

File No. 121170

Committee Item No. 6

Board Item No. 18

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance

Date January 9, 2013

Board of Supervisors Meeting

Date January 15, 2013

Cmte Board

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Completed by: Alisa Miller Date January 4, 2013
 Completed by: Alisa Miller Date January 10, 2013

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
 The complete document can be found in the file.

1 Real Property Lease Amendment - Autodesk, Inc. - Pier 9]

2
3 **Resolution approving Port Commission's Second Amendment to Lease No. L-15169**
4 **with Autodesk, Inc., a Delaware corporation for the lease of office space and**
5 **unimproved shed space at Pier 9 in the Northern Waterfront with a one hundred and**
6 **twenty month term.**

7
8 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San
9 Francisco Charter Sections 4.114 and B3.581 empower the San Francisco Port Commission
10 ("Port Commission") with the power and duty to use, conduct, operate, maintain, manage,
11 regulate and control the lands within Port Commission jurisdiction; and

12 WHEREAS, Autodesk, Inc. a Delaware corporation, ("Autodesk") is a San Francisco
13 based business currently located at Pier 9 pursuant to Port of San Francisco Lease No.
14 L-15150, a 66-month lease for approximately 8,391 square feet with rent credits applied for
15 significant tenant improvements, as approved by the Port Commission on September 11,
16 2012 by Resolution 12-64 as amended by the First Amendment ("Lease"); and

17 WHEREAS, Port and Autodesk have mutually agreed on the terms and conditions of a
18 Second Amendment to the Lease (the "Second Amendment") approved by the Port
19 Commission on October 23, 2012 by Resolution 12-79 to increase the Lease term to 120
20 months, increase the minimum required tenant investment to \$7,000,000, increase the rent
21 credit to \$2,861,311.50 (\$105.24 per sq.ft.) for core and shell improvements only, and add
22 approximately 18,799 square feet of existing office space and unimproved shed space located
23 at Pier 9. The total new premises is approximately 27,190 square feet with an initial monthly
24
25

1 rent of \$55,444.00 (\$2.25 & \$1.25 per sq. ft.) after a 180-day rent-free construction period;
2 and

3 WHEREAS, a copy of the Lease, the First Amendment, and the Second Amendment,
4 are on file with the Clerk of the Board in File No. 121170; and

5 WHEREAS, Pursuant to requirements under the California Environmental Quality Act
6 (CEQA), the environmental effects of the Second Amendment were reviewed and determined
7 to be exempt from CEQA under a General Rule Exclusion issued by the San Francisco
8 Planning Department to the Port, dated November 2012, which allows the Port to lease and
9 manage property where there is no change or substantial intensification of the existing use;
10 and

11 WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors
12 approval of real property leases with terms of ten (10) or more years, including extension
13 options, or having anticipated revenue to the City of One Million Dollars (\$1,000,000.00) or
14 more; and

15 WHEREAS, with the Second Amendment, the Lease will have revenues that exceed
16 One Million Dollars (\$1,000,000.00), and the term will be ten years; now, therefore, be it

17 RESOLVED, That the Board of Supervisors approves the Second Amendment; and, be
18 it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
20 Director of the Port (the "Executive Director") to execute the Second Amendment in a form
21 approved by the City Attorney and in substantially the form of the Second Amendment on file
22 with the Clerk of the Board of Supervisors; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
24 Director to enter into any additions, amendments or other modifications to the Lease
25

1 (including, without limitation, preparation and attachment of, or changes to, any or all of the
2 exhibits and ancillary agreements) that the Executive Director, in consultation with the City
3 Attorney, determines when taken as a whole, are in the best interest of the Port, do not
4 materially increase the obligations or liabilities of the Port or City or materially decrease the
5 public benefits accruing to the Port, and are necessary or advisable to complete the
6 transactions contemplated and effectuate the purpose and intent of this Resolution, such
7 determination to be conclusively evidenced by the execution and delivery by the Executive
8 Director of any such documents; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors approves, and ratifies all prior
10 actions taken by the officials, employees and agents of the Port Commission, or the City with
11 respect to the Lease.

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

January 4, 2013


TO: Budget and Finance Committee 
FROM: Budget and Legislative Analyst
SUBJECT: January 9, 2013 Budget and Finance Committee Meeting

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Item 6
File 12-1170

Department:
Port

EXECUTIVE SUMMARY

Legislative Objective

The resolution would approve a Second Amendment to the lease agreement between the Port and Autodesk, Inc. (Autodesk) for the lease of additional office space and unimproved shed space at Pier 9 in the Northern Waterfront for a ten-year term beginning on or about January 15, 2013 to approximately January 14, 2023.

Key Points

- On September 11, 2012, the Port Commission approved a 66-month lease with Autodesk from October 1, 2012 through March 31, 2018 for approximately 8,391 square feet of office space and unimproved shed space located at Pier 9. The original lease was not subject to Board of Supervisors approval because it was for less than ten years and \$1,000,000 in revenues.
- The proposed Second Amendment, approved by the Port Commission on October 23, 2012, would:
 - (a) Increase the lease term from 66 months to 120 months (ten years);
 - (b) Increase the leased space from 8,391 square feet to 27,190 square feet of office space and unimproved shed space, an increase of 18,799 square feet;
 - (c) Require minimum tenant improvements of \$7,000,000, which includes construction and renovations to the building's shell and interior structure, installation of building systems, and for other tenant improvements; and
 - (d) Provide a rent credit of \$2,861,311 for construction of the building shell and installation of building systems.
- At the time of writing this report, Autodesk's construction estimates were \$4,185,998 for core and shell improvements and \$4,898,563 for tenant improvements, totaling \$9,084,561, or \$2,084,561 more than the minimum required improvement amount of \$7,000,000.
- The proposed Second Amendment impacts two existing Pier 9 tenants, including (a) termination of the existing lease between the Port and DNA Direct (DNA), and (b) relocation of Cabouchon Properties, LLC (Cabouchon) to a different office space on Pier 9.

Fiscal Impact

- Under the proposed lease, Autodesk will pay monthly base rent of \$55,444 which will increase by 3% per year, as shown in the Attachment to this report. Base rent will be offset by six months of rent abatement from January 15, 2013 to July 14, 2013 to allow for construction of tenant improvements and rent credits, as noted above. Over the ten-year term of the lease, the Port will receive net rent of \$4,474,676, as shown in Table 3 below.

Policy Consideration

- The Port did not competitively bid the original lease with Autodesk, consistent with Port practice to not competitively bid office and warehouse (shed) space. According to Mr. Bauer, the Port considered competitive bidding of the original lease between the Port and Autodesk to be impractical because the lease was for functionally obsolete office space and unimproved shed space, requiring the tenant to make improvements of approximately \$3,230,745. Because the City's Administrative Code Section 2.6-1, requires that leases of City-owned property be competitively bid, unless the Board of Supervisors finds that the bidding procedures for the leases are impractical or impossible, and legislation was not previously submitted by the Port to the Board of Supervisors to make such a finding, the Budget and Legislative Analyst considers approval of the proposed Second Amendment to be a policy matter for the Board of Supervisors.

Recommendations

- Amend the proposed resolution by changing line 22 of page 1 from "approximately 18,499 square feet of existing office space" to "approximately 18,799 square of existing office space" to reflect the correct increase in square footage from Autodesk's original lease to the expanded space as set forth in the proposed Second Amendment.
- Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with City Charter Section 9.118(c), any lease of City-owned property, modification to lease, amendment or termination of lease exceeding ten years and/or having anticipated revenue to the City of \$1,000,000 or more, is subject to approval by the Board of Supervisors.

Background

Autodesk, Inc. (Autodesk) is a publicly traded, American multinational corporation that focuses on 3D design software used in a variety of industries. On September 11, 2012 the Port Commission approved a lease with Autodesk, for approximately 8,391 square feet of office space and unimproved shed space located at Pier 9 for a 66-month term that commenced October 1, 2012. The original lease was not subject to Board of Supervisors approval because it was for less than ten years and \$1,000,000 in revenues.

Autodesk is rapidly expanding and needs additional space to accommodate its growth. Therefore, the Port is proposing an amendment to the existing lease to increase the leased space and modify the existing terms.

DETAILS OF PROPOSED LEGISLATION

The resolution would approve a Second Amendment to the existing lease agreement with Autodesk for the lease of office space and unimproved shed space at Pier 9 in the Northern Waterfront for a ten-year term beginning on the effective date of the Second Amendment which is expected to be on or about January 15, 2013.

The proposed Second Amendment, approved by the Port Commission on October 23, 2012 would:

- (a) Increase the lease term from 66 months to 120 months (ten years);
- (b) Increase the leased space from 8,391 square feet to 27,190 square feet of office space and unimproved shed space, an increase of 18,799 square feet;
- (c) Require minimum tenant improvements of \$7,000,000, which includes construction and renovations to the building's shell and interior structure, installation of building systems, and other tenant improvements; and
- (d) Provide a rent credit of \$2,861,311 (see Table 3 below) for construction of the building shell and installation of building systems.

Details of the proposed Second Amendment are provided in the Attachment to this report, which was prepared by the Budget and Legislative Analyst.

The unimproved shed space that Autodesk is proposing to lease is currently used for parking, to house a trash compactor for the Waterfront Restaurant, and to store construction material. According to Mr. Jeff Bauer, Leasing Manager for the Port of San Francisco, two of the four office spaces that would be incorporated into Autodesk's expansion have been vacant since 2010 and are functionally obsolete.¹

Impact on Existing Tenants

The proposed Second Amendment impacts three existing Pier 9 tenants, including (a) termination of the existing lease between the Port and DNA Direct (DNA), (b) relocation of Cabouchon Properties, LLC (Cabouchon), and (c) the relocation of the Waterfront Restaurant's trash compactor.

Termination of DNA Direct Lease

Under the original lease between the Port and DNA Direct, which was effective from September 1, 2010 to August 31, 2014, DNA paid a blended rate of approximately \$2.35 per square foot per month for 7,137 square feet of office space and for 1,314 square feet of unimproved shed space and non-exclusive bathroom space, totaling 8,451 square feet.

¹ The space is not compliant with the Americans with Disability Act (ADA) or building standards under Title 24 within the California Code of Regulations.

On October 18, 2012, the Port Commission approved a Mutual Termination Agreement between DNA and the Port which enabled Autodesk to incorporate DNA's office, shed and bathroom space into Autodesk's total expanded space (27,190 square feet) under the proposed Second Amendment. Autodesk would pay a blended rate of approximately \$2.25 per square foot per month for the entire 8,451 square foot space, including the unimproved shed and bathroom space, which is consistent with the Port's FY 2012-13 Monthly Rental Rate Schedule.

The total reduction in rent revenues to the Port under the proposed Second Amendment for DNA's 8,451 square foot space is \$10,141 per year. However, according to Mr. Bauer, the overall benefit of the (1) 10-year lease term, (2) total expanded square footage, (3) 3% annual rent increase, and (4) estimated \$9,000,000 investment in Port property (see Table 1 below) exceeds the \$10,141 reduction in annual rent revenues.

Relocation of Cabouchon

Cabouchon formerly occupied office space on Pier 9 and was relocated to make room for Autodesk's expansion. Although Cabouchon's lease was not set to terminate until March 31, 2016, Cabouchon agreed to relocate to a smaller suite on Pier 9.

Pursuant to Cabouchon's lease terms, the Port was required to provide Cabouchon with a functionally equivalent relocation space. Autodesk agreed to pay Cabouchon \$225,000 for improvements to their relocated office space and in exchange, Cabouchon terminated its lease early and entered into a new, five-year lease with the Port for Suite 105 on Pier 9. Under the prior First Amendment to the lease, the Port incurs no liability for the relocation of Cabouchon.

The Waterfront Restaurant's Trash Compactor

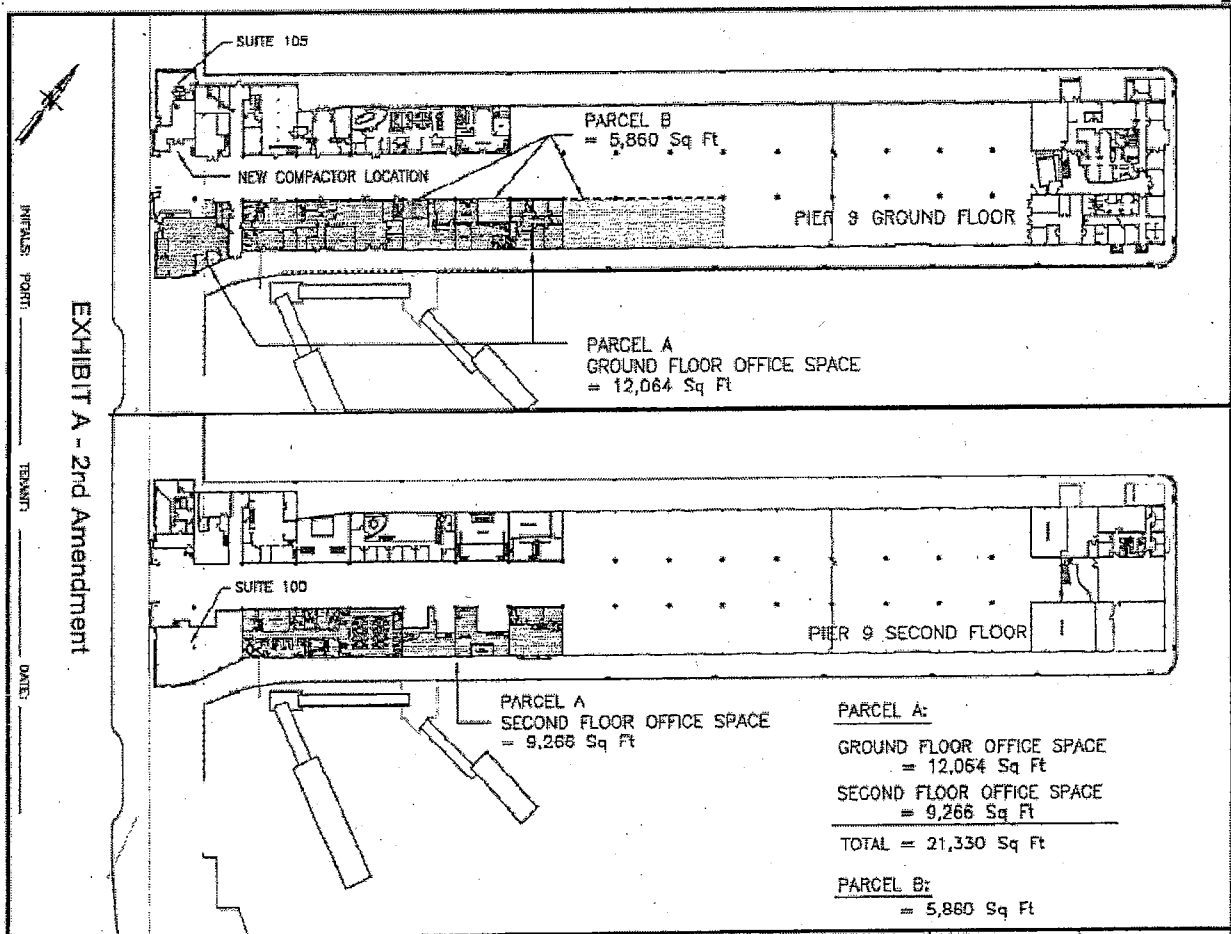
According to the original lease between Autodesk and the Port, Autodesk is required to relocate the Waterfront Restaurant's trash compactor at Autodesk's sole cost to a new trash room or to implement a new waste system within 30-days of the original lease's commencement date, which was October 31, 2012. The Port and Autodesk agreed to extend the date for the relocation until December 31, 2012 which Autodesk has completed on time.

Proposed Lease Space

As shown in Chart 1 below, the proposed lease contains a total of 27,190 square feet:

- (1) 12,064 square feet of office space on the ground floor and 9,266 square feet of office space on the second floor totaling 21,330 square feet of office space, and
- (2) 5,860 square feet of shed space.

Chart 1
Pier 9 Parcel A Office Space and Parcel B Shed Space



Pier 9 Improvements

Pier 9's exterior space would be rented to Autodesk "as is" without any improvements or alternations by the Port. According to the proposed Second Amendment, Autodesk would be required to complete a minimum of \$7,000,000 of improvements consisting of core and shell improvements that would be offset by rent credits provided by the Port and tenant improvements that would be funded completely by Autodesk.

If Autodesk does not complete the improvements within six months of the Second Amendment commencement date, Autodesk is required to provide the Port with a deposit, either a cash or letter of credit; to complete the improvements.²

² According to Mr. Bauer, the Port generally requires a payment and performance bond for construction of improvements on Port property to protect the Port if the tenant fails to complete the improvements. However, it was agreed that Autodesk could provide cash or letter of credit because Autodesk has sufficient cash on hand.

As shown in Table 1 below, Autodesk will be making an estimated:

- (1) \$4,185,998 in improvements to Pier 9's core and shell which is Port property and can be offset by rent credits, and
- (2) \$4,898,563 in tenant improvements which benefit the tenant and cannot be offset by rent credits.

The major improvements that Autodesk will be making to the core and shell include: (1) an Americans with Disabilities Act (ADA) compliant elevator, (2) heating ventilation and air conditioning system, (3) fire sprinkler system, (4) flooring, (5) new electrical and natural gas service, (6) structure supports and seismic bracing, and (6) wall construction to enclose the unimproved shed space.

Table 1
Construction Costs for Pier 9 Improvements

Category	Core & Shell Improvements	Tenant Improvements	Total
Demolition	\$159,778	\$159,778	\$319,556
Sitework	46,707	11,676	58,383
Substructure	651,521	0	651,521
Superstructure	1,158,612	0	1,158,612
Exterior Skin	976,288	0	976,288
Roofing	199,473	0	199,473
Interior Construction	278,863	2,509,763	2,788,626
Conveying	73,358	0	73,358
Special Construction	0	70,000	70,000
Plumbing/Process Piping	115,299	214,127	329,426
Fire Protection	26,716	106,864	133,580
Mechanical	100,337	568,579	668,916
Electrical	99,007	891,061	990,068
Jobsite Management	240,732	294,228	534,960
Project Requirements	59,307	72,487	131,794
Total	\$4,185,998	\$4,898,563	\$9,084,561

Autodesk's total estimated construction costs of improvements of \$9,084,561, as shown in Table 1 above, are \$2,084,561 more than the minimum required improvement amount of \$7,000,000 set forth in the lease.

Rent Credits

Under the proposed Second Amendment, Autodesk would receive rent credits up to \$2,861,311, as shown in Table 2 below, which is intended to offset Autodesk's costs for improvements to the Port's property. The rent credits may be deducted in equal installments of \$25,099 per month

beginning the seventh month of the lease term and continuing until the end of the ten-year lease term.

Table 2
Pier 9's Capital Improvement Investments

Proposed Improvements	Total Cost	Less Port Rent Credits	Autodesk Costs
Core & Shell	\$4,185,998	\$2,861,311	\$1,324,687
Tenant Improvements	4,898,563	0	4,898,563
Total	\$9,084,561	\$2,861,311	\$6,223,250
Investment Percentage	100%	31%	69%

Six-Month Rent Abatement

Under the proposed Second Amendment, Autodesk would not be required to pay rent for the additional 18,799 square feet of existing office space and unimproved shed space for the first six-months of the Second Amendment, coinciding with the expected length of time to construct the above-noted improvements. The foregone rent during this six-month period, from approximately January 15, 2013 to July 14, 2013, is approximately \$332,664 (six months times \$55,444).

Existing Port policy allows Port staff to provide one-month of rent abatement for each year of the lease term, up to three-months without Port Commission approval. Under the Second Amendment, Autodesk would receive six-months of rent abatement which requires the Port Commission's approval. The Port Commission approved the six-month rent abatement period when the lease was approved by the Port Commission on October 23, 2012.

FISCAL IMPACT

The total net revenue that the Port would receive under the proposed Second Amendment for the first year would be approximately \$223,532 and approximately \$4,474,676 over the ten-year lease term, as shown in Table 3 below. The initial monthly rent for the approximately 27,190 square feet at Pier 9 is \$55,444 (see Attachment) and is projected to commence on July 15, 2013 after a six-month rent abatement period.

Rent for the space under the original lease for approximately 8,391 square feet is \$13,822 a month and is scheduled to commence on April 1, 2013, which is three-months earlier than the commencement date for the additional 18,799 square feet of space. This three-month period of rent of \$41,463 is included in the first year's total net revenues under "Three-Month Original Contract Rent" as shown in Table 3 below. The six-month rent abatement period for the original lease will not be reset by the Second Amendment.

The Port has negotiated a 3% annual rent increase per year over the ten-year lease term beginning on the first anniversary of the effective date of the proposed Second Amendment which is expected to be on or about January 15, 2013.

Table 3
Total Rent under the Proposed Lease

Year	Annual Rent	Three-Month Original Lease Rent	Six-Month Rent Abatement	Rent Credits	Total Net Revenues
1	\$665,328	\$41,463	(\$332,664)	(\$150,595)	\$223,532
2	685,284	0	0	(\$301,191)	384,093
3	705,840	0	0	(\$301,191)	404,649
4	727,020	0	0	(\$301,191)	425,829
5	748,824	0	0	(\$301,191)	447,633
6	771,288	0	0	(\$301,191)	470,097
7	794,436	0	0	(\$301,191)	493,245
8	818,268	0	0	(\$301,191)	517,077
9	842,808	0	0	(\$301,191)	541,617
10	868,092	0	0	(\$301,191)	566,901
Total³	\$7,627,188	\$41,463	(\$332,664)	(\$2,861,311)	\$4,474,676

Source: Budget and Legislative Analyst

Financial Feasibility

According to Mr. Bauer, Autodesk is in good financial standing based on the Port's criteria for determining credit worthiness. Autodesk's publicly available financial reports indicate that Autodesk's total net revenue to date for fiscal year 2013 is \$1,705,000,000; Autodesk's total cash and short-term securities to date for fiscal year 2013 is \$1,737,000,000.⁴

Minimum Net Effective Rental Rate

Each year, the Port Commission establishes "Minimum Net Effective Rental Rates" also referred to as parameters, according to commercial property use and location, and based on fair market value. The current Net Effective Rental Rates for Pier 9 are \$2.20 per square foot per year for office space and \$1.25 per square foot per year for shed space.

According to existing Port policy:

"Port staff has the authority to issue tenant improvement allowances for floor and wall coverings if those credits do not result in the net rent over the term of the lease to be below the Minimum Net Effective Rental Rates found in the Rental Rate Schedule."

Mr. Bauer noted that, with the exception of two suites located on Pier 9, the 27,190 square foot space that Autodesk is proposing to lease could not be leased at current Net Effective Rental Rates because it is functionally obsolete. Therefore, the proposed Second Amendment is consistent with the aforementioned Port policy as the Port will begin to receive rent revenues for space that could not currently be leased at Minimum Net Effective Rental Rates.

³ \$3 difference (\$4,474,676 compared to \$4,474,673) is due to rounding.

⁴ Autodesk, Inc. Quarter 3 Fiscal Year 2013 Earnings Release, November 15, 2012.

Calculation Error

According to page 1, line 22 of the proposed resolution, the increase in square footage from the Original Lease to the proposed Second Amendment is shown as "18,499 square feet." The correct amount is an increase of 18,799 square feet. Therefore, the Budget and Legislative Analyst recommends amending the resolution to reflect the correct increase in square footage.

POLICY CONSIDERATION

The Port did not competitively bid the original lease with Autodesk, consistent with Port practice to not competitively bid office and warehouse (shed) space. According to the Port's Leasing Policy:

"The Port usually enters into non-retail leases without competitive bidding, based on the Port's Commission's approved parameter rental rate policy and a finding, upon public hearing of the Port Commission, that bidding office, warehouse, open land or other (non-retail) leases is impractical."

According to Mr. Bauer, the Port considered competitive bidding of the original lease between the Port and Autodesk to be impractical because the lease was for functionally obsolete office space and unimproved shed space, requiring the tenant to make improvements of approximately \$3,230,745.

Because the City's Administrative Code Section 2.6-1, requires that leases of City-owned property be competitively bid unless the Board of Supervisors finds that the bidding procedures for the leases are impractical or impossible, and legislation was not previously submitted by the Port to the Board of Supervisors to make such a finding, the Budget and Legislative Analyst considers approval of the proposed Second Amendment to be a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. As noted above, amend the proposed resolution by changing line 22 of page 1 from "approximately 18,499 square feet of existing office space" to "approximately 18,799 square of existing office space" to reflect the correct increase in square footage from Autodesk's original lease to the expanded space set as forth in the proposed Second Amendment.
2. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.

Term	120 months (10 years)
Commencement Date	Approximately January 15, 2013, upon Board of Supervisors approval and Port execution of lease
Premises	<u>Parcel A</u> : 21,330 square feet of general office space, Pier 9 <u>Parcel B</u> : 5,860 square feet of shed space, Pier 9
Use	Office, research and development and workshop space
Initial Monthly Rent	Approximately \$2.25 for 21,330 square feet of general office space, Pier 9, Parcel A Approximately \$1.25 for 5,860 square feet of shed space, Pier 9, Parcel B Total: \$55,444
Rent Commencement Date	181 days from the Second Amendment (6 months) commencement date which is on or around July 15, 2013.
Lease Expiration Date	Anticipated January 15, 30, 2023
Rent Increase	3% increase on each anniversary of the Rent Commencement Date
Tenant Improvements	No less than \$7,000,000 of core and shell and tenant improvements within 180 days of the Commencement Date.
Rent Abatement Period	180 days for initial Lease and 180 days for expanded premises
Rent Credits	Autodesk will receive a maximum rent credit of \$2,861,311 from months 7-120 at a rate of approximately \$25,099.22 per month to offset the costs of core and shell improvements. Rent credits are contingent upon completion of improvements and will not be provided until a Certificate of Completion is issued.
Security Deposit	\$144,638.68 due no later than 3 days after the Second Amendment Commencement Date.
Termination Rights	Upon issuance of a Certificate of Completion for Tenant Improvements, the Autodesk can terminate the Lease on the last day of the 60 th month of the term with no fewer than 6 months' notice without a termination fee. Autodesk will not be entitled to any outstanding or unused Rent Credit for any of the unamortized tenant improvement costs.

