiling with acoustic batt above and integrated recessed lighting;

- a. 1200-series by 9Wood

1. Weight area: Mondo Sport Impact; 10 mm rubber sport flooring specifically designed for free weight room use

-
1. Studio floor: Robbins 2 1/8" Bio-cushion classic for dance with Northern hard maple 25/32" x 2" blind nailed. Clear sport flooring finish (3 coats) with
 2. Vented rubber cove base

-
1. Provide sound-control mineral wool batt insulation between metal studs at Studio partitions, restroom/shower rooms and demising walls. Thickness as required to fill wall cavity.

-
1. Quilted studio blanket acoustic insulation at high wall and roof as indicated, mechanically fastened
 2. Lamvin standard acoustic rigid panel wall-mounted at Studio as indicated, 1-inch thick

-
1. Exterior steel handrail system to receive high-performance coating with primer, intermediate, and and finish coat. Finish coat by Tnemec, "Fluoronar, Series 1071V"
 2. High-performance coating for exposed structural steel
 3. See Finish Schedule in DWGS for additional information.

SPECIALTIES

1. Solid Phenolic Lockers, see drawings for count and location
 - a. Day Use 36" tall x 15" wide x 15" deep (2 per tower) with overlapping "S" door design
 - b. Rentable "Kit" lockers 12x12x 12 (6 per tower)
 - c. Stainless steel hardware, door vents
 - d. Colors selected from manufacturer's colors expanded range of Wilsonart or sim
 - e. Metal stud base with cove rubber base applied. Lockers anchored to partition or steel structure behind.

-
1. Provide new toilet, soap and shower accessories for accessible toilet stall, showers and lavatory areas.
 2. Accessible bench at locker – to match locker system

-
1. Provide interior acrylic code required signage for room identification, accessibility and exiting.
 2. For wayfinding, entry, and branding signage and elements see YMCA's separate budget

-
1. Fire extinguishers with semi-recessed cabinets.

FURNISHINGS

1. Owner provided FFE
2. Manual window coverings
3. Recessed entry mat at YMCA entrance
4. Exterior circular bicycle racks (2)

STRUCTURAL DETAILS

THE STRUCTURAL WORK INCLUDES THE FOLLOWING:

- A. NEW FREE-STANDING ROOM WITHIN THE EXISTING BUILDING, CONSISTING OF COLD-FORMED STEEL CONSTRUCTION, WITH PLYWOOD ROOF AND WALL
 - 1. SHEATHING.
- B. NEW CANOPY AT NORTH ENTRY OF THE BUILDING, NEW CONCRETE RAMP WORK OVER (E)S.O.G. WITHIN THE BUILDING.
- C. Plywood sheathing supported by metal stud walls along the interior perimeter of the building.

MECHANICAL DETAILS

- 1. Radiant flooring installed in YMCA tenant space
- 2. Split System Outdoor/Indoor Unit
- 3. Heat Pump for Radiant Heating
- 4. Exhaust Fans (3)
- 5. Supply Fans (2)
- 6. Large Interior Fans in YMCA Space (3)
- 7. Water Heater (1)
- 8. 20 GPM Pump for Radiant Flooring

PLUMBING DETAILS

- 1. Floor Cleanout
- 2. Hose Bibb at Dogpatch Paddle tenant space
- 3. Area Drain
- 4. Water Closet (ADA Compliant)
- 5. Lavatory
- 6. Sinks at new YMCA restroom and breakroom spaces
- 7. Shower (2) in new YMCA restroom space
- 8. Bottle filler/Water fountain in YMCA space

ELECTRICAL DETAILS

- 1. New lighting and branch circuiting to existing panel
- 2. Maintain some of the existing power and signal outlets and provided additional new power branch circuiting and raceway systems as required to new power and signal outlets

ATTACHMENT 2

FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the Port of San Francisco on behalf of City and County of San Francisco, State of California, has awarded to:

hereinafter designated as the "Principal", a Lease by Port Commission Resolution No. xx-xx, adopted on xxx, xx, xxxx for:

Lease No. L-16997 (the "Contract")

WHEREAS, said Principal is required under the terms of said Contract to furnish a Bond for the faithful performance of certain improvements under said Contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done;

NOW, THEREFORE, we the Principal and

as Surety, are firmly bound unto the City and County of San Francisco in the penal sum of

(PERFORMANCE BOND)

and

(PAYMENT BOND)

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for the penal sum for a performance bond and an equal and separate penal sum for a separate payment bond. The conditions of this obligation is such that if the said principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

(PERFORMANCE BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

(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 Insurance Code 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 brought against this Bond.

Should the condition of this Payment Bond be fully performed, then this obligation shall become null 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.

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 to authority of its governing body.

Approved as to form:
David Chiu
City Attorney

By: _____
Deputy City Attorney

Principal

By: _____

Surety

By: _____
END OF DOCUMENT

ATTACHMENT 3 INITIAL IMPROVEMENTS THAT DO NOT NEED TO BE REMOVED FROM THE PREMISES

Subject to Section 14.8 of the Lease, the following table lists Initial Improvements that can remain at the Premises or that must be removed (unless otherwise requested by Port) at the end of the lease term.

Area of Improvement	Description (if needed)	Status	
		Can Remain	To be Removed Unless Otherwise Requested by Port
Mechanical Infrastructure and Equipment	The new HVAC systems are connected throughout Building 49 across the tenant spaces. This includes radiant flooring system and electrical heating components.	X	
Electrical Infrastructure and Equipment		X	
Plumbing Infrastructure and Equipment		X	
Openings	All new exterior windows, storefronts, and large coiling doors.	X	
Interior Walls	Offices, breakrooms, and miscellaneous interior walls and openings.		X
Plywood Sheathing	Interior perimeter plywood sheathing	X	
Interior Structural Walls	Interior structural walls that separate tenant spaces.	X	
Ceilings	Ceilings of tenant spaces. Includes food and beverage tenant area and auxiliary space in master tenant space.	X	
Additional Restrooms	New restroom and water closet facilities.	X	
FFE	All fixtures, furniture, and equipment throughout the building		X
Tile and Flooring	All tile and finished flooring material throughout the tenant spaces	X	
IT Low Voltage	All security and communications equipment.		X
Fire Alarm Systems	All fire systems	X	
Signage	All tenant interior and exterior signage including code compliance signage.		X

Unrentable Space	All infrastructure, equipment, and fixtures including public restroom facilities.	X	
Paint	Tenant-specific painting of interior or exterior walls (e.g. business signage, murals)		X