Sublease Rights	The Port does not have an option to recapture any proposed sublease area if Autodesk requests Port's consent to a sublease. If Autodesk subleases space for more than Autodesk's monthly base rent, Autodesk must pay the Port the excess rent less the subletting expenses.
Maintenance and Repair	If the Port fails to maintain and repair the exterior of Pier 9, such as the roof, roof membrane, and exterior walls and doors, then Autodesk is permitted to make repairs at its sole cost and expense with the Port's consent.
Utilities	Autodesk is responsible for utilities.
Rights to Negotiate for Pier 9 Suites 100 and 105	Autodesk will have a one-time right to make an offer to amend this lease to add Suite 100 and/or Suite 105 if the current tenants do not wish to continue their lease.

2012.1447



November 15, 2012

Monica Pereira, Environmental Planning
 San Francisco Planning Department
 1650 Mission Street, Suite 400
 San Francisco, CA 94103

Re: Monthly CEQA Exemption Report for Port Lease Agreements & Permits

Dear Ms. Pereira:

I am writing to inform your department of the anticipated Port property agreements that will be entered into by relying on the General Rule Exclusion (GRE) category issued by Environmental Planning on February 2, 2012, effective through 2015; in addition Port Repair and Maintenance Projects, Encroachments and Special Events Permits that will be approved by relying on the Exemption from Environmental Review for these types of projects issued by Environmental Planning on March 1, 2012 effective through March 1, 2013 for the month of November 2012.

November GRE Leases

The Port is completing or has completed negotiations for six new property agreements for the month of November 2012. These property agreements fall within the scope of routine leasing activities on Port property with tenants that (1) continue an existing land use, (2) will not make any substantial physical changes to their leased site, and (3) will not generate a substantial intensification of the existing use through their operations. Please find below site information for these new lease agreements.

LEASE TYPE	TENANT NAME	LOCATION	USE	SF or LF
New	Black Coalition on Aids	601 Cesar Chavez	Office Retail Clinic Parking	1,893 5,000 476 4,235
Previous	Butler Enterprise Group	601 Cesar Chavez	Restaurant Parking	7,369 4,235
New	Autodesk, INC	Pier 9	Office Shed	21,330 5,560
Previous	Cabouchon	Pier 9	Office Parking	2,202 450
Previous	Bayworld Trading	Pier 9	Office	2,480
Previous	Signature Dining Yachts	Pier 9	Office	1,200
Previous	CA State Bar Pilot Commission	Pier 9	Office	2,356
Previous	Port of San Francisco	Pier 9	Office	1,346
Previous	DNA Direct	Pier 9	Office	8,465
New	Golden Gate Audubon Society	Pier 94	Wetlands	43,800
Previous	Port	Pier 94	Wetlands	43,800
Renewal	Waldorf Ltd	Pier 45	Storage	2,342
Renewal	Crab Station at Fisherman's Wharf, Inc.	Pier 45	Storage	1,258
Renewal	Promia Incorporated	Agricultural Bldg.	Office	3,852



Exempt Basic Repair, Maintenance and Encroachment Projects for the time period between January 15, 2012 to November 15, 2012. These activities are determined to be categorically exempt under State CEQA Guidelines Section 15301 or Class 1, Section 15305 or Class 5 and Section 15306 or Class 6.

Location	Use	Consistent w/Historic Preservation Standards	Repair, Maintenance Encroachment Description
Pier 23	Restaurant	N/A	Temporary Tent from 11/15 – 2/15
Pier 1 1/2	Restaurant	N/A	Temporary Tent from 11/15 – 2/15
Waterbar at Rincon Park	Restaurant	N/A	Temporary Tent from 11/28 – 1/3
Pier 7	Restaurant	N/A	Temporary Tent 11/30 – 1/3

November Special Event Exemptions

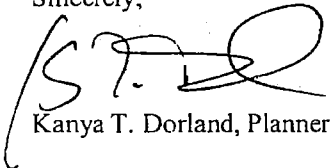
These activities are determined to be categorically exempt under State CEQA Guidelines Section 15304(e) or Class 4(e) and Section 15311(c) or Class 11(c)

Location	Name/Sponsor	Date & Duration	Attendees	Event Type
Pier 48	Holiday Party/Yahoo	12/1/12	5,000	Temporary Improvements
Pier 48	Giants World Series Post Game Event/ Giants	10/24 – 11/1	1,000	Temporary Improvements
Pier 48	Facebook Holiday Party	12/7/12	5,600	Temporary Improvements
Pier 39	Gillette Urbanathlon Training Grounds	11/8/12	3,000	Temporary Improvements
Pier 39	Tree Lighting Celebration	11/18/12	3,000	Temporary Improvements
The Embarcadero & Jefferson Street	Urbanathlon/Men's Health	11/18/12	1,000	Temporary Improvements
Pier 30	Delancey St. Christmas Tree Lot	11/1 -12/31	500	Temporary Tents
SWL 332	Episcopal Charities	11/10/12	250	Temporary Improvements



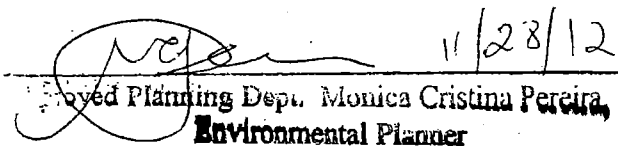
Our intent is to provide Environmental Planning monthly reports on proposed lease agreements, basic repair and maintenance, encroachment and special event projects that the Port intends to permit before they are approved by staff or the Port Commission. We are providing this lease information to Environmental Planning pursuant to Section 31.08 (f) of Chapter 31 of the Administrative Code, which provides for posting and noticing of General Rule Exclusions. We are providing this basic repair and maintenance, encroachment and special event project information in accordance with the conditions of the Port Exemption from Environmental Review issued for these types of projects. Please do not hesitate to contact me at (415) 274-0264, if you have any questions regarding these projects, or if you require any additional information. Thank you for your assistance.

Sincerely,



Kanya T. Dorland, Planner

The Planning
Department
concur with
the above
CEQA determina-
tions.



11/28/12
Environmental Planning Dept. Monica Cristina Pereira,
Environmental Planner



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

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November 28, 2012

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

12/1/12

Subject: Autodesk Second Amendment to Lease No.L-15169

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for Board of Supervisors approval, approving the Second Amendment to Port Commission Lease No. L-15169 with Autodesk, a Delaware Corporation for a term of ten (10) years for certain real property located at Pier 9 in the City and County of San Francisco.

Attached you will also find the following supporting documents:

1. Five copies of the Port Commission Staff Report and companion Resolution 12-79 (approving the proposed Second Amendment and recommending the lease to the Board of Supervisors);
2. Five copies of the proposed Port Commission Second Amendment and Lease No.L-15169.

Thank you for your consideration. If you should have questions or require additional information I may be contacted at (415) 274-0514.

Sincerely,

Jeffrey A. Bauer, Senior Leasing Manager
Port of San Francisco



MEMORANDUM

October 18, 2012

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

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Request approval of a Second Amendment to Lease No. L-15169 ("Lease") with Autodesk, Inc. a Delaware corporation ("Autodesk"), to add approximately 18,499 square feet of office space and unimproved shed space located at Pier 9 (the "Expanded Premises") to its current Lease for use as office and manufacturing space and to extend the term of the Lease to a total of 120 months, subject to Board of Supervisors' approval

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

Port staff and Autodesk have mutually agreed on the terms and conditions of a Second Amendment to Lease No. L-15169 to provide additional space at Pier 9. The Amendment is being brought before the Port Commission because the amended lease term, total rent, rent abatement period, and the rent credit amounts exceed the criteria found in the Port Commission approved business parameters. The Amendment requires Board of Supervisors approval as well because the total rent exceeds \$1,000,000 and the term is ten (10) years.

I. BACKGROUND

On September 11, 2012 the Port Commission approved Lease No. L-15169 with Autodesk, Inc. a Delaware corporation, for approximately 8,391 square feet of office space and unimproved shed space located at Pier 9 with a term of 66 months (Resolution No. 12-64). Lease No. L-15169 commenced on October 1, 2012; Autodesk is already doing preliminary demolition work and the Port is process permits. Autodesk is a tenant in good standing.

THIS PRINT COVERS CALENDAR ITEM NO. 9A

Autodesk is an American multinational corporation that focuses on 3D design software for use in the architecture, engineering, construction, manufacturing, media and entertainment industries.

Autodesk now desires to lease additional space to accommodate its rapid expansion and associated space needs. The expansion space at Pier 9 will house Autodesk's consumer products division. The initial Lease approved in September by the Port Commission is to relocate and house its newly acquired company instructables.

Port staff and Autodesk have agreed on terms and conditions found in the Second Amendment to Lease No. L-15169 now before the Port Commission for approval. The Second Amendment adds approximately 18,499 square feet of existing office space and 8,691 square feet of previously unimproved shed space located at Pier 9 (see attached location map). The expanded premises amount will be approximately 27,190 square feet. The majority of the office spaces are now functionally obsolete. Two of the four office spaces that will be incorporated into the expansion premise have been vacant since 2010.

The unimproved shed space is an open area, currently being used for a trash compactor for the Waterfront Restaurant, construction material storage, parking, and a nonoperational stevedore restroom facility.

Autodesk will construct a minimum of \$7,000,000 of improvements consisting of: enclosing existing unimproved shed space to construct a 5,058 square foot workshop-space, new non-permeable floors, wall construction and window installation (floor to ceiling windows), replacement of existing doors and windows, complete renovation of the existing office space, installation of Heating Ventilation and Air Conditioning system, new electrical service and data systems, constructing of American's with Disabilities Act ("A.D.A") compliant bathrooms, paths of travel, an accessible entry-way, a demonstration kitchen, and an elevator. Core and shell improvements represent \$3,000,000 of the total project costs, which total \$7,000,000.

The new initial monthly rent prior to rent credit deductions is \$55,444.00 per month or \$2.25 per square foot for the office space and \$1.25 per square foot for the unimproved shed space. Both rates are in-line with the FY 2012/2013 Port Commission approved parameter rates for Pier 9 office and shed space. The monthly rent will be increased by 3% annually beginning on the first anniversary date of the Lease Amendment.

In general, core and shell improvements consist of the building envelope and building level systems. Tenant improvements in general are alterations made to rental premises in order to customize it for the specific needs of a tenant such as painting, installing partitions, changing the flooring, putting in customized light fixtures and so on. Typically, these improvements increase the value and the marketability of rental space.

The Lease provides for a one hundred and twenty (120) month term starting on the effective date of the Second Amendment that includes a 180-day (180) rent abatement period during which no rent is paid to account for construction of the core and shell and tenant improvements.

Rent will commence one hundred eighty-one days (181) from the Second Amendment commencement date regardless of whether or not the improvements are completed. All improvements will remain on the Premises at the expiration of the Lease at no additional cost to Port.

The rent under the initial Lease No. L-15169 is scheduled to commence April 1, 2012, two months prior to the rent commencement of the additional space in the Second Amendment, anticipated to be June 1, 2013. To account for the two months beginning April 1st, the Port will include those months' rent in the amount of \$13,821.75 in months 5 and 6 (April 2013 & May 2013) in the Second Amendment.

To accommodate Autodesk's expansion, an existing Pier 9 tenant, DNA Direct, has to terminate their lease. This Second Amendment provides for the termination of the lease with DNA Direct for approximately 8,451 square feet of office subject to Port Commission approval. The Autodesk Second Amendment rental rates are in-line with DNA Direct rental rates.

The other necessary termination / relocation are Cabouchon Properties that occupies approximately 2,206 square feet of office space at Pier 9, suite 112. Cabouchon has agreed to relocate to suite 105 at Pier 9. Under the terms of Cabouchon's Lease, the Port is required to provide Cabouchon with a functionally equivalent relocation space and Autodesk has agreed to pay for the construction of up to \$75,000 of tenant improvements at suite 105 in order to provide Cabouchon a comparable improved office.

Autodesk will pay for improvements to Pier 9 Suite 105 that will make it equivalent to Cabouchon's current leasehold and will pay Cabouchon's relocation costs. In exchange, Cabouchon will terminate its current lease and enter into a new 5-year lease with Port for Suite 105 which includes the requirement to improve the space (Lease No. L-15202). Port is amenable to these arrangements, provided that it incurs no liability and is protected from Autodesk's default on its promise to fund the improvements in the new Cabouchon space.

Autodesk and the Port have entered into a First Amendment to provide that the security deposit under Autodesk's Lease may be used to secure Autodesk's payment for the improvements in the new Cabouchon leasehold. Cabouchon has agreed to release Port from any obligations under its current lease through a mutual termination agreement.

If Autodesk completes the improvements, it will have the right to early termination of the Lease until the last day of the sixtieth-month (60th) of the Lease without penalty, provided, Autodesk will have no rights to any unamortized or outstanding rent credits. Port staff believes the work-shop space can easily be converted to high-demand open plan office space should Autodesk execute its termination rights.

III. ANALYSIS

The Second Amendment is being brought before the Port Commission because the lease term, the total rent, rent abatement period, and the amortized credit exceed the

criteria found in the Port Commission approved business parameters. Below is a summary of material differences between the proposed Lease and the Port's standard form lease that the Port Commission previously approved as part of the original Lease and that will continue to apply to the amended Lease.

- In lieu of a payment and performance bond generally required for construction of improvements on Port property, Port will instead receive a deposit in the form of cash or letter of credit to protect the Port if Autodesk fails to complete the Improvements (as defined in Section II of this staff report) within 180 days after commencement of the Second Amendment.
- In the event Port fails to maintain and repair the exterior portions of Pier 9 (such as the roof, roof membrane, and exterior walls and doors), then Autodesk at its sole cost and expense, is permitted to make repairs to the exterior portions of the Pier 9 facility with Port's prior consent.
- A right of first offer to release the premises following damage and destruction to its premises or to the facility.
- The definition of Habitual Late Payer is revised to mean tenant has received (a) at least two (2) notices of *material* monetary default, or (b) at least three (3) notices of *any material non-monetary default* within a twelve (12) month period. In exchange for modifying the definition, if Autodesk is deemed to be a Habitual Late Payer, Autodesk will be obligated to pay rent in advance on a quarterly basis.
- In addition to the improvements, Autodesk must also, at its sole cost, relocate the existing trash compactor serving the Waterfront Restaurant or build out a new waste management system.
- Port does not have an option to recapture any proposed sublease area if Autodesk requests Port's consent to a sublease.
- Neither Port nor Autodesk is liable for any indirect, consequential, special, exemplary, incidental or punitive damages arising from the Lease.
- Port has no unilateral right to terminate in connection with Port development projects.

Autodesk will make a significant capital investment in Port property in the amount of approximately \$7,000,000 or \$257.45 per square foot for core and shell and tenant improvements. In consideration of this investment into Port property, the Lease provides for a 180-day rent-abatement period in the amount of \$11.22 per square foot for the construction of the improvements. The Lease also includes rent credits for the core and shell improvements only in the amount of \$2,833,668 (\$104.22 per square

foot) that may be deducted in equal installments of \$24,856.74 per month, starting month 7 and continuing through month 120. The total direct investment made by Autodesk is 59% of the total project costs.

	Minimum Investment		
Category	Total	Port	Autodesk
Core and Shell	\$3,000,000	\$2,883,667	\$116,333
Tenant Improvements	\$4,000,000		\$4,000,000
Total	\$7,000,000	\$2,883,667	\$4,116,333
Percent		41%	59%

The difference between Autodesk's investment and the rent abatement is \$153.23 per square foot or \$4,166,332 in net capital investment made directly by Autodesk into Port property.

The chart below compares a similar development lease in which significant capital investments were made into Port property and where credits were provided for core and shell improvements.

Year Commenced	2012	2008
	Autodesk	Pilara
Initial Rate PSF	\$2.25 \$1.25	\$1.02
Terms in Months	120	120
Premise Total SF	27,190	27,311
Credit PSF	\$104.22	\$108.00
Capital Invest PSF	\$257.45	\$439.00
Net Capital Investment	\$153.23	\$331.00
Capital Investment	\$7 million	\$12 million

This chart summarizes the type of improvements at the Premises that will be funded by rent credits.

Major Core and Shell improvements (Reimbursed by Credits)	Tenant Improvements Not Funded By Credits
ADA Elevator	Carpet, Paint, and Wall Coverings
Wall Construction to Enclose Parcel B	Cabinets and Fixtures
Heating Venation and Air-conditioning	Lighting System
Fire Sprinkler System	Kitchen and Appliances
Floors	Internal Demising Walls
New Electrical and Natural Gas Service	Interior Doors and Windows
Structure Supports and Seismic Bracing	Room/Space Partitions

Assuming maximum rent credits are given, the net rent paid to the Port over a 114 month period is shown in the table below.

Total Gross Rent	Total Rent Credit	Total Net Rent
\$7,294,575.89	\$2,833,668.00	\$4,460,907.89

IV. LEASE TERMS

Tenant:	Autodesk, Inc. a Delaware corporation
Lease Number:	L-15169
Premises:	Approximately 21,330 square feet of office space and approximately 5,860 square feet of unimproved shed space located at Pier 9
Term:	120 months
Second Amendment Commencement Date:	Anticipated by December 1, 2012
Rent Commencement Date:	Anticipated June 1, 2013
Lease Expiration Date:	Anticipated November 30, 2022
Initial Monthly Rent:	\$55,444.00
Rent Adjustment	3% increase on each anniversary of the Rent Commencement Date
Use:	Office, research and development and workshop space
Tenant Improvements:	No less than \$7,000,000 of core and shell and tenant improvements within 180 days of the Commencement Date
Rent Abatement Period:	180 days for initial Lease and 180 days for expanded premises
Rent Credit:	Tenant shall receive a maximum rent credit in the amount of \$2,833,668.00 that may be deducted from the monthly rent starting the latter of month 7 or the date Port issues a certificate of completion for the Improvements until expiration of the term. Rent credit is only for core and shell improvements and contingent on the completion of the Improvements.
Maintenance and Repairs:	In the event Port fails to maintain and repair the exterior portions of Pier 9 (such as the roof, roof membrane, and exterior walls and doors), then Autodesk at its sole cost and expense, is permitted to make repairs to the exterior portions of the Pier 9 facility with Port's prior consent.

<i>Holding Over:</i>	Monthly rent for holding over after expiration of the term with Port consent shall be increased by 125%; without consent, by 150%
<i>Security Deposit:</i>	Tenant shall provide a Security Deposit equal to two (2) month's Base Rent due in the last year of Lease.
<i>As Is:</i>	The Premises shall be accepted in its "as is" condition.
<i>Insurance:</i>	Tenant shall provide standard insurance coverage acceptable to Port and City Risk Manager.
<i>Default Interest:</i>	Default interest paid on unpaid rent balance changed from 10% per year to 5% per year.
<i>City Requirements:</i>	The lease includes provisions requiring Tenant to comply with all applicable City laws, including but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws.

V. RECOMMENDATION

Port staff recommends that the Port Commission approve the Second Amendment to Lease No. L-15169 with Autodesk, Inc., a Delaware corporation, as described in this staff report, subject to Board of Supervisors' approval.

Prepared by: Jeffrey A. Bauer, Senior Leasing Manager

For: Susan Reynolds, Director of Real Estate

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

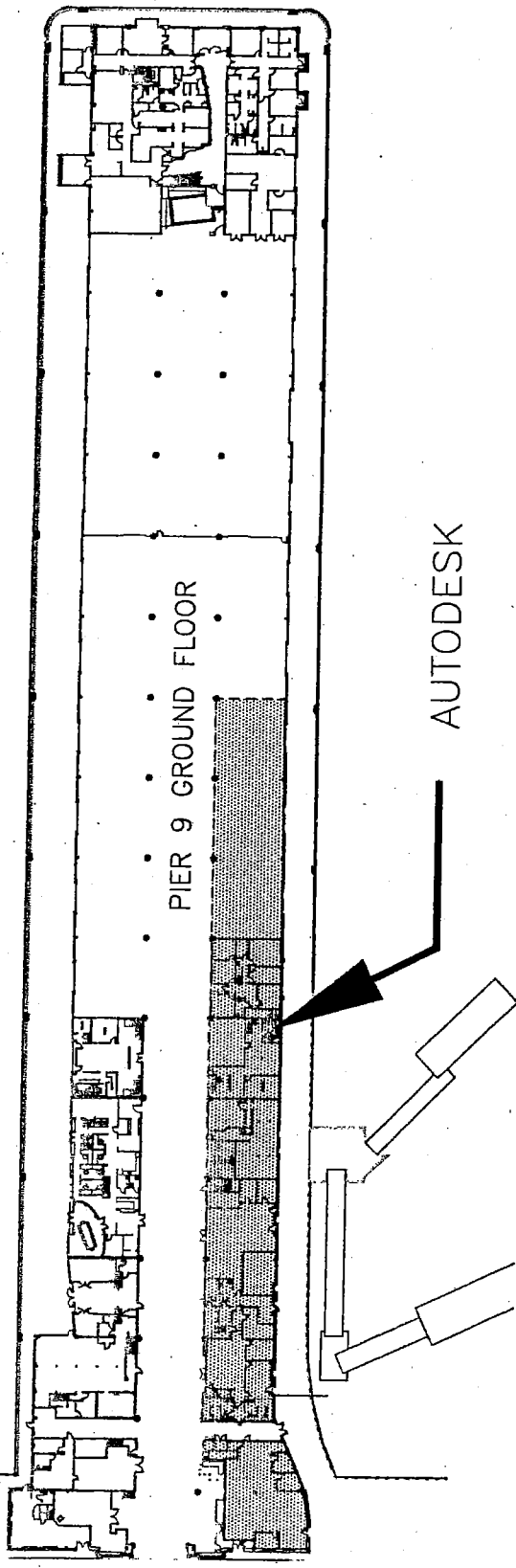
RESOLUTION NO. 12-79

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, Pier 9, located at Broadway and The Embarcadero in the City and County of San Francisco, is in the Northeast Waterfront area of the Waterfront Land Use Plan; and
- WHEREAS, Port staff has negotiated a Second Amendment to Lease No. L-15169 with Autodesk, Inc. a Delaware corporation that provides a one hundred twenty month (120) month term extension for an approximately additional 18,499 square feet of office and unimproved shed space located at Pier 9 at an initial rental rate of \$55,444.00 per month or \$2.25 per square foot for office space and \$1.25 for unimproved shed space, and other terms and conditions described in the staff report accompanying this resolution; and
- WHEREAS, the Second Amendment provides for a one hundred eighty (180) day free rent period and total rent credits in the maximum amount of \$2,833,668.00 in consideration for Tenant's construction, at its sole expense, of a minimum of \$7,000,000 million of core and shell and tenant improvements which will have value to the Port following the end of the Lease; and
- WHEREAS, the permitted uses in the Lease are a continuation of existing and related uses and are therefore covered under the General Rule Exclusion pursuant to the California Environmental Quality Act; now, therefore be it
- RESOLVED, that the Port Commission approves the Second Amendment to Lease No. L-15169 subject to the Board of Supervisors approval and upon such approval authorizes the Executive Director or her designee to execute said Lease; and, be it further

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

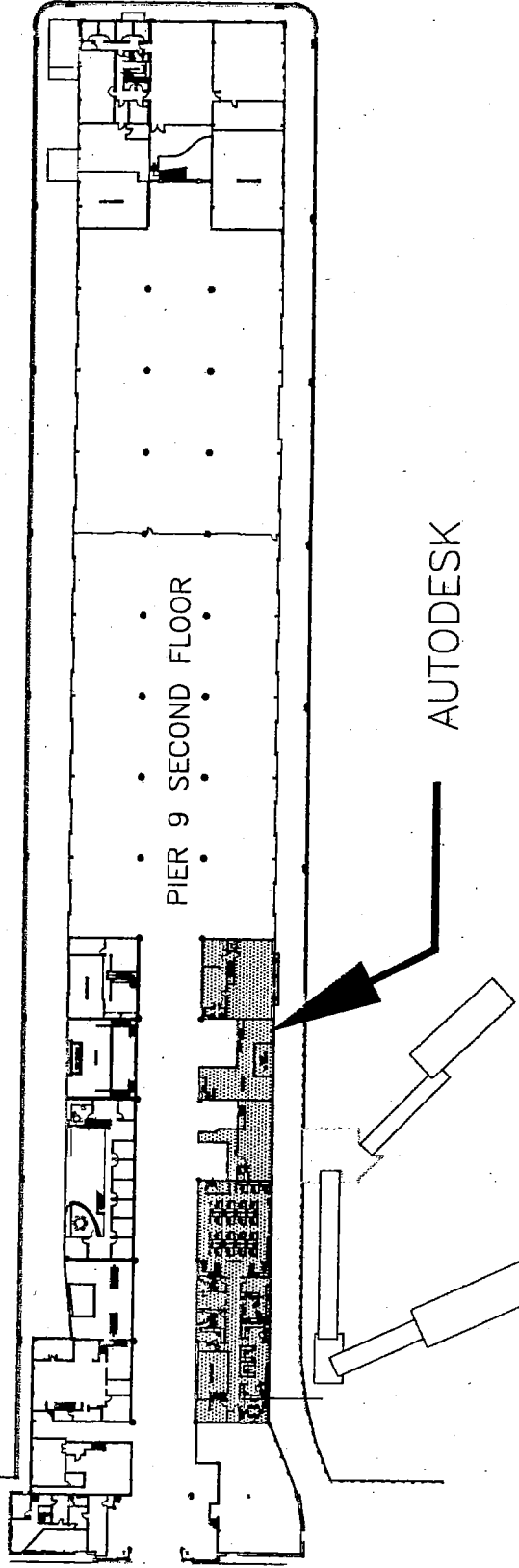
I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 23, 2012.

Secretary



AUTODESK

PIER 9 GROUND FLOOR



AUTODESK

PIER 9 SECOND FLOOR

TEWANT

SAN FRANCISCO PORT COMMISSION
 PORT OF SAN FRANCISCO
 DEPARTMENT OF ENGINEERING

AUTODESK

DRAWN BY: ECC DATE: OCT 11, 2012

CHECKED BY: J. BAUER SCALE: 1" = 100'

PLACE CODE NO. SHEET NO.

1090-00

F SHEETS

ORIGINAL

SECOND AMENDMENT TO LEASE NO. L-15169

This Second Amendment to Lease No. L-15169 (this "Second Amendment"), dated for reference purposes only as of October 10, 2012 is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating through the SAN FRANCISCO PORT COMMISSION ("Port"), as landlord, and Autodesk, Inc., a Delaware corporation, as tenant ("Tenant").

RECITALS

A. Port and Tenant entered into Port Lease No. L-15169 which commenced on October 1, 2012 for that certain real property located at Pier 9 as approved by the Port Commission by Resolution 12-64 ("Original Lease"). The Original Lease is for a sixty-six (66) month term for two parcels comprising about 8,391 square feet (the "Original Premises"). The Original Lease provides for a 180-day rent free construction period and substantial tenant improvements at a cost to Tenant of approximately \$3.2 million. The Original Lease provides for a rent credit of up to \$667,069.50 for Shell Work Costs to be taken at a monthly rate of approximately \$11,117.83. The Original Lease includes an exclusive right to negotiate for an additional 5-year term to be given at Port's sole discretion and subject to further approvals. The Original Lease does not allow Port to terminate for a Port development project, but does give Tenant the unilateral right to terminate until the 36th month of the Original Lease without penalty provided that the improvements are complete; if Tenant terminates, Tenant would not be entitled to any remaining rent credits. In addition, the Original Lease varies from the Port's standard form with respect to construction security, damage and destruction, subleasing, recoverable damages, and other standard provisions as detailed in the staff report which accompanied Resolution 12-64. The Rent Commencement Date of the Original Lease is April 1, 2013 and the Expiration Date of the Original Lease is March 31, 2018.

B. A portion of the Expanded Premises (Suite 114) is currently leased to Cabouchon Properties, LLC, a California limited liability corporation ("Cabouchon") under Lease No. L-14968 which terminates on March 31, 2016. In order to incorporate that space into its leasehold, Autodesk agreed to pay \$225,000 for improvements to Pier 9 Suite 105. On or about November 27, 2012, the parties amended the Lease by the First Amendment which provides that Port may use Tenant's Security Deposit to secure Tenant's payment as described in the First Amendment.

C. Tenant now desires and Port agrees to revise the Lease as provided in this Second Amendment. In summary, this Second Amendment: (i) adds approximately 18,799 square feet (the "Expanded Premises") to the Original Premises for a total of approximately 27,190 square feet; (ii) provides for additional tenant improvements both to the Original Premises and the Expanded Premises, thus increasing Tenant's approximate costs of construction to \$7 million; (iii) increases the available rent credit for Shell Work Costs to a maximum of \$2,861,311.50 to be taken at a maximum rate of \$25,099.22 per month; (iv) provides for a 180-day construction period during which no rent will be paid for the Expanded Premises which adds an additional 60 days to the construction period for the Original Premises during which Rent will be paid; (v) adds a right to negotiate to expand into Suites 100 and 105 upon surrender by the current tenants; and (vi) revises the Late Charge fee, certain standard default provisions and makes other clarifications and adjustments necessitated by the above changes.

D. Tenant is in Good Standing.

E. The Original Lease, the First Amendment and this Second Amendment shall collectively be referred to as the "Lease". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Original Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the original Lease as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. Effective Date. This Second Amendment shall be effective and will commence one (1) business day following the full execution and delivery of this Second Amendment by Tenant and Port (which will not occur until after approval by the Board of Supervisors) (the "Second Amendment Commencement Date").
3. Basic Lease Information. The following sections of the Basic Lease Information shall be revised as of the Second Amendment Commencement Date as described below:

3.1 The "Premises" section is deleted and replaced with the following:

<i>Premises:</i>	Portions of the Pier 9 Shed, as more particularly described on <i>Exhibit A Revised</i> , attached hereto and incorporated by reference herein
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3.2 The "Premises Rentable Square Footage" section is deleted and replaced with the following:

<i>Premises Rentable Square Footage:</i>	A total of approximately 27,190 rentable square feet, comprised of: <u>Parcel A:</u> approximately 21,330 rentable square feet ground and second floor of office space; and <u>Parcel B:</u> approximately 5,860 rentable square feet of unimproved shed space
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3.3 The "Length of Term" Section is deleted and replaced with the following:

<i>Length of Term:</i>	One hundred twenty (120) months
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3.4 The "Commencement Date" section is deleted and replaced with the following:

<i>Commencement Date:</i>	October 1, 2012 The Second Amendment shall be effective and will commence one (1) business day following the full execution and delivery of this Second Amendment by Tenant and Port (the "Second Amendment Commencement Date"). Port's "execution and delivery to Tenant of this Second Amendment" as described in this section shall mean that Port has acquired possession of Suites 114 and 106 and has delivered the entire Expanded Premises to Tenant. Promptly following the actual Second Amendment Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date
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	Memorandum substantially in the form attached hereto as <i>Exhibit B</i> , confirming the actual Second Amendment Commencement Date and associated Rent Commencement Expiration dates, but either party's failure to do so shall not affect the commencement or expiration of the Term.
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3.5 The "Rent Commencement Date" section is deleted and replaced with the following:

<i>Rent Commencement Date:</i>	As shown below in the Rent schedule: April 1, 2013 for the Original Premises; and Six (6) months after the Second Amendment Commencement Date for the remainder of the Premises as shown below.
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3.6 The "Expiration Date" section is deleted and replaced with the following:

<i>Expiration Date:</i>	The last day of the one hundred twentieth (120th) month following the Second Amendment Commencement Date.
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3.7 The "Monthly Base Rent" section is deleted and replaced with the following:

<i>Monthly Base Rent:</i>	Months	Square Feet	Monthly Base Rate/Square Foot	Total Monthly Base Rent
Parcel A: Parcel B:	0 to 4/1/13	21,330 5,860	\$0.00* \$0.00*	\$0.00* *Provided there is no Tenant Event of Default
Parcel A: Parcel B: April 1, 2013 (Initial Lease months 7-8)	4/1/13 to Lease Month 7	17,997 3,333 5,058 802	\$00.00 \$2.25 \$1.25 \$00.00	\$00.00** \$7,499.25 \$6,322.50 \$00.00** Total: \$13,821.75 **Provided there is no Tenant Event of Default
Parcel A: Parcel B:	7-12	21,330 5,860	\$2.25 \$1.25	\$48,091.74 \$7,352.26 Total: \$55,444.00

Parcel A: Parcel B:	13-24	21,330 5,860	\$2.32 \$1.29	\$49,534.49 <u>\$7,572.83</u> Total: \$57,107.32
Parcel A: Parcel B:	25-36	21,330 5,860	\$2.39 \$1.33	\$51,020.52 <u>\$7,800.02</u> Total: \$58,820.54
Parcel A: Parcel B:	37-48	21,330 5,860	\$2.46 \$1.37	\$52,551.14 <u>\$8,034.02</u> Total \$60,585.16
Parcel A: Parcel B:	49-60	21,330 5,860	\$2.54 \$1.41	\$54,127.67 <u>\$8,275.04</u> Total: \$62,402.71
Parcel A: Parcel B:	61-72	21,330 5,860	\$2.61 \$1.45	\$55,751.50 <u>\$8,523.29</u> Total: \$64,274.79
Parcel A: Parcel B:	73-84	21,330 5,860	\$2.69 \$1.50	\$57,424.05 <u>\$8,778.99</u> Total: \$66,203.04
Parcel A: Parcel B:	85-96	21,330 5,860	\$2.77 \$1.54	\$59,146.77 <u>\$9,042.36</u> Total: \$68,189.13
Parcel A: Parcel B:	97-108	21,330 5,860	\$2.86 \$1.59	\$60,921.17 <u>\$9,313.63</u> Total: \$70,234.80
Parcel A: Parcel B:	109-120	21,330 5,860	\$2.94 \$1.64	\$62,748.81 <u>\$9,593.04</u> Total: \$72,341.84

3.8 The "Annual Base Rent" section is deleted.

3.9 The "Rent Credit for Shell Work" section is revised by: (i) increasing the Shell Work Costs available for Rent Credits to \$2,861,311.50 over months 7 - 120 at a maximum rate of \$25,099.22 per month; and (ii) clarifying that the Outside Completion Date is 180 days from the Second Amendment Commencement Date. The amended Section reads as follows:

<i>Rent Credit for Shell Work:</i>	As a component of the Total Initial Tenant Improvement Costs (defined below), Tenant, at Tenant's sole cost and expense, shall construct a building shell and other improvements to the building core ("Shell Work"). The Shell Work shall include the costs to
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construct the shell, install a heating, ventilation and air conditioning system ("HVAC"), all required electrical work, the replacement of any defective windows or exterior rolling doors, installation of new shed demising walls, all required Pier, shell and restroom work, construction and installation of an ADA compliant elevator, fire sprinkler system and structural supports and bracing any required remediation of Hazardous Materials and all "soft" costs incurred in connection with the Shell Work, including space planning, architectural and engineering costs and all permitting fees, but not attorney's fees.

Tenant will be entitled to receive a rent credit against the monthly Base Rent otherwise due and payable by Tenant pursuant to this Lease equal to the lesser of Tenant's actual cost of the Shell Work (determined in accordance with generally accepted accounting principles, consistently applied) or \$2,861,311.50 "Shell Work Costs". The Shell Work Costs will be amortized on a straight line basis at zero percent (0.00%) interest from and after the later of Port's issuance of a Certificate of Completion or the Outside Completion Date (180 days from the Second Amendment Commencement Date) until the last day of the one hundred twentieth (120th) month following the Commencement Date. The monthly amortization amount allocable to the Shell Work Costs shall be credited by Port against the monthly Base Rent otherwise due and payable by Tenant pursuant to this Lease ("Rent Credit") until the earlier of (i) the last day of the one hundred twentieth (120th) month following the Second Amendment Commencement Date, (ii) termination of this Lease, or (iii) until Tenant is credited in full for the Shell Work Costs.

Within thirty (30) days after completion of the Initial Tenant Improvements, Tenant shall provide Port with a summary of the Shell Work Costs incurred in connection with the Shell Work, together with an itemized statement of the actual costs expended by Tenant in connection with the Shell Work, accompanied by documentation substantiating all said expenditures. Such documentation of expenditures shall include, without limitation, (a) copies of executed contracts; (b) copies of invoices for labor, services and/or materials, copies of bills of lading, and/or copies of other bills or receipts for goods, materials and/or services; (c) copies of canceled checks, (d) unconditional lien waivers from all the general contractors and all subcontractors and suppliers; (e) a copy of the as-built final plans for the Tenant Improvements, and (f) such other proofs of expenditure as may be reasonably requested by Port (collectively, "Documents Evidencing TI Costs"). Appropriate proofs of expenditure may include copies of canceled checks; copies of contracts or invoices for labor, services and/or materials marked "Paid", or otherwise evidenced as having been paid, bills of lading marked "Paid"; other bills, contracts, receipts for goods materials and/or services marked "Paid" and such other proofs of expenditure as may be reasonably approved by Port. Shell Work Costs that are eligible for Rent Credits shall not include items related to Tenant's trade fixtures, office equipment and supplies, furniture,

	<p>communications facilities (whether voice or data) or any other items of personalty not intended to become a part of the realty.</p> <p>By way of example only, if Tenant Completes the Shell Work by the Outside Completion Date and the Shell Work Costs equals \$2,861,311.50, the monthly Rent Credit would be approximately \$25,099.22 per month for one hundred fourteen (114) months.</p> <p>The Rent Credits are personal to Autodesk, Inc. and its Permitted Transferee or Affiliate.</p>
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3.10 The "Initial Tenant Improvements" section is revised by: (i) increasing the Total Initial Tenant Improvement Costs to not less than \$7 million; (ii) revising the monthly Base Rent to refer to the rent schedule; (iii) replacing the term "Occupancy Certificate" with the term "Certificate of Completion"; and (iv) revising timeframes to reflect the longer Term of the Lease. The amended section will read as follows:

<p><i>Initial Tenant Improvements:</i></p>	<p>Tenant must complete the Initial Tenant Improvements more particularly described in the Scope of Development attached as <i>Attachment 1 (Revised)</i> to the Work Letter attached hereto as Exhibit E (the "Work Letter"). The cost of the Initial Tenant Improvements will be comprised of the Shell Work Costs and all other costs incurred by Tenant in connection with all other interior improvements to be constructed by Tenant within the Premises ("Total Initial Tenant Improvement Costs"). The Total Initial Tenant Improvement Costs will not be less than \$7 million.</p> <p>Tenant shall have until the date that is One Hundred Eighty (180) days from the Second Amendment Commencement Date ("Construction Period") to complete the Initial Tenant Improvements and obtain from the Port's Building Permitting Group, a Certificate of Completion, subject to extensions by the Executive Director, as described in the Work Letter ("Outside Completion Date"). Notwithstanding anything to the contrary contained in this Lease, if the Certificate of Completion has not been issued by the Outside Completion Date, Tenant shall pay Monthly Base Rent in the amounts shown in the rent schedule above commencing on the Rent Commencement Date until the date that the Certificate of Completion has been issued pursuant to the provisions of Section 5 of the Work Letter (such collective amount, the "Non-Reduced Rent"). So long as the Certificate of Completion has been issued by the Outside Completion Date, from and after issuance of the Certificate of Completion, Tenant may abate the Monthly Base Rent payable after deduction of any available monthly installment of Rent Credit ("Base Rent Differential"), until the earlier of the expiration or earlier termination of the Lease or the Non-Reduced Rent is credited in full.</p> <p>So long as there is no Tenant Event of Default, in no event shall Tenant be obligated to pay Rent prior to the respective Rent Commencement Dates shown above, whether or not Tenant occupies the Premises for purposes of conducting its business operations prior</p>
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	<p>to a Rent Commencement Date. Provided that Tenant is in compliance with all requirements of Port Building Permits and the Port Building Code, nothing in this Lease prohibits Tenant from occupying portions of the Premises prior to the issuance of a Certificate of Completion where is it safe to do so given any ongoing construction activities.</p> <p>If there is a Tenant Event of Default during the Construction Period, then notwithstanding anything set forth in this Lease, Tenant shall pay monthly Base Rent equal to the amount set forth in the rent schedule above until such Tenant Event of Default is cured. Furthermore, until the later of Port's issuance of a Certificate of Completion or the Outside Completion Date, Tenant will not be entitled to apply any Rent Credit against the monthly installment of Base Rent payable to Port, but upon the issuance of the Certificate of Completion, Tenant shall be entitled to the credit against the Base Rent Differential described in this Section above.</p> <p>All the Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with Section 13 below and the Work Letter. Tenant understands and agrees that in the event the Term of this Lease is extended, Tenant will not receive any rent abatement, offset, credit, or any other monetary consideration to amortize the Total Initial Tenant Improvements Cost, less any Rent Credit.</p>
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3.11 "The Security for Completion of Tenant Improvements" section is revised by: (i) replacing the term "Occupancy Certificate" with the term "Certificate of Completion"; and (ii) changing the TI Security amount to \$7 million. Section 2.5 of the Work Letter also is revised by changing the TI Security amount to \$7 million and the first sentence of Section 5.1(b) of the Work Letter is revised to state "The TI Cost Summary and Documents Evidencing TI Costs must show that the Initial Tenant Improvements construction cost is equal to or exceeds \$7 million."

3.12 The "Option to Terminate" section is deleted and replaced with the following:

<p><i>Option to Terminate:</i></p>	<p>Provided that Port has issued a Certificate of Completion for the Initial Tenant Improvements as required by this Lease, then, notwithstanding anything else to the contrary contained in this Lease, Tenant shall have the option, exercisable in Tenant's sole and absolute discretion, to terminate this Lease as of the last day of the sixtieth (60th) month of the Term by providing Port with not fewer than six (6) months prior written notice. Tenant will not be obligated to pay any termination fee or other payment in connection with Tenant's exercise of its termination option. Tenant acknowledges and agrees that it shall not be entitled to any outstanding or unused Rent Credit or reimbursement or other form of consideration for any of the unamortized Total Initial Tenant Improvements Costs or any portion thereof.</p>
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3.13 The following section is added following the "Option to Terminate" section:

<p><i>Right to Negotiate for Pier 9 Suites 100 and 105:</i></p>	<p>As described in Section 35, provided that the current respective tenant does not wish to continue to lease Suite 100 or Suite 105 at the end of the term of those leases, Autodesk, Inc. shall have a one-time right to make an offer to amend this Lease to add Suite 100 and/or Suite 105. This right is personal to Autodesk, Inc.</p>
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4. Security Deposit. No later than the date that is three (3) business days after the Second Amendment Commencement Date, Tenant shall increase its Security Deposit to One Hundred Forty Four Thousand Six Hundred Thirty Eight Dollars and 68 cents (\$144,638.68).

5. Trash Compactor. Pursuant to the Original Lease, Tenant was required to relocate the Waterfront Restaurant's Trash Compactor to a new Trash Room or to implement a New Waste System within thirty (30) days after the Commencement Date (by October 31, 2012). The Trash Compactor Location has been selected as shown on *Exhibit A Revised*. Port and Tenant agree to extend the date for the Trash Compactor Relocation until December 31, 2012. Tenant agrees and acknowledges that its failure to complete Trash Compactor Relocation by that date is a material breach of the Lease.

6. Premises. Exhibit A is replaced with "*Exhibit A Revised*" attached to this Second Amendment.

7. As Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the portions of the Premises delivered under this Second Amendment ("Expanded Premises") which are being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures and schedules attached to the Original Lease which also apply to the Expanded Premises. 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 Expanded Premises and its suitability 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, the physical or environmental condition or the Facility (including, but not limited to the substructure), the present or future suitability of for Tenant's business, or any other matter whatsoever relating to the Expanded Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

8. Definitions. Section 2 (Definitions) is revised as follows:

8.1 Books and Records. The definition is deleted and replaced with the following:

"Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to the Initial Tenant Improvements and the Total Initial Tenant Improvement Costs.

8.2 Certificate of Completion. The definition is deleted and replaced with the following:

"**Certificate of Completion**" means a sign-off by Port's Building Permitting Group that approves final completion of the Initial Tenant Improvements in the form of a notice of occupancy, certificate of completion, final sign-off on the building permit or such other applicable document to finally approve the Initial Tenant Improvements and permit use and occupancy of the Premises by Tenant for the Permitted Uses.

8.3 Expanded Premises. The definition is added:

"**Expanded Premises**" means those portions of the Premises (approximately 18,799 square feet) added by the Second Amendment.

8.4 Force Majeure. The definition is added:

"**Force Majeure**" means events which result in delays in a Party's performance of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of such Party, including acts of nature or of the public enemy, war, invasion, insurrection, riots, any general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Improvements, acts of the government, fires, floods, earthquakes, tidal waves, epidemics, quarantine, restrictions, strikes, freight embargoes, 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; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between a Party and its contractors or work performed on behalf of such Party); inability to obtain materials or reasonably acceptable substitute materials (provided that such Party has ordered such materials on a timely basis and such Party is not otherwise at fault for such inability to obtain materials). Force Majeure does not include (1) failure to obtain financing or failure to have adequate funds, (2) sea level rise to the extent the Premises is not flooded; and (3) any event that does not cause an actual delay.

8.5 Habitual Late Payer. The definition is deleted and replaced with the following:

"**Habitual Late Payer**" means Tenant has received within a twelve (12) month period: (a) at least two (2) notices of material monetary default, or (b) at least three (3) notices of any material default. In such event, commencing immediately Tenant shall be obligated to pay Monthly Base Rent in advance on a quarterly basis until the expiration of the Lease, in which case Tenant shall not be deemed a "Habitual Late Payer" for purposes of this Lease.

8.6 Hazardous Material. The definition is deleted and replaced with the following:

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

and the Facility; and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

8.7 Hazardous Material Claim. The definition is deleted and replaced with the following:

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

8.8 Late Charge. The definition is deleted and replaced with the following:

"**Late Charge**" means a fee equivalent to five percent (5%) per year of Rent that is due and unpaid.

8.9 Original Premises. The definition is added;

"**Original Premises**" means the approximately 8,391 square feet which comprised the Premises under the Lease as effective October 1, 2012.

8.10 Subletting Expenses. The definition is deleted and replaced with the following:

"**Subletting Expenses**" means verifiable, and reasonable brokerage commissions and legal fees incurred in connection with a Sublease and the cost of any new tenant improvements for which Tenant is responsible under the Sublease and the then unapplied portion of the Rent Credit.

8.11 Transfer. The definition is deleted and replaced with the following:

"**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) Tenant sells, assigns, encumbers, subleases or otherwise transfers any of its interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) subject to the provisions of *Section 20.1* below, Tenant dissolves, merges, consolidates or otherwise reorganizes or sells, assigns, encumbers or otherwise transfers cumulatively or in the aggregate 50 percent or more (25 percent or more if publicly traded) of its equity interests or business assets, such as goodwill, inventory and profits; or (d) any subtenant, assignee or other Transferee of Tenant sells, assigns, encumbers, sub-subleases or otherwise Transfers any of its interest in its Sublease or premises.

8.12 Occupancy Certificate. All references in the Lease, including in the Work Letter, to "**Occupancy Certificate**" or a similar term shall be to the defined term "**Certificate of Completion.**"

9. Rules and Regulations. The following sentence is added to the end of Section 3.8 (Port's Rights Regarding Premises): "Any new or amended Rules and Regulations shall not materially interfere with Tenant's ability to use the Premises for the Permitted Uses."

10. Regulatory Approvals. Section 10.2 is amended by adding the following sentence to the end of the section, "Notwithstanding anything to the contrary contained in this **Section 10.2**, Port shall provide Tenant with its proprietary approval or disapproval of any Change in writing within thirty (30) business days after receipt of Tenant's written request therefore. Port's failure to respond in such time period shall be deemed a denial."

11. Maintenance and Repair. The first paragraph of Section 11.1 (Tenant Maintenance and Repair Obligations) is deleted and replaced with the following:

"11.1 **Tenant Maintenance and Repair Obligations**. Unless otherwise set forth in the Basic Lease Information, and except as explicitly set forth in Sections 17 and 18, Tenant shall at all times during the Term, including any period of early entry if any under this Lease, 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."

12. Port Remedies. Section 15.8 (Failure to Comply) is deleted and replaced with "Section Left Blank by Agreement of Parties."

13. Damage and Destruction. Section 17.3 (Tenant's Right to Re-Lease Premises) is revised by changing the timeframe for negotiations in the last sentence from "within sixty (60) days of Port's Offer" to "within ninety (90) days of Port's Offer."

14. Transfers. The first sentence of Section 20.2(b) is revised to decrease the number of days for Tenant's Transfer Notice from "at least 60 days" to "at least 45 days".

15. Defaults. Section 21(k) is deleted and replaced with "Section Left Blank by Agreement of Parties."

16. Suites 100 and 105. Section 35 (Tenant's Right to Negotiate to Lease Pier 9 Suites 100 and 105) is added to the Lease to read as follows:

"35. TENANT'S RIGHT TO NEGOTIATE TO LEASE PIER 9 SUITE 100 AND 105.

(a) Tenant shall have the right to negotiate to lease Pier 9 Suite 100 and/or Suite 105 as shown in *Exhibit A Revised* (each an "Offered Space") as provided in this Section 35. Tenant's right shall be exercised as follows: if at any time during the Term Port determines that the existing tenant(s) in an Offered Space will surrender its leasehold, then prior to leasing such space to another party, Port shall advise Tenant of the terms under which Port is prepared to lease an Offered Space to Tenant for the remainder of the Term of this Lease (the "Advice"). If Tenant delivers written notice to Port of its interest in leasing Offered Space (the "Notice of Interest and Offer") within fifteen (15) days after the date of the Advice, Port shall exclusively negotiate with Tenant for a lease amendment to include the Offered Space for a period of no less than an

additional fifteen (15) business days or other period as mutually agreed. The Notice of Interest and Offer must be for the entire remaining Term of this Lease and for the entire Offered Space and the proposed rental rates must be no less than Port's approved rental rates per square foot for office space at Pier 9.

(b) If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's Notice of Interest and Offer or at any time prior to the execution of a lease amendment pursuant to Tenant's rights under this Section (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then this *Section 35* shall be null and void and Port may elect to proceed as it wishes, in its sole discretion.

(c) If Tenant fails to provide a Notice of Interest and Offer within the time frame set forth above or if Tenant's Notice of Interest and Offer is inconsistent with this Section 35, Port shall have no obligation under this Section 35.

(d) Tenant will be solely responsible for all costs Tenant incurs related to or arising from negotiations with Port. Tenant will have no claims against Port for reimbursement.

(e) The right described in this Section 35 is personal to Autodesk, Inc. and Autodesk, Inc. shall have no rights and the Port shall have no obligation under this Section 35 if the Premises, or any portion thereof, is sublet at the time Port would otherwise deliver the Advice; or this Lease has been assigned prior to the date Port would otherwise deliver the Advice; or Autodesk, Inc. is not occupying the Premises on the date Port would otherwise deliver the Advice; or the Offered Space is not intended for the exclusive use of Autodesk, Inc. during the Term. Further, notwithstanding any other provision of this Lease and notwithstanding any allowable Transfer of the rights under this Lease, the right in this Section 35 may not be Transferred to any other Transferee without Port's express prior consent, which may be withheld in Port's sole and absolute discretion. Any Transfer in violation of this Section 35 will be an incurable Event of Default.

(f) The parties agree that that rights granted in this Section are not intended to create any agreement or obligation by Port to negotiate a final agreement and imposes no duty whatsoever on Port to continue negotiations, other than to engage in arm's length exclusive negotiations subject to the limitations specified in this Section 35. The parties agree that Port cannot deliver a final lease amendment for the additional space unless and until the Port Commission and Board of Supervisors (each, if required, and in its sole and absolute discretion) have approved such lease amendment.

(g) If Port is delayed delivering possession of an Offered Space due to the holdover or unlawful possession of such space by any party, Port shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the Offered Space shall be postponed until the date Port delivers possession to Tenant free from occupancy by any party."

17. Scope of Development. The Scope of Development attached to the Work Letter (Exhibit E) as *Attachment 1* is deleted and replaced with the Scope of Development, *Attachment 1 (Revised)* attached to this Second Amendment.

18. Entire Agreement. This Second Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or

oral representations relating to the subject matter of the Second Amendment are superseded in their entirety by this Second Amendment. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment 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 such drafts in interpreting this Second Amendment.

19. Miscellaneous. This Second Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise. This Second Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Second Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this Second Amendment and the Lease, the terms of this Amendment shall prevail. Time is of the essence of this Second Amendment. This Second Amendment shall be governed by the laws of the State of California. Neither this Second Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

20. Full Force and Effect. Except as specifically amended herein, the terms and conditions of the Original Lease shall remain in full force and effect.

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

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IN WITNESS WHEREOF, Port and Tenant execute this Second Amendment to Lease No. L-15169 at San Francisco, California, 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: _____
Susan Reynolds
Deputy Director, Real Estate

Dated: _____

TENANT: Autodesk, Inc., a Delaware corporation

By: MJA

Name: Mark Hawkins

Its: Chief Financial Officer

Dated: 11-27-2012

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

By: _____
Rona H. Sandler
Deputy City Attorney

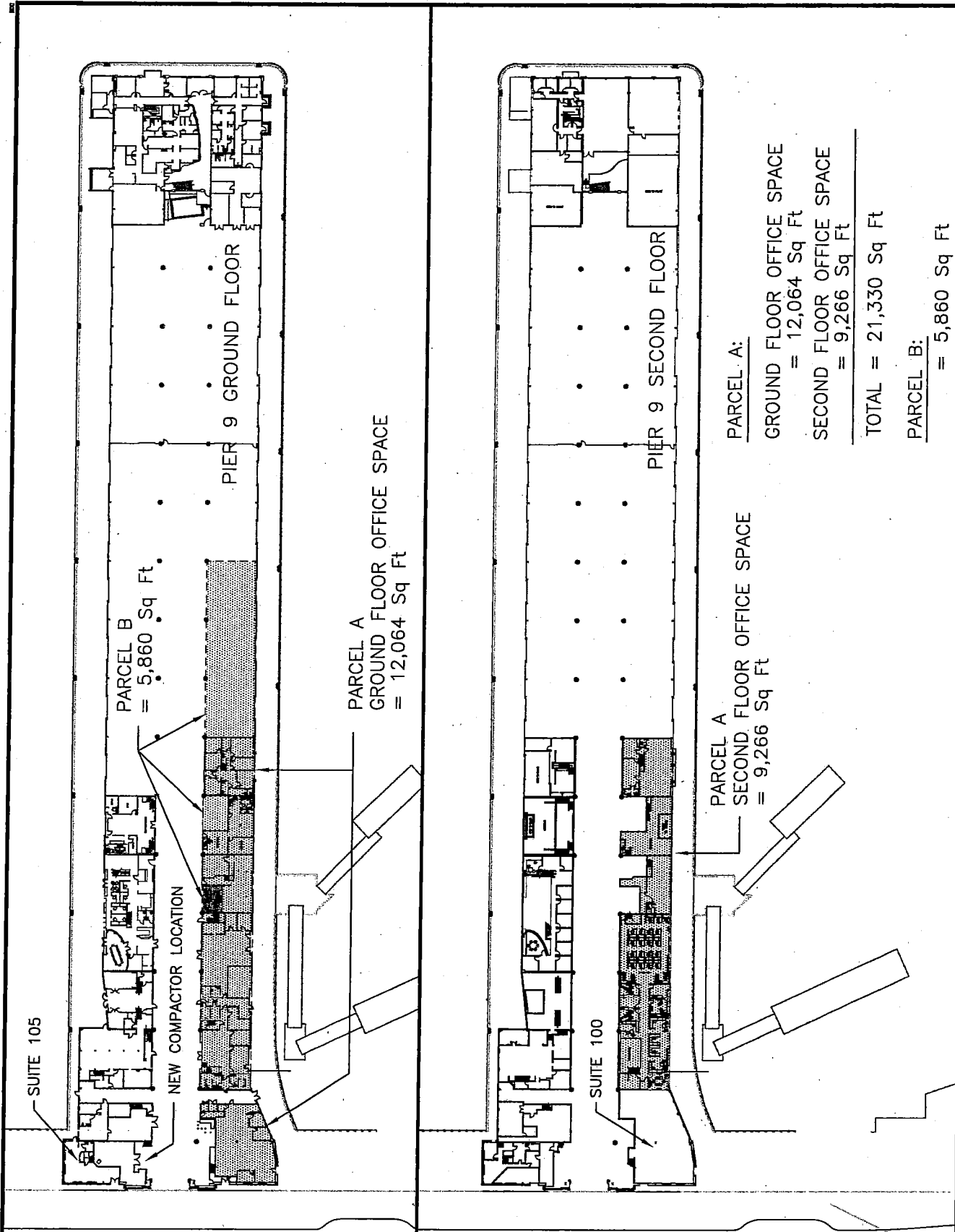
Amendment Prepared By: Jeffrey A. Bauer, Senior Leasing Manager _____ (initial)
Port Commission Reso. No. 12-79
Board of Supervisors Reso. No.

Exhibit A Revised



EXHIBIT A - 2nd Amendment

INITIALS: _____ PORT: _____ TENANT: _____ DATE: _____



PARCEL B
= 5,860 Sq Ft.

PARCEL A
GROUND FLOOR OFFICE SPACE
= 12,064 Sq Ft

PARCEL A
SECOND FLOOR OFFICE SPACE
= 9,266 Sq Ft

PARCEL A:
GROUND FLOOR OFFICE SPACE
= 12,064 Sq Ft
SECOND FLOOR OFFICE SPACE
= 9,266 Sq Ft
TOTAL = 21,330 Sq Ft

PARCEL B:
= 5,860 Sq Ft

LEASE NO.

L-15169

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

AUTODESK

DRAWN BY: ECC
CHECKED BY: J. BAUER
PLACE CODE NO. 1090-00

DATE: OCT 16, 2012
SCALE: 1" = 100'
SHEET NO. 1090-00
OF SHEETS

EXHIBIT B

SECOND AMENDMENT COMMENCEMENT DATE MEMORANDUM

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

Tenant:

Lease Number:

Second Amendment

Date:

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

The Second Amendment Commencement Date is established as _____, 20____.
The Second Amendment Rent Commencement Date is _____ and the Expiration Date is _____.

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

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT E
SCOPE OF DEVELOPMENT
ATTACHMENT 1 (REVISED)

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FIRST AMENDMENT TO LEASE NO. L-15169

This First Amendment to Lease No. L-15169 (this "**First Amendment**"), dated for reference purposes only as of October 10, 2012 is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating through the SAN FRANCISCO PORT COMMISSION ("**Port**"), as landlord, and Autodesk, Inc., a Delaware corporation, as tenant ("**Tenant**").

RECITALS

A. Port and Tenant entered into Port Lease No. L-15169 which commenced on October 1, 2012 for that certain real property located at Pier 9 as approved by the Port Commission by Resolution 12-64 ("**Original Lease**"). Port and Tenant are now negotiating an amendment to the Original Lease, which includes among other things, an expanded premises (the "**proposed Second Amendment**"). Because of its terms, the proposed Second Amendment will be subject to the approval of the Port Commission and Board of Supervisors, each in its own discretion, scheduled to occur in late October and thereafter. The expanded premises in the proposed Second Amendment would include space known as Suite 114 which is now leased to Cabouchon Properties, LLC, a California limited liability corporation ("**Cabouchon**") under Lease No. L-14968 which terminates on March 31, 2016. Tenant and Cabouchon have reached an agreement ("**Cabouchon Agreement**") pursuant to which Tenant will contribute \$225,000 towards the cost of improvements to Pier 9 Suite as further defined by the Cabouchon Agreement ("**Autodesk Contribution**"). In exchange, Cabouchon will terminate its current lease and enter into a new 5-year lease with Port for Suite 105 (Lease No. L-15202) which includes the requirement to improve the space (Lease No. L-15202).

B. Port is amenable to these arrangements, provided that (i) it incur no liability to either party and (ii) is adequately protected from Tenant's default on its promise to pay the Autodesk Contribution. Tenant has agreed to allow Port to use its Security Deposit to secure it's payment of its contribution and to indemnify Port for a default of such obligation as provided below in this First Amendment.

C. Tenant is in Good Standing.

D. The Original Lease and this First Amendment shall collectively be referred to as the "**Lease**". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Original Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the original Lease as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. Application of Security Deposit. In addition to those uses specified in the Original Lease, Tenant agrees that Port may apply the Security Deposit required under Section 7.1 in the event that Tenant is in default of its obligation to pay the Autodesk Contribution to compensate Port for any expenses incurred or damage caused as a result of Tenant's default of its obligation to pay the Autodesk Contribution including, but not limited to, any attorneys' fees and costs and the cost of any necessary safety measures resulting from such default of Tenant, regardless of whether the proposed Second Amendment is approved. The amount of the Security Deposit will not be deemed to limit Tenant's liability under this provision.

3. Indemnity. Tenant agrees that its obligation to Indemnify the Indemnified Parties under the Original Lease includes Claims, direct or vicarious liability, damage, injury or loss to the Indemnified Parties arising directly or indirectly out of Tenant's default of the obligations set forth in this First Amendment.

4. Entire Agreement. This First Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the First Amendment are superseded in their entirety by this First Amendment. No prior drafts of this First Amendment or changes between those drafts and the executed version of this First Amendment 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 such drafts in interpreting this First Amendment.

5. Miscellaneous. This First Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This First Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise. This First Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this First Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. As amended hereby, the Lease is hereby ratified and confirmed in all respects. In the event of any inconsistencies between the terms of this First Amendment and the Lease, the terms of this Amendment shall prevail. Time is of the essence of this First Amendment. This First Amendment shall be governed by the laws of the State of California. Neither this First Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

6. Full Force and Effect. Except as specifically amended herein, the terms and conditions of the Original Lease shall remain in full force and effect.

[Remainder of Page Left Blank]

7. Effective Date. This First Amendment shall be effective on the date of full execution and delivery of this First Amendment by Port as indicated below

IN WITNESS WHEREOF, Port and Tenant execute this First Amendment to Lease No. L-15169 at San Francisco, California, 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: _____
Susan Reynolds
Deputy Director, Real Estate

Dated: _____

TENANT: Autodesk, Inc., a Delaware corporation

By: _____

Name: JOSEPH CHEN
Autodesk, Inc
Its: VP, Corporate Real Estate & Facilities

Dated: 11 / 28 / 2012

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

By: _____
Rona H. Sandler
Deputy City Attorney

Amendment Prepared By: Jeffrey A. Bauer, Senior Leasing Manager _____ (initial)



ORIGINAL

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

LEASE NO. L-15169

BY AND BETWEEN

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

AND

**AUTODESK, INC.
A DELAWARE CORPORATION**

PIER 9

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

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EXHIBITS AND SCHEDULES

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EXHIBIT C	ESTOPPEL CERTIFICATE
EXHIBIT D	PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES
EXHIBIT E	WORK LETTER
SCHEDULE 1	ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2	SUBSTRUCTURE REPORT(S)
SCHEDULE 3	FEMA DISCLOSURE NOTICE
SCHEDULE 4	HAZARDOUS MATERIALS DISCLOSURE

BASIC LEASE INFORMATION

<i>Lease Date:</i>	September 12, 2012
<i>Lease Number:</i>	L-15169
<i>Landlord or Port:</i>	City and County of San Francisco, a municipal corporation, operating by and through the San Francisco Port Commission
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	Autodesk, Inc., a Delaware corporation
<i>Tenant's Contact Person:</i>	Roger Van Overbeek
<i>Tenant's Address:</i>	Autodesk, Inc. 111 McInnis Parkway San Rafael, California 94903 Attention: General Counsel Telephone: 415-507-6211 Facsimile: 415-507-6138
<i>Contact Information for Tenant's Agent for Service of Process:</i>	NRAI 2875 Michelle Drive Irvine, CA 92606 Telephone: 800-562-6504
<i>Premises:</i>	Suite 116 and the adjacent Bay #1, Bay #2, and Bay #3, as more particularly described on <i>Exhibit A</i> , attached hereto and incorporated by reference herein
<i>Facility:</i>	Pier 9 San Francisco, California 94111
<i>Premises Rentable Square Footage:</i>	Parcel A: Suite 116, comprised of approximately 3,333 rentable square feet, together with the adjacent Bay #1, Bay #2, and Bay #3 (collectively, "Parcel B"), which, upon completion of the Initial Tenant Improvements (defined below), shall be enclosed and consist of an additional approximately 5,058 rentable square feet, for a total

	of approximately 8,391 rentable square feet.			
<i>Length of Term:</i>	Sixty-six (66) months.			
<i>Commencement Date:</i>	One (1) business day following the later of (i) the date of approval of this Lease by the Port; (ii) full execution and delivery of this Lease by Tenant and Port; and (iii) the date that the Port delivers the Premises to Tenant in its as-is condition, and other than the Trash Compactor in Parcel B, free of all tenancies and possessory interests (" Commencement Date "). Promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as <i>Exhibit B</i> , confirming the actual Commencement Date, the Rent Commencement Date, and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.			
<i>Rent Commencement Date:</i>	Six (6) months after the Commencement Date.			
<i>Expiration Date:</i>	The last day of the sixty-sixth (66 th) month following the Commencement Date.			
<i>Right of First Offer to Extend Term:</i>	As described in Article 33, Tenant shall have a one-time right to make an offer to extend the Term for an additional sixty (60) months.			
<i>Monthly Base Rent:</i>	Months	Square Feet	Monthly Base Rate/Square Foot	Total Monthly Base Rent
Parcel A: Parcel B:	0-6	3,333 5,058	\$0.00* \$0.00*	\$0:00* *Provided there is no Tenant Event of Default
Parcel A: Parcel B:	7-12	3,333 5,058	\$2.25 \$1.25	\$7,499.25 \$6,322.51.00 Total: 13,821.75
Parcel A: Parcel B:	13-24	3,333 5,058	\$2.32 \$1.29	\$7,732.56 \$6,525.82 Total: 14,257.38
Parcel A: Parcel B:	25-36	3,333 5,058	\$2.39 \$1.33	\$7,965.87 \$6,727.14 Total: 14,693.01
Parcel A: Parcel B:	37-48	3,333 5,058	\$2.47 \$1.37	\$8,232.51 \$6,929.46 Total: \$15,161.97

Parcel A: Parcel B:	49-60	3,333 5,058	\$2.55 \$1.42	\$8,499.15 \$7,182.36 Total: \$15,681.51
Parcel A: Parcel B:	61-66	3,333 5,058	\$2.63 \$1.47	\$8,765.79 \$7,435.26 Total: \$16,201.05
<i>Annual Base Rent Increase</i>	On each Anniversary Date during the Term, the monthly Base Rent shall increase by three percent (3%).			
<i>Rent Credit for Shell Work:</i>	<p>As a component of the Total Initial Tenant Improvement Costs (defined below), Tenant, at Tenant's sole cost and expense, shall construct a building shell ("Shell") enclosing Bay No. 1, Bay No. 2, and Bay No. 3 ("Shell Work"). The Shell Work shall include the costs to construct the Shell, install a heating, ventilation and air conditioning system ("HVAC"), all required electrical work, the replacement of any defective windows or exterior rolling doors, installation of new shed demising walls, all required Pier, Shell and restroom work, any required remediation of Hazardous Materials and all "soft" costs incurred in connection with the Shell Work, including space planning, architectural and engineering costs and all permitting fees, but not attorney's fees.</p> <p>Tenant will be entitled to receive a rent credit against the monthly Base Rent otherwise due and payable by Tenant pursuant to this Lease equal to the lesser of Tenant's actual cost of the Shell Work (determined in accordance with generally accepted accounting principles, consistently applied) or \$667,069.50 ("Shell Work Costs"). The Shell Work Costs will be amortized on a straight line basis at zero percent (0.00%) interest from and after the later of Port's issuance of a Certificate of Completion or the Outside Completion Date until the last day of the sixty-sixth (66th) month following the Commencement Date. The monthly amortization amount allocable to the Shell Work Costs shall be credited by Port against the monthly Base Rent otherwise due and payable by Tenant pursuant to this Lease ("Rent Credit") until the earlier of (i) the last day of the sixty-sixth month following the Commencement Date, (ii) termination of this Lease, or (iii) until Tenant is credited in full for the Shell Work Costs.</p> <p>Within thirty (30) days after completion of the Initial Tenant Improvements, Tenant shall provide Port with a summary of the Shell Work Costs incurred in connection with the Shell Work, together with an itemized statement of the actual costs expended by Tenant in connection with the Shell Work, accompanied by documentation substantiating all said expenditures. Such documentation of expenditures shall include, without limitation, (a) copies of executed contracts; (b) copies of invoices for labor, services and/or materials, copies of bills of lading, and/or copies of other bills or receipts for goods, materials and/or services; (c) copies of canceled checks, (d) unconditional lien waivers from all the general contractors and all subcontractors and suppliers; (e) a copy of the as-built final plans for the Tenant Improvements, and (f) such other</p>			

	<p>proofs of expenditure as may be reasonably requested by Port (collectively, "Documents Evidencing TI Costs"). Appropriate proofs of expenditure may include copies of canceled checks; copies of contracts or invoices for labor, services and/or materials marked "Paid", or otherwise evidenced as having been paid, bills of lading marked "Paid"; other bills, contracts, receipts for goods materials and/or services marked "Paid" and such other proofs of expenditure as may be reasonably approved by Port. Shell Work Costs that are eligible for Rent Credits shall not include items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities (whether voice or data) or any other items of personalty not intended to become a part of the realty.</p> <p>By way of example only, if Tenant Completes the Shell Work by the Outside Completion Date and the Shell Work Costs equals \$667,069.50, the monthly Rent Credit would be approximately \$11,117.83 per month for sixty (60) months.</p> <p>The Rent Credits are personal to Autodesk, Inc. and its Permitted Transferee or Affiliate.</p>
<i>Security Deposit:</i>	Thirty Two Thousand Four Hundred Two Dollars and Ten Cents (\$32,402.10)
<i>Permitted Use:</i>	<p>Office, research and development and workshop space uses, and all related legal uses. The Workshop space use shall include the placement and operation of machinery and equipment, including, without limitation, mills, lathes, drill press, circular saw, scroll saw, laser cutter, welder and the like, and maintenance, repair and replacement of such equipment.</p> <p>All uses and activities must be conducted in compliance with the Operations Plan (as defined below).</p>
<i>Operations Plan:</i>	<p>Tenant must maintain an operations plan regarding its operations within the Premises ("Operations Plan"), which Operations Plan must include the following elements consistent with Laws, industry standards, best management practices and good house-keeping: Supplies/deliveries Plan; Storage and Handling of Hazardous Materials (including a list of specific materials to be used and best management practices), and such other plans relating to operations as reasonably required by Port. The Operations Plan must be acceptable to Port in its sole discretion; provided, however, in no event will Port withhold its consent to the Operations Plan by prohibiting or materially modifying the Permitted Uses as proposed in the following information provided by Tenant to Port, unless otherwise consented to by Tenant: (1) Autodesk Pier 9 Operations Plan - Preliminary (9/6/12), (2) Appendix G - Autodesk Chemical Inventory (appendix G to the 9/6/12 Preliminary Operations Plan), (3) PIER9 AUTODESK - Sheet - A2-1 - Proposed FFE- Phase 1 dated 9/10/12 (a site use layout), and (4) PIER9 AUTODESK PHASE 1 EQUIP SCHEDULE dated 9/10/12 (equipment list) (collectively, the "Baseline Operations Information").</p>

Tenant must submit a more refined draft of the Baseline Operations Information as soon as reasonably possible after the Commencement Date. The parties will work together to finalize and have a Port approved Operations Plan within forty-five (45) days of the Commencement Date (“**Operations Plan Due Date**”). If Port has not approved an Operations Plan by the Operations Plan Due Date, Tenant must provide Port an amount equal to Thirty-Five Thousand Dollars (\$35,000.00) within ten (10) business days following the Operations Plan Due Date (the “**Initial Environmental Deposit**”).

Port will approve or disapprove the refined draft of the Baseline Operations Information (or any re-submissions) within ten (10) business days following Port’s receipt of the same. If Port disapproves, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. Tenant will resubmit as expeditiously as possible. Tenant will continue making resubmissions until Port approval is obtained. If Port fails to respond within such ten (10) business day period, Tenant will deliver notice to Port requesting a response. Such notice will display prominently on the envelope enclosing such request and the first page of such request, substantially the following: “**APPROVAL REQUEST FOR AUTODESK OPERATIONS PLANS AT PIER 9. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED.**” If Port fails to approve, disapprove, or conditionally approve within five (5) business days following receipt of such notice, Port’s failure to respond shall be deemed approval.

Port will determine the amount of the Environmental Oversight Deposit, if any, required in connection with Tenant’s operations within the Premises in conjunction with its approval of the Operations Plan. Once the actual amount of the Environmental Oversight Deposit is determined by Port after Port’s approval of an Operations Plan, the Initial Environmental Deposit held by Port may be applied against the Environmental Oversight Deposit due. If the Initial Environmental Deposit received by Port exceeds the required Environmental Oversight Deposit, Port will reimburse Tenant the difference within thirty (30) days following determination of the Environmental Oversight Deposit amount.

Failure to comply with the Operations Plan is a breach of this Lease. Port may, from time to time, review Tenant's Operations Plan and make recommendations for revisions, provided, however, in no event may Port require revisions that prohibit or materially modify any of the Permitted Uses as proposed in the Baseline Operations Information (unless otherwise consented to by Tenant). All revisions to the Operations Plan, whether initiated by Port or Tenant, are subject to Port approval, in its sole discretion. Port’s approval of any revisions to the then approved Operations Plan may be conditioned on Tenant increasing the amount of the Environmental Oversight Deposit.

<i>Substructure:</i>	See <i>Schedule 2</i> .
<i>Load Restrictions:</i>	Tenant, as part of the Initial Tenant Improvements, will, as necessary or if required, reinforce and increase the load-bearing capacity of the floors of the Premises to withstand the weight and load of the equipment to be installed, operated, and used by Tenant in connection of the Permitted Uses. Additionally, although the south apron is not part of the Premises, the maximum load on the south apron is 100 PSF.
<i>Maintenance and Repair and Utilities:</i>	Tenant's sole responsibility, as further described in Sections 11 and 12 below.
<i>Location of Asbestos in Facility:</i>	See <i>Schedule 1</i> attached hereto.
<i>Development Project:</i>	America's Cup has the right to install floating docks at the south side of Pier 9. Hornblower Dining Yachts has negotiated a lease for excursion boat docking at Pier 9. The Exploratorium is under construction at Piers 15/17. 8 Washington is a mixed use development to be constructed at the corner of The Embarcadero and Washington Street.
<i>Waterfront Restaurant's Trash Room:</i>	<p>Tenant acknowledges that the Waterfront Restaurant's trash compactor is currently located in a portion of Parcel B (the "Trash Compactor") and agrees that Port will deliver the Premises to Tenant with the Trash Compactor in Parcel B as-is. The Initial Tenant Improvements will include construction of a trash room to be located within the Pier 9 Facility, which final location will be chosen by Port and Tenant (the "Trash Room"). The Trash Room will be used to sort waste (i.e. compostable, recyclable, and landfill).</p> <p>Tenant agrees to work in good faith with (1) Port to finalize the location of the Trash Room and (2) with Port and the Waterfront Restaurant to finalize whether the existing Trash Compactor will be relocated to the Trash Room or another system to sort waste (the "New Waste System") will be implemented for the Waterfront Restaurant's use. If the Tenant, Port, and the Waterfront Restaurant agree that the Waterfront Restaurant will continue to use the Trash Compactor after the Commencement Date, then Tenant will dismantle, relocate, and re-install the Trash Compactor to a mutually agreed upon location in the Trash Room such that the Trash Compactor is fully operational for the Waterfront Restaurant's use in the new location ("Trash Compactor Relocation").</p> <p>The Trash Compactor Relocation or construction of the New Waste System must be completed within 30 days of the Commencement Date and at Tenant's sole cost and expense.</p> <p>Tenant is required to construct any necessary infrastructure improvements in connection with the Trash Compactor Relocation or</p>

	<p>the New Waste System, which includes among other things, construction of a concrete pad, floor drain, electrical connection, ventilation fan, water source, hose bib, and construction of an enclosure of the trash compactor.</p> <p>In no event shall any of Tenant's cost and expense related to the Trash Compactor Relocation or construction of the New Waste System be subject to rent credit or abatement or form a part of Shell Work Costs.</p> <p>Additionally, Tenant shall perform the Trash Compactor Relocation or construct the New Waste System such that the Waterfront Restaurant will have use of the Trash Compactor or the New Waste System while the Waterfront Restaurant is open to the public.</p>
<p><i>Initial Tenant Improvements:</i></p>	<p>Tenant must complete the Initial Tenant Improvements more particularly described in the Scope of Development attached as Attachment 1 to the Work Letter attached hereto as Exhibit E (the "Work Letter"). The cost of the Initial Tenant Improvements will be comprised of the Shell Work Costs and all other costs incurred by Tenant in connection with all other interior improvements to be constructed by Tenant within the Premises ("Total Initial Tenant Improvement Costs"). The Total Initial Tenant Improvement Costs will not be less than \$3,230,745.00.</p> <p>Tenant shall commence construction of the Initial Tenant Improvements on the Commencement Date. Tenant shall have until the date that is One Hundred Eighty (180) days from the Commencement Date ("Construction Period") to complete the Initial Tenant Improvements and obtain from the Port's Building Permitting Group, a certificate of occupancy, final sign-off on the building permit, or such other applicable document to permit occupancy of the Premises by Tenant for the Permitted Uses ("Occupancy Certificate"), subject to extensions by the Executive Director, as described in the Work Letter ("Outside Completion Date").</p> <p>Notwithstanding anything to the contrary contained in this Lease, if the Certificate of Completion has not been issued by the Outside Completion Date, Tenant shall pay Monthly Base Rent in the amount of \$13,821.75 (as adjusted on each Anniversary Date) commencing on the Rent Commencement Date until the date that the Certificate of Completion has been issued (such collective amount, the "Non-Reduced Rent"). So long as the Occupancy Certificate has been issued by the Outside Completion Date, from and after issuance of the Certificate of Completion, Tenant may abate the Monthly Base Rent payable after deduction of any available monthly installment of Rent Credit ("Base Rent Differential"), until the earlier of the expiration or earlier termination of the Lease or the Non-Reduced Rent is credited in full.</p> <p>No Rent is due during the Construction Period, provided that there is no other uncured Tenant Event of Default. By way of example only, if the Commencement Date is September 1, 2012, so long as there is no Tenant Event of Default, Tenant is relieved from paying Rent from September 1, 2012 through February 28, 2013 (Months 1 - 6 in</p>

	<p>the table above) and must commence paying Rent on March 1, 2013 (month 7 in the table above.) For avoidance of doubt, so long as there is no uncured Tenant Event of Default, in no event shall Tenant be obligated to pay Rent prior to the Rent Commencement Date, whether or not Tenant occupies the Premises for purposes of conducting its business operations prior to the Rent Commencement Date.</p> <p>If there is a Tenant Event of Default during the Construction Period, then notwithstanding anything set forth in this Lease, Tenant shall pay monthly Base Rent equal to the amount set forth for Months 7-12 in the table above until such Tenant Event of Default is cured. Furthermore, until the later of Port's issuance of a Certificate of Completion or the Outside Completion Date, Tenant will not be entitled to apply any Rent Credit against the monthly installment of Base Rent payable to Port, but upon the issuance of the Certificate of Completion, Tenant shall be entitled to the credit against the Base Rent Differential described in this Section above.</p> <p>All the Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with Section 13 below and the Work Letter. Tenant understands and agrees that in the event the Term of this Lease is extended, Tenant will not receive any rent abatement, offset, credit, or any other monetary consideration to amortize the Total Initial Tenant Improvements Cost, less any Rent Credit.</p>
<p><i>Security for Completion of Tenant Improvements:</i></p>	<p>If Tenant Transfers its interest in this Lease (including any Affiliate Transfers or Permitted Transfers) at any time prior to issuance of an Occupancy Certificate, or if Tenant does not obtain an Occupancy Certificate by the Outside Completion Date (as such date may be extended pursuant to Section 1.5 of the Work Letter), Tenant must deliver to Port an amount equal to one hundred twenty-five percent (125%) of the estimated cost to complete construction of the Initial Tenant Improvements, as reasonably determined at such time by Port and Tenant, but in no event more than \$3,230,745.00 ("TI Security") within ten (10) business days (i) prior to the effective date of the Transfer, or (ii) following the Outside Completion Date, as applicable.</p> <p>The TI Security may be used by Port to help protect Port against any liability for mechanics' and materialmen's liens, stop notices, to ensure completion of the Initial Tenant Improvements, and to compensate Port for any expenses incurred or damage caused as a result of Tenant's failure to obtain the Occupancy Certificate by the Outside Completion Date (including, but not limited to, any attorneys' fees and costs), as such date may be extended pursuant to Section 1.5 of the Work Letter.</p> <p>The TI Security may be in the form of cash or letter of credit, the requirements of which are described in Attachment 2 of the Work Letter. Port will not be required to keep the TI Security separate from its general funds, and Tenant will not be entitled to any interest on the TI Security. The amount of the TI Security will not be deemed to limit Tenant's liability for Completion of the Tenant</p>

	Improvements in accordance with the terms and conditions of this Lease. Port will return the unused balance of the TI Security to Tenant within thirty (30) days after issuance of the Occupancy Certificate.
<i>Option to Terminate:</i>	Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the option, exercisable in Tenant's sole and absolute discretion, to terminate this Lease as of the last day of the thirty-sixth (36th) month of the Term by providing Port with not fewer than six (6) months prior written notice. Tenant will not be obligated to pay any termination fee or other payment in connection with Tenant's exercise of its termination option. Tenant acknowledges and agrees that it shall not be entitled to any outstanding or unused Rent Credit or reimbursement or other form of consideration for any of the unamortized Total Initial Tenant Improvements Costs.
<i>Parking:</i>	Tenant acknowledges that no space for parking is provided by this Lease.
<i>Signage:</i>	Tenant, at Tenant's sole cost and expense, shall have the right to install the maximum allowable Facility exterior and lobby/entry signage in accordance with applicable law, Port's sign guidelines, and any standards for signage at Pier 9, subject to Port approval (which shall not be unreasonably withheld, conditioned or delayed).
<i>Conflict:</i>	In the event of a conflict between the terms and conditions of this Basic Lease Information and the terms and conditions of the remained of the Lease, the provisions of this Basic Lease Information shall control.
<i>Lease Prepared By:</i>	Jeffrey A. Bauer, Senior Leasing 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 the Lease Agreement are and shall be construed as a single instrument and are referred herein as this "**Lease**". In event of any conflict or inconsistency between the Basic Lease Information and the Lease Agreement, the Basic Lease Information will control.

1. DEMISE.

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

2. DEFINITIONS.

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

"ACMs" is defined in Section 15.6 below.

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

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

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

"Affiliate Transfer" means a Transfer from Tenant to an Affiliate meeting the requirements of Section 20.1.

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

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

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

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

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

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

"BCDC" means the Bay Conservation and Development Commission.

"Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, the Initial Tenant Improvements and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

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

"Cal-OSHA" is defined in Section 15.6 below.

"Certificate of Completion" is the temporary or final certificate of occupancy issued by Port allowing for commencement of the Permitted Use.

"Changes" is defined in Section 10.2 below.

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

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

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

"Commission" means the San Francisco Port Commission.

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

"Conduct Code" is defined in Section 28.13 below.

"Concession" is defined in Section 30.16.

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

(b) otherwise has the right to direct or cause the direction of substantially all of the management and policies of the second Person.

"**Completion**" in reference to the Initial Tenant Improvements is defined in the Work Letter. "**Completion**" in reference to any Subsequent Alteration means the issuance of a Certificate of Completion.

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

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

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

"**disturbed or removed**" is defined in Section 13.3(g) below.

"**Encroachment Area**" is defined in Section 3.2 below.

"**Encroachment Area Charge**" is defined in Section 3.2 below.

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

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

"**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 to Tenant, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"**Exacerbate**" or "**Exacerbating**" when used with respect to Hazardous Materials means any act or omission by Tenant, its Agents, or Invitees, 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, and construction of the Initial Tenant Improvements, Improvements and Alterations under this Lease. "**Exacerbation**" has a correlating meaning.

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

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

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

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

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

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

"**Habitual Late Payer**" means Tenant has received (a) at least two (2) notices of material monetary default, or (b) at least three (3) notices of any material default within a twelve (12) month period. In such event, commencing immediately Tenant shall be obligated to pay Monthly Base Rent in advance on a quarterly basis until the expiration of the Lease, in which case Tenant shall not be deemed a "Habitual Late Payer" for purposes of this Lease.

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

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

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

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

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

"**HEPA**" is defined in Section 13.3(g) below.

"**Improvements**" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises, including, without limitation, the Initial Tenant Improvements and any Subsequent Alteration and including those Improvements constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs,

roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

"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 property in place considered as part of the realty should be compared with its value if it were removed and sold.

"Indemnified Parties" is defined in Section 19.1 below.

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

"Initial Tenant Improvements" means the tenant improvements to be constructed by Tenant, at its sole cost and expense, as further described in the Basic Lease Information, Section 13 below and the Work Letter.

"Interest Rate" is defined in Section 5.5 below.

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

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

"Late Charge" means a fee equivalent to fifteen percent (15%) of Rent that is due and unpaid.

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

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

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

"Notice of Removal" is defined in Section 13.5 below.

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

"Notice to Vacate" is defined in Section 3.2 below.

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

"OSHA" is defined in Section 15.6 below.

"PACMs" is defined in Section 15.6 below.

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

"Pesticide Ordinance" is defined in Section 28.9 below.

"Port" means the San Francisco Port Commission.

"Port program or project" shall mean (a) any development or renovation, by public and/or private parties, of the building, pier or seawall lot in or on which the Premises is located (including, but not limited to the Event as described in Section 3.4 and any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating).

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

"Port's Guidelines" is defined in Section 13.3(e) below.

"Port Work" is defined in Section 13.8 below.

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

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

"prevailing party" is defined in Section 23.1 below.

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

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

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

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

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

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

"Rent" means the Base Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge assessed pursuant to Section 5.3 below and any interest assessed pursuant to Section 5.5 below.

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

"Repair Period" means two hundred forty (240) days after the date of damage to the Premises or the Facility by fire or other casualty.

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

"saltwater immersion" is defined in Section 28.12 below.

"Secretary's Standards" is defined in Section 13.3(e) below.

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

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

"Subletting Expenses" means verifiable, and reasonable brokerage commissions and legal fees incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the 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 Tenant Improvements pursuant to the Work Letter.

"SWPPP" is defined in Section 15.10(a) below.

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

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

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

"Term" is defined in Section 4.1 below and in the Basic Lease Information.

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

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

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

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

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

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

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

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

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

"**Work**" when used in reference to construction is defined in Section 13.3(c) below.

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

3. PREMISES; AS-IS CONDITION.

3.1. Premises.

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

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

shall unreasonably restrict access to the Premises and Port shall use reasonable efforts to minimize any adverse and material disruption to Tenant.

3.2. No Right to Encroach.

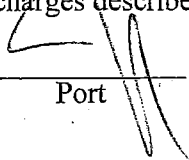
(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "Encroachment Area"), then upon written notice from Port ("Notice to Vacate"), Tenant shall immediately vacate such Encroachment Area and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

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


(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below 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 so 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 placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.3 and the reasonableness of the amount of the charges described in this Section 3.3.

Initials:



Port



Tenant

3.3. Proximity of Development Project. Tenant acknowledges that during the Term, the Development Project described in the Basic Lease Information is scheduled to be, or may be, constructed on property in the immediate vicinity of the Premises. Tenant is aware that the construction of such project and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

3.4. America's Cup. Tenant acknowledges that the Golden Gate Yacht Club has selected San Francisco as the host city for the 34th America's Cup. The selection could result in activities and impacts, all of which are subject to review under the California Environmental Quality Act. The potential activities and impacts include events related to the America's Cup, which will include the 34th America's Cup match, anticipated to occur in 2013, pre-match races, possible future successive defense(s) of the America's Cup, related events and potential long-term development uses, to be determined after the racing events in 2013 (collectively the "Event"). The Event, if held, will be, or may be, on property, including land and water, in the immediate vicinity of the Premises. Tenant is aware that the Event as proposed will include construction projects, racing in the Bay, and public and private events. The activities associated with the Event, if held, are expected to create certain impacts, some of which may result in some inconvenience to or disturbance of Tenant.

Impacts of the Event may include, but are not limited to, increased pedestrian, vessel, vehicle and truck traffic, traffic delays and re-routing of street traffic, loss of street and public parking, temporary re-routing or interruption of land and water transit, dust, dirt, land- and water-based construction, dredging, and other noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of impacts, inconvenience or disturbance as a result of the Event.

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

3.6. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; and (c) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of the Lease.

3.7. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are 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 3* and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in *Schedule 2* attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or

warranties, express or implied, concerning the rentable area of the premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure), 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.

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

4. TERM OF LEASE; TERMINATION BY PORT.

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

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term shall not commence until Port delivers possession of the Premises to Tenant and the Rent Commencement Date shall be the date that is six (6) months following the date of delivery of possession of the Premises to Tenant. 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 the Rent Commencement Date shall be the date that is six (6) months after the date when Port would have delivered possession of the Premises but for such acts or omissions.

Notwithstanding anything to the contrary contained in this Lease, if Port has not delivered possession of the Premises to Tenant for any reason other than a Tenant Delay by January 1, 2013, Tenant may terminate this Lease by written notice to Port given at any time until Port has delivered the Premises to Tenant, in which event neither party will have any further rights or obligations hereunder and Port shall promptly refund to Tenant any Security Deposit or Environmental Oversight Deposit (which may be in the form of cash or Letter of Credit) paid or delivered by Tenant to Port in connection with Tenant's execution of this Lease. In no event will Tenant be entitled to any reimbursement or payment for any other costs (including, but not limited to "soft costs" related to the Initial Tenant Improvements) incurred by Tenant in connection with this Lease.

4.2. Termination Rights.

(a) Port has the right to terminate the Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's structures, substructure or utilities has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination ("Facilities Notice") under this Subsection, but

reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Subsection.

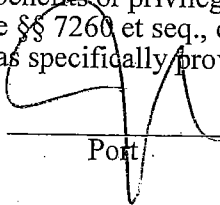
(b) Tenant may, within thirty (30) days after receipt of the Facilities Notice by Tenant, notify Port of Tenant's election to repair, at its sole cost and expense, the Pier Facilities ("Notice of Election to Repair"). Upon receipt by Port of the Notice of Election to Repair, it shall be deemed as if Port had never delivered the Facilities Notice to Tenant. Promptly following delivery of the Notice of Election to Repair, Tenant shall commence and diligently pursue to completion, the repair to or replacement of the Pier Facilities in accordance with the provisions of Section 13. During the period of repair to or replacement of the Pier Facilities ("Facilities Repair Period"), Base Rent shall be reduced in proportion to the area of the Premises that is untenable. Other than the abatement of Base Rent during the Facilities Repair Period set forth in the immediately foregoing sentence, Tenant shall not be entitled to, nor shall Port be liable for the payment of, any other rent credit, allowance, abatement, or any other monetary consideration arising from Tenant's repair to or replacement of the Pier Facilities. If the Base Rent was reduced as a part of Tenant's repair to or replacement of the Pier Facilities due to the untenability of all or a portion of the Premises, following the completion of any such repairs or replacement, the Base Rent will be adjusted to reflect such area's reincorporation into the Premises.

(c) In the event this Lease terminates in accordance with this Section, neither party shall be deemed at fault and other than its obligation to make Port's Offer in accordance with Section 17.3, Port shall have no further obligations to Tenant, including without limitation, any obligation to reimburse Tenant for any costs related to the required alterations, any alterations and any other improvements Tenant may have made to the Premises. In no event shall the Port be liable to Tenant for any loss of business to Tenant or any other costs or losses of any kind or nature whatsoever incurred by Tenant as a result of a removal of a portion of the Premises pursuant to this Section 4.2 or any termination of this Lease resulting therefrom.


(d) In the event this Lease terminates in accordance with this Section, Port restores the Facility, and Port elects to lease the Premises to third party tenants at any time prior to the date that would have been the ninety (90) days prior to the Expiration Date hereof had Port not terminated this Lease, then Port will be subject to Port's Offer in connection with any leasing of the Premises.

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 this Lease.

Initials:



Port



Tenant

5. RENT.

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

5.1. Base Rent. From and after the Rent Commencement Date, but subject to the Rent Credit set forth in the Basic Lease Information, Tenant shall pay the monthly Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month. Except as provided in Section 1.5 of the Work Letter, under no circumstances shall the Rent Commencement Date be delayed due to failure to complete the Initial Tenant Improvements, force majeure, Port Delays or other reasons.

5.2. Manner of Payment. All payments due from Tenant to Port under this Lease shall be made to Port without abatement, deduction, setoff (except for the Rent Credit), prior notice or demand, in lawful money of the United States of America at Port's address for notices as set forth in the Basic Lease Information, or to such other person or at such other place as Port may from time to time designate in writing to Tenant. Additional Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand", "promptly following notice", "upon receipt of invoice", or the like, then such Additional Rent shall be due thirty (30) days following the giving by Port of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

5.3. Late Charges. 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, a Late Charge will be paid by Tenant for all Rent, or any portion thereof due and unpaid. In addition to the Late Charge, Tenant shall pay any reasonable attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent when due under this Lease. Such charges shall be computed from the date on which such Rent first became due. Additionally, in the event Port notifies Tenant 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 5.7 represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Except as provided above, such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Amounts due under this Section 5.7 are in addition to, not in lieu of, amounts due under Section 5.8 below.

5.4. 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 and default interest.

5.5. Default Interest. Any Rent, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law (the "Interest Rate"). However, interest shall not be payable on Late Charges incurred by Tenant nor on any amounts on which Late Charges are paid by Tenant 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.

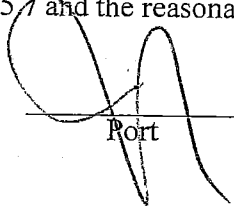
5.6. Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset (except for the Rent Credit). Except as 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

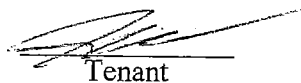
relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease 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.

5.7. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections 12.1, 15.4(a), 15.8, 15.10, 28.1(d), and 34 below, or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.7 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 5.7 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 placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 5.7 and the reasonableness of the amount of the charges described in this Section 5.7.

Initials:


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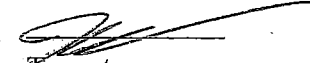
6. TAXES AND ASSESSMENTS.

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

6.2. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the

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

Initials:


Tenant

7. FINANCIAL ASSURANCES.

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

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

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

7.2. Environmental Oversight Deposit.

(a) Within ten (10) business days following Port's determination of the amount of additional security required, if any, as a result of the information contained in the Operations Plan approved by Port (the "Environmental Oversight Deposit"), Tenant must deliver to Port the Environmental Oversight Deposit, either in the form of cash or letter of credit (the requirements of which are described in *Attachment 2* of the Work Letter), as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Tenant's operations under this Lease; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default. Tenant may apply the Initial Environmental Deposit, if any, held by Port against the Environmental Oversight Deposit due.

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

(c) If an Environmental Notice is delivered to Tenant, and Tenant has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply the sum of \$500 from the Environmental Oversight Deposit as Additional Rent for each Environmental Notice delivered to Tenant to reimburse Port for its administrative costs.

(d) Tenant must pay to Port within five (5) business days after receipt of written demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies. Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Tenant within a reasonable time after the expiration or earlier termination of this Lease. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

8. USE OF THE PREMISES.

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

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

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

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

(c) any activity or object which will overload or cause damage to the Premises;

(d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors,

noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

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

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

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

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

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

(j) Except as specifically provided in the Basic Lease Information, any vehicle or equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;

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

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

(m) the washing of any vehicles or equipment;

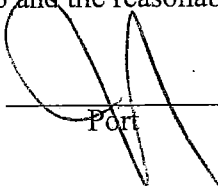
(n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the design load restrictions of the Initial Tenant Improvements; or

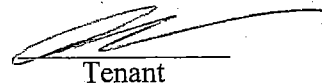
(o) any other Prohibited Uses identified in the Basic Lease Information, if any.

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

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 8.3 and the reasonableness of the amount of the charges described in this Section 8.3.

Initials:


Port


Tenant

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved is related to Tenant's particular use of the Premises. Notwithstanding anything to the contrary contained in this Lease (including the preceding sentence), Tenant shall not be required to construct or pay the cost of complying with any Laws requiring construction of improvements to the Premises or to any other portion of the Facility or the common areas, unless such compliance is necessitated solely because of Tenant's particular and unique use of the Premises or any Alterations or Improvements to the Premises made and paid for by Tenant. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

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

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

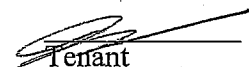
10.2. Regulatory Approvals. Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "Changes") may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory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

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

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to indemnify and hold City, Port and their Agents harmless from and against any loss, expense, cost, damage, reasonable attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

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

Initials:


Tenant

10.3. Compliance with City's Risk Manager's Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase rates under a standard form fire insurance policy or subject Port to potential premises liability. Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords in the Northeast Embarcadero and Fisherman's Wharf areas of the City.

11. MAINTENANCE AND REPAIRS.

11.1. Tenant Maintenance and Repair Obligations. Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, including any period of early

entry if any under this Lease, 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 the Facility, Port may repair the same at Tenant's sole cost and expense and Tenant shall reimburse Port therefor within thirty (30) days after receipt of Port's written request with supporting documentation. Tenant shall not make, nor cause or suffer to be made any repairs or other work for which a permit is required by an applicable building code, standard or regulation, including, without limitation, the Port Building Code, the Port Facility Code, or of any rule or regulation of Port without first obtaining Port's prior written consent in its proprietary capacity, which consent shall not be unreasonably withheld, conditioned, or delayed, and a permit therefor.

11.2. Port's Right to Inspect. 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. Without limiting Section 24 below, Port may make periodic inspections of the Premises during normal business hours and with reasonable prior notice except in the case of emergency (in which case no notice is required), and may advise Tenant when, in Port's reasonable business judgment, 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, damage, destruction, or eminent domain.

11.3. Port's Right to Repair. In the event Tenant fails to maintain the Premises in accordance with Sections 11.1, 11.2 above or 12.1, or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, Port, after five (5) business days' written notice except in the case of emergency (in which case no notice is required), may repair the same at Tenant's sole cost and expense and Tenant shall reimburse Port therefor within thirty (30) days after receipt of Port's written request with supporting documentation. If the cost (including, but not limited to, salaries of Port staff and reasonable attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "Hard costs" of the work. "Hard costs" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees, engineering fees and permitting 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) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("Maintenance Notice"). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to

comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges 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 11.3 shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

Initials:


Tenant

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

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

11.5. Maintenance of Facility Exterior. If Tenant reasonably believes that Port has failed to properly maintain, repair, and replace, in good working order, condition and repair, the Facility's roof, roof membrane, exterior walls, or exterior doors, and Tenant desires to maintain, repair, and replace the same at its sole cost and expense ("Facility Work"), then at least forty-five (45) days prior to performing the Facility Work, Tenant will request Port's consent. If Port consents to Tenant performing the Facility Work, Tenant shall commence and diligently pursue to completion the Facility Work in accordance with the provisions of Section 13. Tenant agrees and acknowledges that all costs associated with the Facility Work shall be borne solely by Tenant and that Tenant will have no right to any rent credits, abatement, offset, or any other monetary consideration in connection with the Facility Work. Failure by Port to respond to Tenant request will be deemed to be Port's disapproval of Tenant's request. If Port does not consent or is deemed not to have consented to Tenant's request for Port's consent for Tenant to perform the Facility Work, Tenant may not perform any of the Facility Work.

12. UTILITIES AND SERVICES.

12.1. Utilities. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant. Tenant will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission is unable to meet Tenant's needs, requirements for load, or its price is rates are materially higher than rates available to Tenant from Pacific Gas and Electric Co. or on the open market, Tenant may seek another provider.

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

by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

Tenant shall install and construct additional utility infrastructure as part of the Initial Tenant Improvements (including a separate electric current meter for the Premises) such that Tenant is able to use the equipment installed by Tenant for the Permitted Uses in the Premises and electric current used by other tenants or occupants of the Facility is not adversely affected. If Tenant requires additional electric current in excess of that usually furnished or supplied for the Premises after completion of the Initial Tenant Improvements, Tenant shall first procure the written consent of Port, which Port may refuse, in its reasonable discretion.

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

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

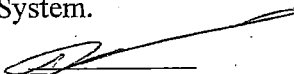
So long as Tenant, as part of the Initial Tenant Improvements, reinforces and increases the load-bearing capacity of the floors of the Premises to withstand the weight and load of the equipment installed by Tenant in connection of the Permitted Uses, then except for such equipment installed by Tenant,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

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

12.3. On-Site Renewable Energy. At any time during the Term, Port shall have the right, at its sole and absolute discretion, to install, or cause another party to install, a renewable energy system, using sources such as solar (photovoltaic or solar thermal power), wind, tidal or biofuel power ("**Renewable Energy System**") on the roof of the Facility or otherwise on or near the Premises for the purpose of supplying power to the Facility or other locations. Unless the cost

per kilowatt of power to Tenant from such Renewable Energy System is greater than the cost per kilowatt Tenant would otherwise pay for power, Tenant shall purchase all or a portion of its power needs from the operator of the Renewable Energy System.

Initials:


Tenant

13. IMPROVEMENTS AND ALTERATIONS.

13.1. *Port Consent Required.*

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements (including the Initial Tenant Improvements) to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that Port shall have the right in its reasonable discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) At least thirty (30) days before commencing any Alterations or Improvements to the Premises subsequent to completion of the Initial Tenant Improvements, Tenant shall notify Port. Tenant's notice shall be accompanied by Final Construction Documents for the Alterations or Improvements, if applicable. Port shall have the right to object to any the Alterations or Improvements within twenty-one (21) days after receipt of notice from Tenant. If Port has not responded in writing to Tenant's request within such twenty-one (21) day period, Tenant shall deliver a second notice to Port requesting Port's approval (the "Second Notice"). The Second Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: **"APPROVAL REQUEST FOR AUTODESK ALTERATIONS AT PIER 9. IMMEDIATE ATTENTION REQUIRED: FAILURE TO RESPOND WITHIN FIVE BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve, disapprove, or conditionally approve within five (5) business days following receipt of the Second Notice, Port's failure to respond shall be deemed approval.

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

13.2. *Tenant's Obligation to Construct the Initial Tenant Improvements.* Tenant shall construct the Initial Tenant Improvements in accordance with, and subject to all the terms, covenants, conditions and restrictions in the Work Letter. Any Subsequent Alteration shall be performed in accordance with this Section. Port shall not unreasonably withhold, condition, or delay its consent to the Initial Tenant Improvements.

13.3. *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 the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

(b) All Alterations and Improvements shall be performed at the sole cost and expenses of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by Port, which approval shall not be unreasonably withheld, conditioned, or delayed, and subject to any conditions that Port may reasonably impose.

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

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

(e) Tenant expressly acknowledges that the facility is a contributing resource to the Embarcadero National Register Historic District. Accordingly, all interior and exterior Alterations (including but not limited to any repair, alteration, improvement, or construction to the interior or exterior of the Facility) 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 the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibit D* ("Port's Guidelines"). Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction. Additionally, Tenant expressly agrees to comply with Port's Guidelines as applicable.

(f) Without limiting Section 15 below (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code 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, which consent shall not be unreasonably withheld, conditioned, or delayed

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3423, 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 3423 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.3(g), lead-based paint is "disturbed or removed" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.4. Improvements Part of Realty. Except as set forth in *Section 13.5 below*, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall, at the expiration or earlier termination of this Lease, become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender).

13.5. Removal of Improvements. At the time that Tenant requests Port's consent to any Alteration or Improvement, Tenant will request Port to specify in writing which Alterations and Improvements which Tenant shall be required to remove from the Premises in accordance with *Section 25* ("Notice of Removal"). Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit, to the extent required by Law. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port, upon five (5) days' prior written notice to Tenant, may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within thirty (30) days after delivery by Port of demand therefor and reasonable supporting documentation.

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

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

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

14. LIENS.

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following Tenant's receipt of written notice of 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 within thirty (30) days after delivery by Port to Tenant of written demand with reasonable supporting documentation. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port, the Premises, and the Facility, from mechanics' and materialmen's liens. Tenant shall give to Port at least ten (10) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold Port, City and their respective Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

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

15. HAZARDOUS MATERIALS.

15.1. Requirements for Handling. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: (i) janitorial and office supplies in limited amounts customarily used for general office purposes, and (ii) the Hazardous Materials listed on Schedule 5 attached hereto and incorporated by reference herein. Tenant shall update the list on each Anniversary Date if there are changes in types or quantities of the Hazardous Materials listed on Schedule 5 and provide a copy therefor

to Port; provided, however, Tenant shall obtain Port's prior consent to the Handling of any changes or increased quantities of Hazardous Materials from those listed on Schedule 5.

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

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

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

(c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, or any other Port property affected or impacted by the Permitted Uses or any acts, omissions, or negligence of Tenant, its Agents or Invitees at the Premises, including the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

15.3. Tenant's Environmental Condition Notification Requirements.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, or other Port property or the environment affected or impacted by the Permitted Uses or any acts, omissions, or negligence of Tenant, its Agents or Invitees at the Premises or the Facility, including 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. If there is a Release or Handling of Hazardous Materials during non-business hours that requires Tenant to notify Port pursuant to this Section 15.3, then Tenant shall call Port at (415) 274-0400.

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

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, or other Port property or the environment affected or impacted by the Permitted Uses or any acts, omissions, or negligence of Tenant, its Agents or Invitees at the Premises or the Facility, 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 with respect to the Premises or the Facility;

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

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, or other Port property or the environment affected or impacted by the Permitted Uses or any acts, omissions, or negligence of Tenant, its Agents or Invitees at the Premises, the Facility, 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 affecting the Premises or the Facility. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Pollution Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section promptly after receipt of 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 Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

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

15.4. Requirement to Remediate.

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

(i) After notifying Port in accordance with Section 15.3(a), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition caused by any acts or omissions of Tenant, its Agents or Invitees 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 the approval from any Regulatory Agency to the extent such approval is required) 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 caused by any acts or omissions of Tenant, its Agents or Invitees, Tenant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises or the Facility, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises or the Facility in any manner related directly, or indirectly to Hazardous Materials.

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

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

15.6. Notification of Asbestos. Port hereby notifies Tenant, in accordance with the United States Occupational Safety and Health Administration ("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 the Division of Occupational Safety and Health of the California Department of Industrial Relations ("Cal-OSHA") General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in *Schedule 1* attached hereto.

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

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

Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware

that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises.

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

15.7. Notification of Lead. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises or Facility. Disturbance or removal of lead is regulated by among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and San Francisco Building Code § 3423.

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

15.8. Failure to Comply. Failure to comply with Section 15 shall constitute a material default under the Lease. In the event of such default, Port shall have all rights available under the Lease and at law or equity including, without limitation, the right to either:

(a) Terminate this Lease and collect damages Port incurs as a result of such default, including, without limitation, Remediation costs incurred by Port resulting from the Remediation of any Hazardous Materials present in, on or under the Premises, the Facility, any other Port property; or

(b) Continue this Lease and require Tenant to Remediate such Hazardous Materials at the Tenant's sole cost and expense.

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

15.10. Storm Water Pollution Prevention.

(a) To the extent required thereby, 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, if applicable, 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. If Tenant is required to file its own Notice of Intent and implement its own SWPPP, 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 commencing occupancy of the Premises.

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

15.11. 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 lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in the Facility, if any, as described in *Schedule 1* attached hereto, and the Hazardous Materials described in the documents listed in *Schedule 4* attached hereto, 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 15.11 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.

16. INSURANCE

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

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

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees

eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with Sections 8.2(h) and 8.2(i) above, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

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

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

(i) Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and 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) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

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

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

(f) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss - Special Form", or its replacement), including earthquake, subject to provisions of Section 16.6(b), and flood, subject to the provisions of Section 16.6(c), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage). Notwithstanding anything to the contrary contained in this Lease, Tenant shall be relieved of the obligation to purchase and/or carry earthquake insurance when such insurance is not available, in Tenant's sole but reasonable judgment, at commercially reasonable rates.

(g) **Builders Risk Insurance.** At all times prior to Completion of the Initial Tenant Improvements and during any period of Subsequent Alteration, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 16.6(c)).

(h) **Boiler and Machinery Insurance.** Unless same is not included within Tenant's property insurance, Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements 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.

(i) **Business Interruption Insurance.** Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 16.1(d), 16.1(e) and 16.1(f) above, with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

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

(k) **Other Coverage.** Such other insurance or different coverage amounts as is required by Law or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility, as may change from time to time, or as may be required by the City's Risk Manager.

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

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

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

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

16.6. General Insurance Matters.

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

(b) As to earthquake insurance:

(i) Subject to Section 16.1(f), during construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable businesses located in the City and County of San Francisco, from recognized carriers (including building code upgrade coverage and without any deduction being made for depreciation).

(ii) Subject to Section 16.1(f), from and after Completion of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the City's Risk Manager, and at rates that are commercially reasonable for owners or operators of comparable businesses located in the City and County of San Francisco.

(c) As to flood insurance only:

(i) During construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable businesses located in the City and County of San Francisco, from recognized insurance carriers (including building code upgrade coverage and without any deduction being made for depreciation);

(ii) from and after Completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at rates that are commercially reasonable for owners or operators of comparable businesses located in the City and County of San Francisco, from recognized insurance carriers, and at rates that are commercially reasonable for owners or operators of comparable businesses located in the City and County of San Francisco.

(d) 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.

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

(f) Tenant shall deliver to Port certificates of insurance and additional insured policy endorsements in a form reasonably satisfactory to Port 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.

(g) 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 in Section 16.1 above if Port finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with the use of the Premises.

17. DAMAGE AND DESTRUCTION.

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

Port shall use its commercially reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and Port's reasonable determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, Port shall have the option to notify Tenant of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Lease shall continue in full force and effect and the Rent shall be reduced as provided herein; or (b) Port's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the Rent shall be reduced as provided above, and Tenant shall pay such reduced Rent up to the date of termination. For avoidance of doubt, if at the time Rent otherwise would be abated for Tenant, Tenant is receiving a Rent Credit pursuant to the Basic Lease Information, then during the period that Rent is abated, the application of the Rent Credit also shall be abated. Subject to the immediately following sentence, application of the Rent Credit shall resume as of the date that the Rent abatement period is terminated and Tenant, at its sole election, shall have the right to extend the Expiration Date by the number of days Rent is abated. Notwithstanding anything to the contrary in this Lease, if this Lease is terminated by either party pursuant to this Section, in no event will Port or City have any obligation or liability to reimburse or pay Tenant for any unused, remaining, or outstanding Rent Credit.

If Port elects not to appropriate funds for such repair, Port shall give written notice to Tenant within sixty (60) days after the date Port elects not to appropriate funds of its election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. Within thirty (30) days after receipt of Port's notice, Tenant shall have the right (but not the obligation) to notify Port that Tenant will provide the funds for such repair, and shall provide Port with such reasonable assurances as Port may require that such funds are available to Tenant. If Tenant exercises the foregoing option, Port's election to terminate shall be deemed rescinded and of no further force or effect and Tenant shall promptly (allowing for securing necessary Regulatory Approvals), commence and diligently repair and restore the damaged Premises and/or the Facility 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 Guidelines), without regard to the amount or availability of insurance proceeds. All repair and restoration shall be performed in accordance with Section 13 and shall be at Tenant's sole cost and expense. In no event will Tenant be entitled to any reimbursement from Port or any rent credit, offset, or abatement in connection with any cost and expense incurred by Tenant for the repair and

restoration of the damaged Premises and/or the Facility. In the case of termination pursuant to this Section, Rent shall be reduced as provided above, and Tenant shall pay such reduced Rent up to the date of termination.

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

In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

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

17.3. Tenant's Right to Re-Lease Premises. Notwithstanding anything to the contrary contained in this Lease, if Port elects to terminate this Lease pursuant to Section 4.2 or Article 17 and Port's election to terminate is not deemed rescinded as set forth in Sections 4.2(b) or 17.1 above, and, at any time prior to the date that would have been ninety (90) days prior to Expiration Date hereof had Port not terminated this Lease, Port restores the Premises for purposes of leasing all or a portion thereof to third party tenants, then, prior to offering the Premises for lease to any third party, Port shall offer ("Port's Offer") the Premises to Tenant upon the same terms and conditions contained in this Lease for that period commencing with the date of delivery by Port of the restored Premises to Tenant until the date that would have been the original Expiration Date hereof. The foregoing shall not be deemed to prohibit the parties from agreeing upon different terms and conditions for any period commencing on the date immediately following what would have been the original Expiration Date hereof. If Tenant and Port are unable to agree on the terms and conditions for the period commencing on the date immediately following what would have been the original Expiration Date hereof within sixty (60) days of Port's Offer, then Port will have the right to lease the Premises or any portion thereof, to any other party on any other terms and conditions.

18. EMINENT DOMAIN.

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

18.2. Partial Takings. If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, as determined by Tenant in its sole but reasonable judgment, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination which shall be not less than thirty (30)

or more than sixty (60) days after the date of notice. For avoidance of doubt, if at the time Rent otherwise would be abated for Tenant, Tenant is receiving a Rent Credit pursuant to the Basic Lease Information, then during the period that Rent is abated, the application of the Rent Credit also shall be abated. Subject to the immediately following sentence, application of the Rent Credit shall resume as of the date that the Rent abatement period is terminated and Tenant, at its sole election, shall have the right to extend the Expiration Date by the number of days Rent is abated. Notwithstanding anything to the contrary in this Lease, if this Lease is terminated by either party pursuant to this Section, in no event will Port or City have any obligation or liability to reimburse or pay Tenant for any unused, remaining, or outstanding Rent Credit.

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

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

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

19. INDEMNITY AND EXCULPATION.

19.1. General Indemnity. Except to the extent caused directly and solely by the gross negligence or willful misconduct of Port or any Indemnified Party, 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, if requested, shall defend them, without cost to the Indemnified Parties, against any and all Claims, direct or vicarious liability, damage, injury or loss 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 the Facility, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e)

any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or the Facility.

19.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise in, on, or about the Premises, the Facility, or other Port property or the environment affected or impacted by the Permitted Uses or any acts, omissions, or negligence of Tenant, its Agents or Invitees at the Premises or the Facility as a result of: (i) any Hazardous Material Condition, except where caused by the Indemnified Parties' sole and direct gross negligence or willful misconduct; and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the Premises or the Facility; (v) sums paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vi) 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 thirty (30) days after delivery by Port to Tenant of Port's written payment demand with supporting documentation. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the 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. The Indemnification obligations of Tenant set forth in this Lease includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude claims, liability, damage or loss resulting solely and exclusively from the gross negligence or willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

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. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter until resolved. Tenant's Indemnification obligation begins from the first notice that any claim or demand is or may be made. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

19.4. Exculpation. Except as set forth in the immediately following paragraph, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims against the Indemnified Parties, and agrees to Indemnify the Indemnified Parties from any Claims for damages to goods, wares, goodwill, merchandise, equipment or business

opportunities and by persons in, upon or about the Premises, the Facility, or other Port property or the environment affected or impacted by the Permitted Uses or any acts, omissions, or negligence of Tenant, its Agents or Invitees at the Premises or the Facility, for any cause arising at any time during the Term or Tenant's occupancy of the Premises, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by the Indemnified Parties.

The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, and (vi) any other acts, omissions or causes. Nothing in this Section 19.4 shall relieve the Indemnified Parties from liability to the extent caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. Effect of Waivers. Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims arising directly or indirectly from the actual or alleged facts or circumstances of the process leading to this Lease prior to the Effective Date.

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

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

BY PLACING ITS INITIALS BELOW, 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.

Initials: _____

Tenant

19.6. No Consequential Damages. Notwithstanding anything to the contrary contained in this Lease, except for Tenant's obligations pursuant to Article 15 (Hazardous Materials) and Article 26 (Holding Over), in no event shall either party be liable to the other for any indirect, consequential, special, exemplary, incidental or punitive damages arising from or relating to this Lease.

20. ASSIGNMENT AND SUBLETTING.

20.1. Transfer to Affiliate; Permitted Transferees.

(a) Tenant may make an Affiliate Transfer without obtaining Port's consent, but only if Tenant gives Port: (i) prior written notice at least 10 business days before the Transfer Date (unless prior notice is prohibited by applicable securities laws, in which case notice shall be provided within five (5) business days after the Transfer Date); (ii) copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within 10 business days after the actual Transfer Date; and (iii) at least five (5) business days prior to the Transfer Date, the TI Security if the Occupancy Certificate has not yet been issued; provided, however, that if applicable securities laws prohibit prior notice of the Transfer, the TI Security shall be delivered within five (5) business days after the Transfer Date).

(b) Subject to the last sentence of this *Section 20.1(b)*, Tenant, without Port's prior written consent but with notice to Port within ten (10) business days after the effective date of the Transfer, also may sublet the Premises or assign this Lease to: (i) a successor corporation or entity related to Tenant by merger, consolidation, non-bankruptcy reorganization or government action; or (ii) a purchaser of substantially all of Tenant's assets or stock (each of the foregoing hereinafter sometimes collectively shall be referred to as "Permitted Transfers," and any person to whom any Permitted Transfer is made hereinafter sometimes shall be referred to as a "Permitted Transferee"). For purposes of this Lease, a transfer or issuance of Tenant's stock over the New York Stock Exchange, the American Stock Exchange, or NASDAQ shall not be deemed an assignment, subletting or other Transfer of this Lease or the Premises requiring Port's consent. Any right of Port to recapture the Premises or receive Excess Rent shall not apply to an Affiliate Transfer or a Permitted Transfer. Subject to the last sentence of *Section 20.1(a)* above, Tenant will provide Port at least ten (10) business days prior the effective date of the Transfer, the TI Security if the Occupancy Certificate has not yet been issued.

(c) Port will have the right to: (i) request additional documentation and information relating to Tenant's relationship with the Affiliate or Permitted Transferee for thirty (30) days after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Affiliate Transfer or Permitted Transfer on the grounds that the Transferee is not an Affiliate or Permitted Transferee as defined in this Lease, if written notice is delivered to Tenant within thirty (30) days after Port's receipt of all required and reasonably requested information.

20.2. *Transfer to Non-Affiliate.*

(a) Except for an Affiliate Transfer or a Permitted Transfer, Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold, condition, or delay unreasonably.

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

(ii) Tenant also agrees that Port will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee under an Assignment, 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.

(iii) Tenant further agrees that it shall be reasonable for Port to withhold its consent if the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any Port interest materially and adversely.

(b) At least 60 days before any Transfer to a Non-Affiliate, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the 3 years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements (unless Tenant is a publicly traded company, in which case, Tenant shall not be obligated to provide financial statement); (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.

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

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

(e) Tenant agrees to reimburse Port for all costs, including reasonable attorneys' fees, that Port incurs to review, investigate, process, document, disapprove, or approve any Transfer request, provided that such costs do not exceed \$2,500.00 per request for consent.

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

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

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

Term of Sublease:

5 years x 12 months = 60 months

Subletting Expenses:	$\$15,000 + \$15,000 = \$30,000$
Amortized Subletting Expenses:	$\$30,000/60 \text{ months} = \$500/\text{month}$
Excess Rent:	$\$5,000/\text{month} - \$3,000/\text{month} = \$2,000/\text{month}$
Additional Rent:	$\$2,000/\text{month} - \$500/\text{month} = \$1,500/\text{month}$

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

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

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

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

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

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

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

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

20.7. No Recapture Right. Notwithstanding anything to the contrary contained in this Lease, in no event shall Port have the right to terminate this Lease or recapture all or any portion of the Premises solely as a result of any Transfer, Affiliate Transfer or Permitted Transfer pursuant to this Section 20.

21. DEFAULT BY TENANT.

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

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

(b) failure to comply with Tenant's management covenants set forth in Section 32 below, as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

(c) abandonment or vacation of the Premises by Tenant while Tenant is in default of any other obligation under this Lease; or

(d) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; or

(e) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 34 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

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

(h) failure by Tenant to comply with the provisions of Section 15 above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided; or

(i) without limiting the provisions of Sections 21(d) or 21(h) above, 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; or

(j) failure by Tenant to discharge any lien or encumbrance placed on the Facility or any part thereof in violation of this Lease within twenty (20) days after the date such lien or encumbrance is filed or recorded against the Facility or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(k) delivery to Tenant of three (3) or more notices of material monetary defaults or defaults relating to Tenant's failure to comply with Sections 8, 9, 11, 13, or 15, irrespective of whether Tenant actually cures such default within the specified time period, may, at the sole and absolute discretion of Port, be deemed an incurable breach of this Lease allowing Port to immediately terminate this Lease without further notice or demand to Tenant; or

(l) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant, and 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.

(m) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code

or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

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

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

(p) Tenant has been notified in writing by Port that Tenant is considered a Habitual Late Payer and Tenant fails to pay all Monthly Base Rent quarterly in advance promptly after receipt of such notice.

22. PORT'S REMEDIES.

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

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

22.2. *Termination of Tenant's Right to Possession.* Port may terminate Tenant's right to possession of the Premises at any time. No act by Port other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the

appointment of a receiver on Port's initiative to protect Port's interest under this Lease shall not constitute a termination of Tenant's right to possession. If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following.

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

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

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

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

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

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

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

22.5. Port's Options for Hazardous Materials Default. If Tenant's Event of Default arises from Tenant's failure to comply with its Remediation obligations under Section 15 above, in addition to its other remedies at law, in equity, and under this Lease, Port may elect at its sole discretion any of the following remedies.

(a) Port may terminate this Lease and collect damages Port incurs as a result of the Event of Default, including Port's costs to Remediate any Hazardous Materials.

(b) Port may keep this Lease in effect and require Tenant to Remediate the Hazardous Materials at the Tenant's sole cost.

(c) If, after seven (7) business days' additional written notice from Port, Tenant still has not commenced its Remediation obligations under *Section 15* above, Port may deem Tenant to have held over, and Tenant will be required to pay Rent as increased under Section 26.2 until the Premises are Remediated. If Port elects this remedy, only Port's notice to Tenant confirming termination of this Lease and accepting Tenant's surrender of the Premises will terminate this Lease or any holdover tenancy. No other Port acts or conduct, such as accepting the keys to the Premises, will constitute an acceptance of Tenant's surrender of the Premises.

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

22.7. *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 default of Tenant hereunder.

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

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

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

23.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 23 shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2. *Appeals.* Attorneys' fees under this Section 23 shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

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

24. PORT'S ENTRY ON PREMISES.

24.1. Entry for Inspection. Port and its authorized Agents shall have the right to enter the Premises upon reasonable prior notice at any time during normal business hours on 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 are in good condition and whether Tenant is complying with its obligations under this Lease.

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

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

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

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

(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, except when showing the Premises for lease after the expiration of the Term, in which case Port shall only market the Premises for lease during the last nine (9) months of the Term;

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

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

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

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

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

25. SURRENDER AND QUITCLAIM.

25.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or

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

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.5, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.3 below until the Premises are surrendered in accordance with these Sections, and Tenant shall indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

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

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

26. HOLDING OVER.

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

26.2. With Consent. If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred twenty-five percent (125%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the higher of the: (a) Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

26.3. Without Consent. If Tenant holds over without the prior written consent of Port, monthly Base Rent shall equal one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.

27. MINERAL RESERVATION.

The State of California, 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. In accordance with the provisions of these Statutes, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract subsurface minerals, including oil and gas deposits, from such area.

In no event shall Port be liable to Tenant for any Claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

28. CITY AND PORT REQUIREMENTS.

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

28.1. Nondiscrimination.

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for

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

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

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

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

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

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

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

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

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

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department 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 the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

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

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

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

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

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

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

28.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements.

Tenant agrees to comply with the ordinance through compliance with the following:

(a) No later than thirty (30) days after full execution of this Lease, Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by the Port of San Francisco.

(b) Tenant shall follow all requirements of the San Francisco Workforce Development System, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to the ordinance, Tenant may be subject to monetary penalties for failure to comply with the ordinance.

28.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with HRC to determine appropriate methods for promoting participation by LBEs in the Scope of Work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm.

28.5. Resource-Efficient Facilities and Green Building Requirements. Tenant agrees to comply with all applicable provisions of Environment Code Chapters 7 and 13C relating to resource-efficiency and green building design requirements.

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

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

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

Tenant agrees to remove all graffiti from any real property owned or leased by Tenant in the City 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. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any

building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Public Works Code, the Planning Code, or the Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

28.9. Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the Environment Code (the "Pesticide Ordinance") which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Tenant to submit to Port an integrated pest management (IPM) 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, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide 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. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 307 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, if Tenant seeks in good faith an exemption under the Pesticide Ordinance.

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

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

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

28.13. Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the Campaign and Governmental Conduct Code (the "Conduct Code") which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or six (6) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

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

28.16. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

28.17. Wages and Working Conditions. Tenant agrees that any person performing labor in the construction of any Alterations or Improvements to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for construction of such Alterations or Improvements a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of such Alterations or Improvements to the Premises.

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

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

29. NOTICES.

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

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

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

30. MISCELLANEOUS PROVISIONS.

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

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

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

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

30.5. Interpretation of Lease.

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

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

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

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

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

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

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

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

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

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

30.7. Real Estate Broker's Fees. 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 and hold Port harmless 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.

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

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

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

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

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

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

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

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

30.16. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by either the Executive Director of Port or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller. For avoidance of doubt, the Rent Credit is not a "Concession" for purposes of this Lease.

31. LIMITATION ON DAMAGES.

31.1. *No Recourse Beyond Value of Facility.* 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 Facility (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

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

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

32. TENANT'S MANAGEMENT COVENANTS.

Tenant shall maintain and operate the Premises, or cause the Premises to be maintained and operated, in a manner consistent with standards for the maintenance and operation of other office, research and development and workshop establishments located on Port property. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in *Section 11*, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping and (e) security services for the Premises.

33. TENANT'S RIGHT OF FIRST OFFER TO EXTEND TERM.

(a) Tenant shall have the one-time right to make an offer to extend this Lease for an additional sixty (60) months ("**Extension Term**") as provided in this Section 33. If Tenant, no later than ninety (90) days prior to the Expiration Date, submits to Port a written offer to lease the Premises for an Extension Term ("**Offer**"), Port shall exclusively negotiate with Tenant for a period of no less than forty-five (45) days. The Offer must be for a term of no less than sixty (60) months and for the entire Premises. Additionally, the proposed rental rates in the Offer must be no less than Port's approved rental rates per square foot for office space at Pier 9. In no event shall any Extension Term contain any form of rent credit, abatement, offset or other monetary consideration for the benefit of Tenant. If Port and Tenant have not reached an agreement for an Extension Term within forty-five (45) days after Tenant's Offer (subject to extension by mutual consent of both parties), Port shall have no further obligation under this Section 33. Port's acceptance or rejection of the Offer shall be in the Port's sole discretion. At the election of the parties, the Extension Term may be documented by a lease amendment ("**Lease Amendment**").

(b) If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's Offer or at any time prior to the execution of a Lease

Amendment pursuant to this right of first offer (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then this **Section 33** shall be null and void and Port may elect to proceed as it wishes, in its sole discretion.

(c) If Tenant fails to provide an Offer within the time frame set forth above or if Tenant's Offer is inconsistent with this Section 33, Port shall have no obligation under this Section 33.

(d) Tenant will be solely responsible for all costs Tenant incurs related to or arising from negotiations with Port. Tenant will have no claims against Port for reimbursement.

(e) The parties agree that that right of first offer is not intended to create any agreement or obligation by Port to negotiate a final agreement and imposes no duty whatsoever on Port to continue negotiations, other than to engage in arm's length exclusive negotiations subject to the limitations specified in this Section 33. The parties agree that Port cannot deliver a final Lease Amendment for an Extension Term unless and until the Port Commission and Board of Supervisors (each, if required, and in its sole and absolute discretion) have approved such Lease Amendment.

(f) Notwithstanding any other provision of this Lease and notwithstanding any allowable Transfer of the rights under this Lease, the right of first offer provided by this Section 33 is personal to Tenant and any Affiliate Transferee or Permitted Transferee, and may not be Transferred to any other Transferee without Port's prior consent, which may be withheld in Port's sole and absolute discretion. Any Transfer in violation of this Section 33 will be an incurable Event of Default.

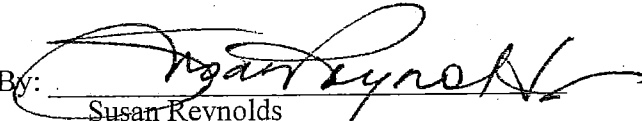
34. TENANT ESTOPPEL CERTIFICATES.

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

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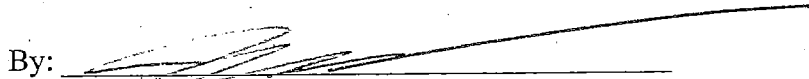
IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

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

By: 
Susan Reynolds
Deputy Director, Real Estate

Date Signed: 09/26/2012

TENANT: AUTODESK, INC., a Delaware corporation


By: 
Name: Joseph Chen
Title: V.P., Real Estate Facilities, Travel Security

Date Signed: _____

By: _____
Name: _____
Title: _____

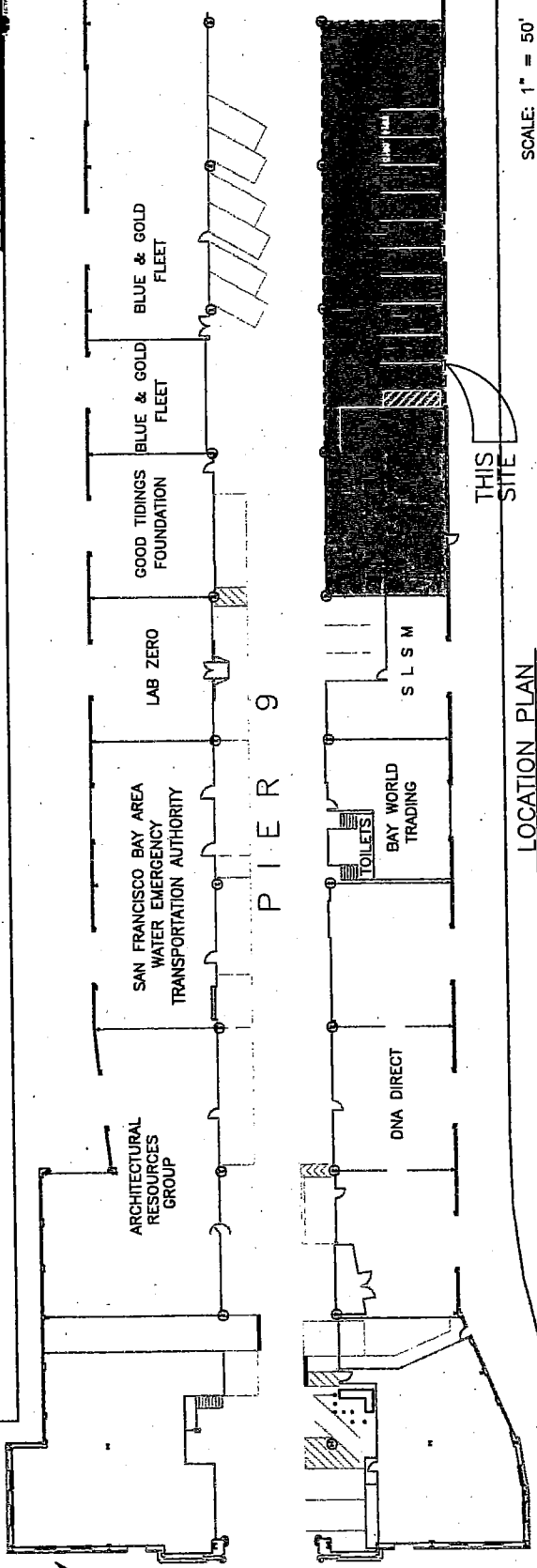
Date Signed: _____

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

By: 
Name: Rona H. Sandler
Deputy City Attorney

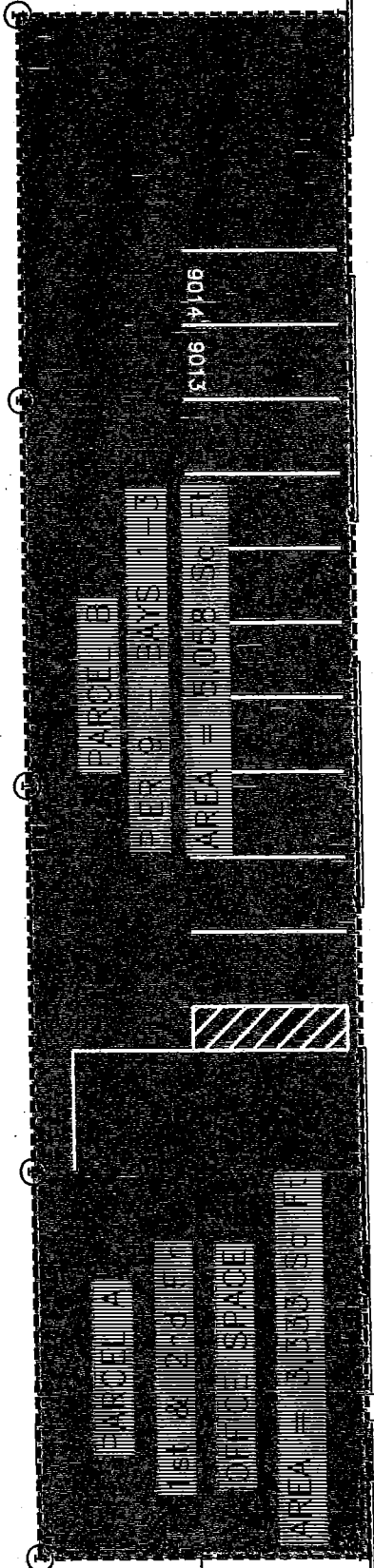
Lease Prepared By: Jeffrey A. Bauer, Senior Leasing Manager


(initial)



SCALE: 1" = 50'

LOCATION PLAN




SCALE: 1" = 20'

EXHIBIT A-1

1065

INITIALS: PORT: _____ TENANT: _____ DATE: _____

LEASE NO. L-15169	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT AUTODESK	DRAWN BY: ECC CHECKED BY: J. BAUER PLACE CODE NO. 1090-SHEDA-116	DATE: JUL 25, 2012 SCALE: AS SHOWN SHEET NO. 116
			OF SHEETS 116	OF SHEETS 116

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

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

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

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

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

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

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

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

EXHIBIT D

PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES

Approved by San Francisco Port Commission, October 26, 2004, with proposed amendments to respond to comments from California State Office of Historic Preservation.

Background

As part of the preparation of the Port of San Francisco Embarcadero Waterfront National Register Historic District nomination, the Port has developed Historic Preservation Review Guidelines (Guidelines) to define how the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) should be interpreted and applied to the historic resources within the District, to ensure its responsible management and stewardship. The set of Guidelines below focuses on Pier and Bulkhead Wharf Substructures, providing an important tool to be used by the Port's historic preservation experts to define parameters for the repair, maintenance or alterations to the pile foundations, substructures and decks of piers and bulkhead wharves upon which pier sheds, bulkhead buildings and other waterfront structures sit.

These Guidelines were developed by the Port's historic preservation expert staff in concert with San Francisco Architectural Heritage and preservation experts familiar with the specific historic resources in the District. The Guidelines were approved by the San Francisco Port Commission in October 2004, and further amended to respond to comments from the California State Office of Historic Preservation. The Guidelines will be used in the review of pier and bulkhead wharf substructure projects that are subject only to approval by the Port. Projects affecting District resources which are subject to review and approval by any of the following entities are not subject to these Guidelines, in recognition of the separate review criteria and practices employed by those agencies to administer the Secretary's Standards:

- 1) Federal Undertakings - Requiring Section 106 consultation
 - Projects receiving federal funding
 - Transfer of federal property
 - Approval of a federal permit, license or similar entitlement (i.e. Army Corps. of Engineers)
- 2) Federal Historic Preservation Tax Credit Projects – Requiring State Office of Historic Preservation and National Park Service approvals
- 3) San Francisco Landmarks Preservation Advisory Board – Subject to Planning Code Article 10 Provisions for City Landmarks and City Historic Districts

Port of San Francisco Review Process – Overview

For projects affecting historic resources within the Embarcadero Historic District that are subject only to the Port's review and approval, the Port conducts its review in conjunction with use of Historic Preservation Guidelines, where applicable, to direct actions that comply with the Secretary's Standards.

All projects undergo case-specific review to determine the appropriate application of the Guidelines and other related Port design reviews. The Port maintains qualified historic preservation expertise on staff and may work with other qualified historic preservation professionals to review projects for consistency with the Secretary's Standards and any applicable Guidelines.

In the case of repairing and managing pier and bulkhead wharf substructures, the Guidelines below are to be used in the Port review process. The process follows the principles of the Secretary's Standards for Rehabilitation and the Port's longstanding practice of repairing existing materials wherever feasible. Replacement of historic materials, if deterioration makes such repair infeasible, is limited to replacement in-kind (use of the same materials) whenever possible. Where replacement in-kind is infeasible, the Port directs use of new substitute materials that are compatible with the character defining features of the subject historic resource to preserve the historic integrity of Contributing resources or, in the case of reviewing Non-Contributing resources, the integrity of the Historic District.

I. Pier and Bulkhead Wharf Substructures

The historic piers and resources in the Embarcadero Historic District are made up of pile-supported platforms upon which pier shed and bulkhead building structures were built to conduct maritime commerce. The substructure of the piers and bulkhead wharf, described in detail in Section 7 of the Embarcadero Historic District nomination, consists of vertically driven piles, topped by stringer and pile cap beams, which create the horizontal structural framework upon which pier decks rest. Beneath these structures, the tides of the San Francisco Bay ebb and flow. Pier substructures are defined to include pier aprons, which are constructed at the perimeter of piers, generally used to provide a pile-supported platform for ship berthing, an outdoor work area, and in more recent times a public access and recreation area. In most instances, pier aprons are constructed of wood and have a shorter life span, historically requiring more maintenance and repair than steel and concrete substructures.

Within this complex, the bulkhead wharf is an important feature. It is comprised of 23 individual sections that extend end to end throughout the historic district, adjacent and connected to the Seawall, which establishes the constructed edge of the waterfront between piers (see Figures 1 and 2). In addition, the bulkhead wharf plays an important role in defining the Embarcadero's urban form, which supports maritime, public access and commercial recreation/retail functions.

EXHIBIT E

WORK LETTER

This Work Letter sets forth Tenant's obligation to construct the Initial Tenant Improvements and shall be deemed part of the Lease. The "Initial Tenant Improvements" are described in the Scope of Development attached hereto as *Attachment 1* and associated Port Building Permits and any amendments thereto and include without limitation, those improvements listed in the Basic Lease Information.

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 Tenant Improvements or, in the event Tenant fails to complete such improvements by the Outside Completion Date, as defined in the Basic Lease Information, to such later date Port issues a Certificate of Completion for the Initial Tenant Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Tenant Improvements, Tenant's obligations to obtain final approvals for the Initial Tenant Improvements, and the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and 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 Commencement Date as defined in the Basic Lease Information and shall expire on the date that Port issues a Certificate of Completion for the Initial Tenant Improvements.

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 reasonably 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 (provided the Executive Director may grant up to a 60 day extension in her sole and absolute discretion) 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.

1.6. Port Acting in its Proprietary Capacity. Tenant understands and agrees that any requests for Port's consent or approval is being made to Port 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. Any time limits on Port's period to respond set forth herein relates only to Port in its capacity as landowner with a proprietary interest in the Premises and in no way modifies or limits the period in which Port, in its regulatory capacity, may respond to Tenant.

2. CONSTRUCTION OF THE INITIAL TENANT IMPROVEMENTS

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to complete for the benefit of the Port the construction of the Initial Tenant

Improvements within One Hundred Eighty (180) days of the Commencement Date, as such dates may be extended by the Executive Director in accordance with Section 1.5 of this Work Letter. Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease including without limitation Section 16 thereof. All such requirements are sometimes referred to collectively as the "Project Requirements." For purposes of the Lease and this Work Letter, "Port Delays" means delays in the issuance of Port permits that are beyond the reasonable control of Tenant, or delays caused by Port's failure to respond within the time periods set forth in this Work Letter.

(b) Scope of Development; Schedule of Performance. Tenant shall use commercially reasonable efforts to construct or cause to be constructed the Initial Tenant Improvements on the Premises within the times and in the manner set forth in this Work Letter and the scope of development comprised of the Schematic Drawings, the Schedule of Performance, the preliminary plans and any narrative description (collectively, the "Scope of Development") attached hereto as *Attachment 1*. All construction with respect to the Initial Tenant 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 Tenant Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining tenants, properties and improvements, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

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

2.2. Utilities. Tenant, at its sole expense, shall arrange for the provision and construction of all on-Premises utilities necessary to use the Premises for the Permitted Use. Tenant and Port shall coordinate, if necessary, with respect to installation of any off-Premises utility infrastructure and design of the Initial Tenant Improvements, including providing 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 Tenant Improvements. If Tenant fails to provide such surveys and as-built plans and specifications to Port within such period of time, Port after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of final surveys and as-built plans and specifications, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

2.4. Insurance. At all times during the construction of the Initial Tenant Improvements, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily

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

2.5. Security for Completion of the Work. If Tenant Transfers its interest in this Lease (including any Affiliate Transfers or Permitted Transfers) at any time prior to issuance of an Occupancy Certificate, or if Tenant does not obtain an Occupancy Certificate by the Outside Completion Date (as such date may be extended by Section 1.5 above of this Work Letter), Tenant must deliver to Port an amount equal to one hundred twenty-five percent (125%) of the estimated cost to complete construction of the Initial Tenant Improvements, as reasonably determined at such time by Port and Tenant, but in no event more than \$3,230,745.00 ("TI Security") within ten (10) business days (i) prior to the effective date of the Transfer, or (ii) following the Outside Completion Date, as applicable. The TI Security may be used by Port to help protect Port against any liability for mechanics' and materialmen's liens, stop notices, to ensure completion of the Initial Tenant Improvements, and to compensate Port for any expenses incurred or damage caused as a result of Tenant's failure to obtain the Occupancy Certificate by the Outside Completion Date (including, but not limited to, any attorneys' fees and costs), as such date may be extended by Section 1.5 above of this Work Letter. The TI Security may be in the form of cash or letter of credit, the requirements of which are described in *Attachment 2* attached hereto. Port will not be required to keep the TI Security separate from its general funds, and Tenant will not be entitled to any interest on the TI Security. The amount of the TI Security will not be deemed to limit Tenant's liability for Completion of the Tenant Improvements in accordance with the terms and conditions of this Lease. Port will return the unused balance of the TI Security to Tenant within thirty (30) days after issuance of the Occupancy Certificate.

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 Tenant Improvements; (iii) all requirements of all policies of insurance which may be applicable to the Premises as to the Initial Tenant Improvements or Tenant's Personal Property; and (iv) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of Tenant by

the preceding sentence shall include the obligation to make, at Tenant's sole cost and expense, 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 Tenant Improvements or Tenant's Personal Property. Tenant shall, promptly upon request, provide Port with reasonable evidence of compliance with Tenant's obligations under this Section.

2.7. Port and Other Governmental Permits. Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the Initial Tenant Improvements and shall make application for such permits directly to the applicable Regulatory Agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with Section 10.2 of the Lease.

2.8. Port Rights of Access. Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the work being performed in constructing the Initial Tenant Improvements 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 Tenant Improvements under any such inspection, subject to withholding documents otherwise privileged or confidential. Port disclaims any warranties, representations and statements made in any such reports, will have no liability or responsibility with respect to any such warranties, representations and statements, and will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Initial Tenant Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

2.9. Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Initial Tenant Improvements, and shall post the signs on the Premises during the period of construction. The size, design, test and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably. Failure by Port to disapprove any such submission within fifteen (15) days after submittal of all such documents required or requested by Port, will be deemed to be an approval.

3. PREPARATION AND APPROVAL OF PLANS

3.1. The Construction Documents.

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

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

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

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

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

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

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

(1) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.
(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.
(5) Preliminary interior improvement plans.
(6) Plans for proposed public access areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.

(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 Premises Permit.

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

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

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

3.3. *Construction Document Review Procedures.*

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents (with Port's approval not to be unreasonably withheld, conditioned, or delayed; provided, however, that Port shall have the right in its sole and absolute discretion to approve or disapprove any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems), in writing, in accordance with the Schedule of Performance, but, in any event, within twenty-one (21) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port has not responded in writing to Tenant's request within such twenty-one (21) day period, Tenant shall deliver a second notice to Port requesting Port's approval (the "Second Notice"). The Second Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: **"APPROVAL REQUEST FOR AUTODESK ALTERATIONS AT PIER 9. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve, disapprove, or conditionally approve within five (5) business days following receipt of the Second Notice, Port's failure to respond shall be deemed approval.

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

3.4. *Changes in Construction Documents.*

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

(b) Response. Tenant shall request in writing Port's approval in connection with all material changes to the Construction Documents. Port shall respond to Tenant in writing within twenty-one (21) days after receipt of Tenant's request. If Port has not responded in writing to Tenant's request within such twenty-one (21) day period, Tenant shall deliver a second notice to Port requesting Port's approval (the "Second Notice"). The Second Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: **"APPROVAL REQUEST FOR AUTODESK ALTERATIONS AT PIER 9. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve, disapprove, or conditionally approve within five (5)

business days following receipt of the Second Notice, Port's failure to respond shall be deemed approval.

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. NO FORCE MAJEURE

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

4.2. No Force Majeure. Tenant's obligation to Complete construction of the Initial Tenant Improvements as set forth in Section 4.1 above shall be final and absolute and shall not be subject to Force Majeure, Port delays, Regulatory Approval delays or any other delays, unless the Executive Director extends the time to perform as described in *Section 1.5* of this Work Letter.

4.3. Port's Remedy for Tenant's Failure to Timely Complete Construction. In the event Tenant fails to complete the Initial Tenant Improvements in a manner sufficient to cause Port to issue a Certificate of Completion for the Initial Tenant Improvements by the Outside Completion Date, notwithstanding anything to the contrary contained in this Lease, Tenant will not be entitled to apply any Rent Credit against the monthly installment of Base Rent payable to Port until Port has issued a Certificate of Completion for the Initial Tenant Improvements.

5. CERTIFICATE OF COMPLETION

5.1. Certificate of Completion.

(a) Issuance Process.

(i) After Tenant has Completed the construction of the Initial Tenant Improvements in accordance with all the provisions of this Work Letter, including, but not limited to, the Project Requirements, Tenant may request a Certificate of Completion for the Initial Tenant Improvements in writing. In conjunction with such request, Tenant will provide Port an itemized list of invoices and accompanying payments made, separated by relevant categories for the Initial Tenant Improvements ("TI Cost Summary"), along with the Documents Evidencing TI Costs.

(ii) Port shall act on Tenant's request for a Certificate of Completion within sixty (60) days of receipt of the TI Cost Summary and the Documents Evidencing TI Costs.

(b) Condition to Approval. The TI Cost Summary and Documents Evidencing TI Costs must show that the Initial Tenant Improvements construction costs is equal to or exceeds \$3,230,745.00. 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 Tenant performing all the Deferred Items. The obligations set forth in this subsection shall survive a termination of the Lease.

Definition of Completed. For purposes of this Work Letter and Port's issuance of a Certificate of Completion in accordance with the provisions of Section 5.1(a) above, "Completed" means completion by Tenant of all aspects of the Initial Tenant Improvements as the case may be in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Project or provision of security satisfactory to Port for Deferred Items under Section 5.1(b), and issuance of the Occupancy Certificate.

6. TERMINATION OF LEASE

6.1. Plans and Data. If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Tenant Improvements, Tenant shall assign and deliver to Port (without cost to Port) any and all copies of reports in its possession regarding the Premises and all Construction Documents in the possession of or prepared for Tenant, for the contracting of the Initial Tenant Improvements within thirty (30) days after written demand from Port. Port may use said reports and Construction Documents for any purpose whatsoever relating to the Premises; provided, however, Port shall release Tenant and Tenant's contractor, architect, engineer, agents, employees and other consultants from any Losses arising out of Port's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by Port to complete the Initial Tenant Improvements. Tenant shall include in all contracts and authorizations for services pertaining to the planning and design of the Initial Tenant Improvements an express agreement by the Person performing such services that Port may use such reports or Construction Documents as provided in this Section 6.1 without compensation or payment from Port in the event such reports or Construction Documents are delivered to Port under the provisions of this Section 6.1, provided that Port agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

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

ATTACHMENTS

ATTACHMENT 1	SCOPE OF DEVELOPMENT
ATTACHMENT 2	LETTER OF CREDIT REQUIREMENTS

ATTACHMENT 1
SCOPE OF DEVELOPMENT
[TO BE ATTACHED]

Pier 9 Scope of Work – Phase I

- Site Preparation and Demolition
- Structural upgrades to beams and girders to support equipment and mezzanine
- New wall enclosure surrounding Bays 1, 2 and 3
- New mezzanine and replaced second floor in Suite 116
- Catwalk spanning between mezzanine and new second floor at Suite 116
- New stairs for circulation and exiting
- ADA accessible lift
- Bathrooms
- New plumbing (water, sewer lines to serve the Premises)
- New HVAC distribution
- New electrical service and distribution
- New storefronts
- New glazing consistent with the Secretary of the Interior Standards
- Interior office improvements
- Workshop improvements
- Other work as necessary

Construction Budget ste 1116 Bays 1, 2, and 3

Autodesk Pier 9 Facilities Project Budget Detail

Date

8/3/2012

Project Information

PSI Job No.
 Client: Autodesk
 Location Pier 9 Ste 116, Bays 1, 2 and 3
 Scope: Work shop and Office Improvements

Ste 116, Bays 1, 2, 3

CSI	Description	Quantity	Units	Cost	Budget	Core/Shell
A01	GENERAL EXPENSES					
	By percent of construction cost	2805000	%	7%	\$196,350	\$ 90,819
	TOTAL				\$196,350	\$90,819
A02	TEMPORARY CONSTRUCTION					
	By percent of construction cost	2805000	%	4%	\$112,200	\$ 51,897
	TOTAL				\$112,200	\$51,897
B01	SITE PREP and STRUCTURAL DEMO					
	Compensate for existing conditions	40	hr	\$ 75	\$3,000	
	Coring for utilities	1	bgt	\$ 2,500	\$2,500	
	Remove workshop/office floors asphalt	6400	sf	\$ 3	\$19,200	\$ 19,200
	Allowance for disposal if hazardous	6400	sf	\$ 2	\$12,800	\$ 12,800
	TOTAL				\$37,500	\$32,000
B02	NON-STRUCTURAL DEMOLITION					
	Compensate for existing conditions	40	hr	\$ 75	\$3,000	
	Demolition of (E) interiors	3300	sf	\$ 5	\$16,500	
	Demolish stair to 2nd floor	16	hr	\$ 75	\$1,200	\$ 1,200
	Relocate trash area	1	allow	\$ 10,000	\$10,000	\$ 10,000
					\$0	
	TOTAL				\$30,700	\$11,200
C02	BELOW GRADE CONSTRUCTION					
	Substructure upgrades for Mezzanine	30	lf of beam	\$ 1,200	\$36,000	\$ 36,000
	Substructure upgrades for heavy equipment	30	lf of beam	\$ 1,200	\$36,000	\$ 36,000
					\$0	
	TOTAL				\$72,000	\$72,000
C03	SUPERSTRUCTURE					
	3300 New slab over insulation	6400	sf	\$ 7	\$44,800	\$ 44,800
	3300 Deck fill	3200	sf	\$ 8	\$25,600	\$ 25,600
	3300 Misc Grout and Patch	1	bgt	\$ 5,000	\$5,000	\$ 5,000
	3300 Housekeeping pads	200	sf	\$ 25	\$5,000	
	3300 Entry ramps	300	sf	\$ 10	\$3,000	\$ 3,000
	2200 Patch asphalt	1	bgt	\$ 1,000	\$1,000	\$ 1,000
	5100 Structural Steel Mezzanine \$ 4.80	3200	sf	\$ 24	\$76,800	\$ 76,800
	5100 Catwalk with rail	200	sf	\$ 250	\$50,000	\$ 50,000
	5300 Metal Decking Mezzanine	3200	sf	\$ 3	\$9,600	\$ 9,600
	5500 Misc Steel Mech support	1	bgt	\$ 15,000	\$15,000	\$ 15,000
	5500 Depressed grated drainage area	1	bgt	\$ 2,500	\$2,500	
	TOTAL				\$238,300	\$230,800
C04	VERTICAL LOAD UPGRADE					
	Column gussets 4 Cx4 gussets ea	25	ea	\$ 750	\$18,750	\$ 18,750
					\$0	
	TOTAL				\$18,750	\$18,750

Construction Budget ste 1116 Bays 1, 2, and 3

CSI	Description	Quantity	Units	Cost	Budget	Core/Shell
					\$0	\$
	Lab				\$58,960	
	Backing	24	lf	\$ 15	\$360	
	Cabinetry/counters	1	bgt	\$ 7,500	\$7,500	
	Doors and hardware	1	ea	\$ 1,200	\$1,200	
	Walls	35	lf	\$ 80	\$2,800	
	Ceilings	150	sf	\$ 10	\$1,500	
	Rubber floors	150	sf	\$ 20	\$3,000	
	Laminate wall panels	410	sf	\$ 10	\$4,100	
	Paint	2	stall	\$ 750	\$1,500	
	Accessories	1	bgt	\$ 1,500	\$1,500	
	Glazing	50	sf	\$ 60	\$3,000	
	Sink	1	bgt	\$ 2,500	\$2,500	
	Gas/Storage	1	bgt	\$ 7,500	\$7,500	
	Lab equipment	Excluded				
	Fume hoods	1	bgt	\$ 10,000	\$10,000	
	Vents/filters	1	bgt	\$ 7,500	\$7,500	
	Power and Light	1	bgt	\$ 5,000	\$5,000	
					\$0	
					\$0	
	TOTAL		OFFICE/BASE BUILDING BUILD OUT		\$532,020	\$37,210
F01	EQUIPMENT					
	Excluded					
					\$0	
	TOTAL		EQUIPMENT		\$0	
G01	STAIRS					
	New stair to second floor				\$0	
	Stair opening	40	sf	\$ 25	\$1,000	\$ 1,000
	Feature stair and handrail	17	rsr	\$ 1,000	\$17,000	\$ 17,000
	Feature stair Platform	60	sf	\$ 100	\$6,000	\$ 6,000
	Feature stair handrail	42	lf	\$ 750	\$31,500	\$ 31,500
	Handrails at opening	34	lf	\$ 500	\$17,000	\$ 17,000
	Exit Stair and H/R	3200	sf	\$ 2	\$6,400	\$ 6,400
	Exit Stair Enclosure	600	sf	\$ 8	\$4,800	\$ 4,800
					\$0	\$ -
	TOTAL		STAIRS		\$83,700	\$83,700
G02	HANDICAP LIFT					
	Handicap lift	2	stop	\$ 20,000	\$40,000	\$ 40,000
	Pit	1	bgt	\$ 2,500	\$2,500	\$ 2,500
	Floor opening	In Struc.				\$ -
	Guide rail supports	1	bgt	\$ 2,500	\$2,500	\$ 2,500
	Shaft	480	sf	\$ 12	\$5,760	\$ 5,760
	Power	1	bgt	\$ 10,000	\$10,000	\$ 10,000
	Life safety	1	bgt	\$ 5,000	\$5,000	\$ 5,000
	Vent	N/R				\$ -
	F/P	2	hds	\$ 350	\$700	\$ 700
	Cab Finishes	N/R				\$ -
	TOTAL		HANDICAP LIFT		\$66,460	\$66,460
H01	PLUMBING					
	Allow for under deck repairs	1	Allow	\$ 25,000	\$25,000	\$ 25,000
	Office WWV	3300	sf	\$ 5	\$16,500	\$ 16,500
	Toilet Fixtures	5	ea	\$ 3,500	\$17,500	\$ 17,500
	Shop WWV	8250	sf	\$ 4	\$33,000	\$ -
	Shop water	8250	sf	\$ 2	\$16,500	\$ -
	Shop drains	4	ea	\$ 8,500	\$34,000	\$ -
	Gas to Boiler	1	bgt	\$ 7,500	\$7,500	\$ 7,500
	Domestic Hot Water	1	bgt	\$ 10,000	\$10,000	\$ -
	Kitchen sinks w/ D/W hook up	2	ea	\$ 3,000	\$6,000	\$ -
	Kitchen water service	2	ea	\$ 350	\$700	\$ -
					\$0	\$ -
	TOTAL		PLUMBING		\$166,700	\$66,500

ATTACHMENT 2

LETTER OF CREDIT REQUIREMENTS

(a) If Tenant is required to deliver an Environmental Oversight Deposit or required at any time prior the issuance of the Occupancy Certificate to deliver the TI Security and Tenant elects to deliver a standby letter of credit (the "**Letter of Credit**") in the amount equal to the Environmental Oversight Deposit and/or the TI Security (the "**LC Value**"), as (i) as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Tenant's operations under this Lease, and/or (ii) collateral to protect Port against any liability for mechanics' and materialmen's liens, stop notices, to ensure completion of the Initial Tenant Improvements, and to compensate Port for any expenses incurred or damage caused as a result of Tenant's failure to obtain the Occupancy Certificate by the Outside Completion Date (as such date may be extended by Section 1.5 above of this Work Letter), including, but no limited to, any attorneys' fees and costs (the "**Secured Obligations**"). Neither the Letter of Credit nor any portion of the proceeds ("**LC Proceeds**") will be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) The Letter of Credit must:

(i) be in a form reasonably acceptable to Port and issued by a nationally-chartered bank with capitalization of at least \$100 million, and otherwise reasonably satisfactory to Port (the "**Issuer**");

(ii) be replaced, renewed, or extended at least sixty (60) days before any expiration date stated in the Letter of Credit, if necessary to ensure that the full LC Value is available to Port at all times until sixty (60) days after the Expiration Date;

(iii) be Issuer's irrevocable, unconditional independent and binding obligation to honor any draw, including partial and multiple draws, presented to Issuer at sight upon the presentation at a branch in San Francisco of Port's signed statement certifying to the Issuer (1) that a default of the Secured Obligations has occurred and is continuing under this Lease, and any applicable grace period has expired, or Port is otherwise entitled to draw on the Letter of Credit; or (2) requesting an extension of the Letter of Credit's expiration date to the maximum time allowed, or, in the alternative, a draw of the full LC Value, because Tenant has not presented Port with a replacement, renewal, or extension as required under this Section, all in accordance with applicable rules; and

(iv) be freely transferable upon Port's (or Port's successors') delivery of any documents required by Issuer confirming a transfer.

(c) Port may draw against the Letter of Credit the amount necessary to cure any Tenant default of the Secured Obligations or to compensate Port for any damage Port incurs as a result of Tenant's default of the Secured Obligations. If Port makes a draw in any amount, Tenant must deliver to Port an amendment to the Letter of Credit or a replacement Letter of Credit providing Port with the full LC Value within ten (10) business days after written notice from Port to Tenant specifying the amount of the draw and the particular purpose to which the LC Proceeds were applied.

(d) Tenant agrees that Port:

(i) will not be required to keep LC Proceeds segregated from its other funds or to deposit them into an interest-bearing account;

(ii) may apply that portion of the LC Proceeds necessary for payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by Tenant's default of its Secured Obligations;

(iii) intentionally omitted.

(iv) will have until sixty (60) days after the Expiration Date (or later date of Port's acceptance of Tenant's surrender of the Premises) to return any LC Proceeds drawn but not applied towards Port costs or damages; and

(v) will have no further liability to Tenant with respect to the Letter of Credit or LC Proceeds following a transfer of the beneficial interest to a transferee in accordance with the Issuer's requirements.

SCHEDULE 1

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

[Attachment on following page(s)]



ASBESTOS TEM LABORATORIES, INC.

EPA 3050B (modified) / EPA 7420 (modified)

Atomic Absorption Spectroscopy

Lead Paint Analysis Report

Laboratory Job # 167-01895

630 Bancroft Way
Berkeley, CA 94710
(510) 704-8930
FAX (510) 704-8429

BULK ASBESTOS SAMPLE LOG AND ANALYSIS REQUEST - CHAIN OF CUSTODY

VAN BRUNT ASSOCIATES
 1401 N. Broadway, Ste. 225
 Walnut Creek, CA 94596
 Office: (925) 685-5900
 Fax: (925) 945-0506

Job #:
 Name: **AUTOBASIC/PIER 9**
 Site Address: **PIER 9 EMERALDWOODS ST**
 Collected By: **AVB/DJS/GM/EZ/JK**

ANALYSIS REQUESTED

Lab Name: **ATEM Micro / EMLabP&K**
 Analyze: **TEM 1000 PT. COUNT 1000 PT. COUNT**
TEM BULK GRAVIMETRIC
TEM H2O POT NONPORE
 2 HR. 4 HR. 24 HR. 48 HR. 72 HR. 5 DAY

SAMPLE ID NO BLDG ADDRESS/FLOOR/ COLUMN/LINE/CHIRON	TYP MAT	COLOR	HOMO AREA	ASSESS		DESCRIPTION
				FR/NF	ND/PD/D/PSD/SD	
9-1-A.5/3.2-B1	ACT	WH	W1	FR/ND		12X12 GUES ON ACT ON SHEET PAPER
9-1-A.5/3.2-B2	GUES	BRN	W2	NF/ND		" " FROM B1
9-1-A.1/3.5-B3	DW TER.	WH	W4	NF/ND		T.I. DW TEXTURE ONLY
9-1-A.3.5-B4	DW C	"	W3	NF/ND		DW C W/ TEXTURE (B3)
9-1-A.3.1-B5	DW TER	"	W2	NF/ND		T.I. DW TER. ONLY PATCH
9-1-A.3 - B6	DW C	"	W4	"		" " W/ TER (B5)
9-1-B.2/3.8-B8	DW C	"	W5	"		T.I. DW C ND TER
9-1-B.2/3.8-B9	DW TER	"	W6	"		" " W/ TER
9-1-B.3.8-B10	ACT	"	W7	FR/ND		TEXTURE ONLY
9-1-B.3.8-B11	GUES	BRN	W9	NF/ND		12X12 ACT ON DW1
9-1-W-C/3.6-B12	DW C	WH	W9	"		12X12 BROWN GUES
9-1-W-B.8/3.2-B13	UND	BRN	W10	FR/ND		T.I. DW C ND TER
9-1-W-B.8/3.2-B14	WASTE	"	W11	NF/ND		SHEET UND ON PAPER B0
9-1-C/3.2-B15	CURTAIN	GRY	W12	"		4X4 CERAMIC TILES THIN SET
						DRIVEWAY ON WIND CURTAINS

RELINQUISHED BY: **AVB** DATE: **3/20/12** NO. OF SAMPLES: **15** PAGE **1** OF **1**
 ACCEPTED BY: **AVB** FIRM: **ATEM** DATE: **3/20/12** NO. OF SAMPLES: **15** TIME: **1**

08-20-12 A08:20 IN
ACK

POLARIZED LIGHT MICROSCOPY ANALYTICAL REPORT

EPA Method 600/R-93/116 or 600/M4-82-020

Page: 2 of

Contact: Mike Van Brunt	Samples Indicated: 15	Report No. 312436
Address: Van Brunt Associates 1401 N. Broadway Street Ste. 225 Walnut Creek, CA 94596	Reg. Samples Analyzed 15 Split Layers Analyzed: 10	Date Submitted: Aug-20-12 Date Reported: Aug-22-12
Job Site / No. Autodesk/ Pier 9 Embarcadero SF		

SAMPLE ID	ASBESTOS % TYPE	OTHER DATA	DESCRIPTION
		1) Non-Asbestos Fibers 2) Matrix Materials 3) Date/Time Collected 4) Date Analyzed	
		FIELD	LAB
9-1-B.3/3-B7	None Detected	1) 1-5% Fiberglass 2) 95-99% Gyp, Other m.p.	T.I. DWJC no tex.
Lab ID # 167-01894-007A		3) 4) Aug-22-12	Drywall-Off-White
9-1-B.3/3-B7	None Detected	1) 1-5% Cellulose 2) 95-99% Calc, Bndr, Mica, Other m.p.	
Lab ID # 167-01894-007B		3) 4) Aug-22-12	JointCom/Text-Off-White
9-1-B.3/3-B7	None Detected	1) 40-50% Cellulose 2) 50-60% Bndr, Other m.p.	
Lab ID # 167-01894-007C		3) 4) Aug-22-12	Wallpaper-Off-White
9-1-B.2/3.8-B8	None Detected	1) 1-5% Fiberglass 2) 95-99% Gyp, Other m.p.	T.I. DWJC w/ tex.
Lab ID # 167-01894-008A		3) 4) Aug-22-12	Drywall-Off-White
9-1-B.2/3.8-B8	None Detected	1) 1-5% Cellulose 2) 95-99% Calc, Bndr, Mica, Other m.p.	
Lab ID # 167-01894-008B		3) 4) Aug-22-12	JointCom/Text-Off-White
9-1-B.2/3.8-B9	None Detected	1) 1-5% Cellulose 2) 95-99% Calc, Gyp, Mica, Qtz	T.I. DWJC texture only.
Lab ID # 167-01894-009		3) 4) Aug-22-12	Texture-Off-White
9-1-B/3.8-B10	None Detected	1) 70-80% Cellulose 2) 20-30% GlassFoam, Other m.p.	12x12 ACT on DW
Lab ID # 167-01894-010		3) 4) Aug-22-12	Ceiling Tile-Grey
9-1-B/3.8-B11	None Detected	1) None Detected 2) 99-100% Glue	12x12 brown glue
Lab ID # 167-01894-011		3) 4) Aug-22-12	Mastic-Brown
9-M-C/3.6-B12	None Detected	1) 1-5% Fiberglass 2) 95-99% Gyp, Other m.p.	T.I. DWJC no tex.
Lab ID # 167-01894-012A		3) 4) Aug-22-12	Drywall-Off-White
9-M-C/3.6-B12	None Detected	1) 1-5% Cellulose 2) 95-99% Calc, Bndr, Mica, Other m.p.	T.I. DWJC no tex.
Lab ID # 167-01894-012B		3) 4) Aug-22-12	JointCom/Text-Off-White

Detection Limit of Method is Estimated to be 1% Asbestos Using a Visual Area Estimation Technique

Analyst Jo Ann Hester



ASBESTOS TEM LABORATORIES, INC

CA DPH ELAP
Lab No. 1866



NVLAP Lab Code: 101891-0
Berkeley, CA

Aug-22-12

Mike Van Brunt
Van Brunt Associates
1401 N. Broadway Street Ste. 225
Walnut Creek, CA 94596

RE: LABORATORY JOB # 312436

Polarized light microscopy analytical results for 15 bulk sample(s) with 10 sample split(s)
Job Site: Autodesk/ Pier 9 Embarcadero SF
Job No.:

Enclosed please find the bulk material analytical results for one or more samples submitted for asbestos analysis. The analyses were performed in accordance with EPA Method 600/R-93/116 or 600/M4-82-020 for the determination of asbestos in bulk building materials by polarized light microscopy (PLM). Please note that while PLM analysis is commonly performed on non-friable and fine grained materials such as floor tiles and dust, the EPA method recognizes that PLM is subject to limitations. In these situations, accurate results may only be obtainable through the use of more sophisticated and accurate techniques such as transmission electron microscopy (TEM) or X-ray diffraction (XRD).

Prior to analysis, samples are logged-in and all data pertinent to the sample recorded. The samples are checked for damage or disruption of any chain-of-custody seals. A unique laboratory ID number is assigned to each sample. A hard copy log-in sheet containing all pertinent information concerning the sample is generated. This and all other relevant paper work are kept with the sample throughout the analytical procedures to assure proper analysis.

Each sample is opened in a class 100 HEPA negative air hood. A representative sampling of the material is selected and placed onto a glass microscope slide containing a drop of refractive index oil. The glass slide is placed under a polarizing light microscope where standard mineralogical techniques are used to analyze and quantify the various materials present, including asbestos. The data is then compiled into a standard report format and reviewed by the authorized signatory before being released to the client.

Sincerely Yours.

Lab Manager
ASBESTOS TEM LABORATORIES, INC.

--- These results relate only to the samples tested and must not be reproduced, except in full, with the approval of the laboratory. This report must not be used to claim product endorsement by NVLAP or any other agency of the U.S. Government. ---

Note: Test samples will be stored for three months after data of receipt, after which they will be properly disposed unless client makes other arrangements with the laboratory.

TABLE 2
 LEAL AMPLING ANL ANALY I RE ULT
 PIER 2 UITE 1162 AN FRANCI CO

AMPLI IL NO BILLG ALL RE AFLOORA ROOMACL RON	ARCL COMPONENT	COLOR	NOBOF LAYER	UB TRATE	CONLITION		LE CRIPTION	LAB RE ULT	
					PAFAG LEBRI YE AND	TA B		PPMB	
9-1-B/3-5-L1	9-11/3	BL-CB	9	9-1-L	3	1-9B951-09-1			991
9-1-C/3-9-19	9 1/ C39	9-C	1	9-1-L	3	C9B - /9 1/ C39			9911
9-1- /3-9-L3	S19CC1C9- L5 /3L-	39- /	9	9-1-L	3	--1-9B9519CC1C9- L5 /3L-			3-911
9-9-B/3-L3	933C	9- 1L-	1	9 33C	C	L-1-S15/- 9 -S1)B33 CC- CBP- 1/ 1			1-111
9-9-B/3-L5	933C	39- - /	1	9 33C	3	39B 1/ - L9- 1/ 1B/ 933 CC- CB			1-911
9-9-B/3-L5	19CSS	9- 1L-	3	9-1-L	3	9-9/5- 1CB59CSSP- 1/ 1			131-111

95-1115 . S 5sfleadbased5 aint

LEAD PAINT SAMPLE LOG AND ANALYSIS REQUEST - CHAIN OF CUSTODY

ANALYSIS REQUESTED

VAN BRUNT ASSOCIATES Job #: Name: AUTORELL / PIER 9 Lab Name: ATLANTA MICRO
 1401 N Broadway Street, Ste. 225 Walnut Creek, CA 94596 Site Address: PIER 9 EMERALD COAST ST Analyst: LEAD:AA
 Office: (925) 685-5900 Fax: (925) 915-0606 Collected By: VANBRUNT/JFC Date: TAT: RUSH 24 HR (48 HR) 5 DAY
 E-MAIL: mlkce@vanbruntassociates.com

SAMPLE ID NO	ARCH. COMP.	CHIP W/PE	VISIBLE COLOR	# OF LAYERS	SUBSTRATE	COND. PPG	DIRTY S/VN	WIPE AREA/NOTES	LAB RESULTS		
									μg	PPM	μg/C2
9-1-B/3.5-L	Painting	CHIP	Red	2	WTL	G	N	INTERIOR SHIP - PAINT			
9-1-C/3.2-L3	WINDOW	"	Red	1	"	"	"	DELIVERED WINDOW			
9-1-A/3.2-L3	STEEL ANGLE	"	GREY	2-3	"	L	"	EXTERIOR - STEEL ANGLE			
9-1-E-B/4-L4	Paint	"	WHT	1	WOOD	F	N	WEST (NEAREST) FOOT DECK			
9-1-F-B/4-L5	"	"	GRN	1	"	G	N	ORIE PAINT ON FOOT DECK			
9-1-G-B/4-L6	TRUSS	"	WHT	3-4	WTL	G	N	VERY THICK TRUSS PT.			

Autorell
 08-20-12 4:06:19 AM

PAGE 1 OF 1
 TOTAL SAMPLES THIS COC: 6

SCHEDULE 2

SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

PORT OF SAN FRANCISCO

SUBSTRUCTURE RAPID EVALUATION SAFETY ASSESSMENT FORM

Substructure Description: Name: Pier 9 (Main Pier, Bulkhead) Location Code: 1090	Overall Rating: INSPECTED (Green) XX REQUIRES REVIEW (Yellow) UNSAFE (RED)
Piling: Wood Concrete XX Steel Concrete Jacket Wrapped Wood Substructure: Concrete Slab XX Concrete Beams XX Steel Beams Wood Apron: Concrete Wood XX	Inspector Name: EFB/UP Affiliation: Port Inspection Date (M/D/Y): 4-22-03 Time: AM

Condition Assessment

Condition	Yes	No	More Review Needed	Comments
1) Severe seawall failure		X		With few exceptions (a broken batter pile at the north face and minor spalls at the east end), the main pier is in good condition. At some locations, the bulkhead substructure concrete deck has deteriorated beams and slab areas.
2) Many missing piles		X		
3) Many significantly damaged piles		X		
4) Significant beam deterioration		X		
5) Significant slab deterioration		X		
6) Other hazard present		X		

Recommendations:

<input type="checkbox"/>	No further action required
<input checked="" type="checkbox"/>	Detailed Structural evaluation required: Deteriorated Concrete Beams/slabs in the bulkhead area
<input type="checkbox"/>	Detailed Geotechnical evaluation required:
<input type="checkbox"/>	Barricades required in the following areas:
<input type="checkbox"/>	Apron:
<input checked="" type="checkbox"/>	Other: Repair spalled slab areas, broken batter pile.

Comments:

Photos Available: Yes XX No



Photo 3-- Deteriorated concrete beams in the bulkhead substructure

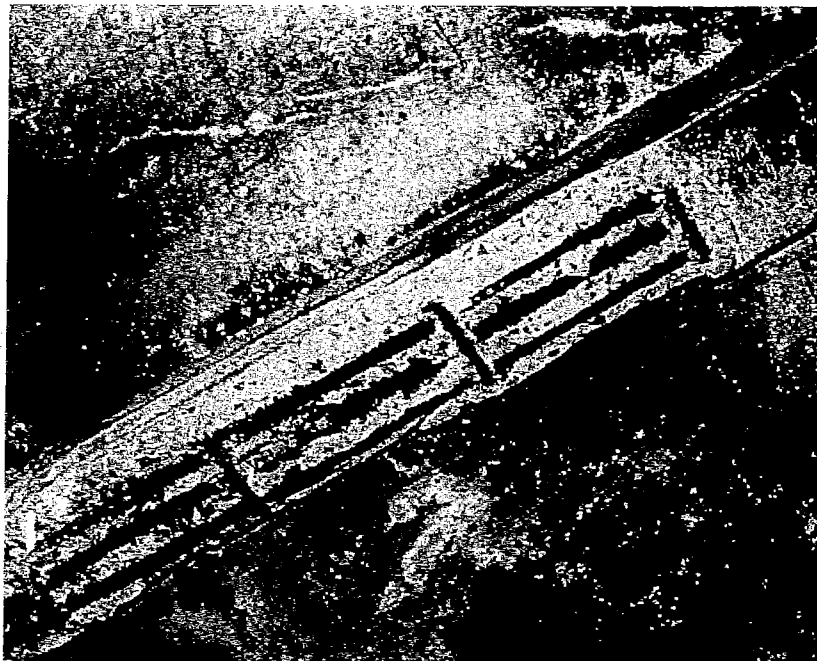


Photo 4-- Deteriorated concrete beam in the bulkhead substructure

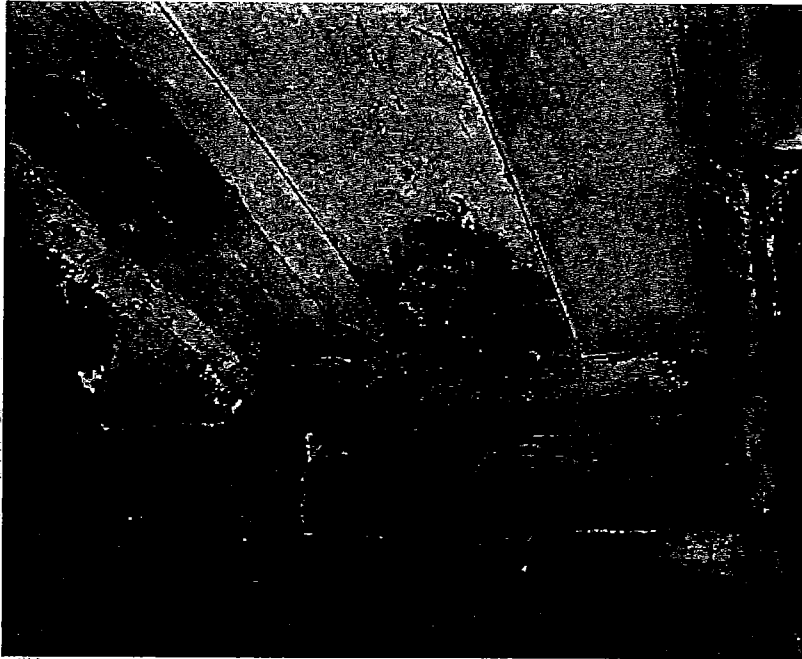


Photo 7--Minor spall in concrete slab of the Pier.

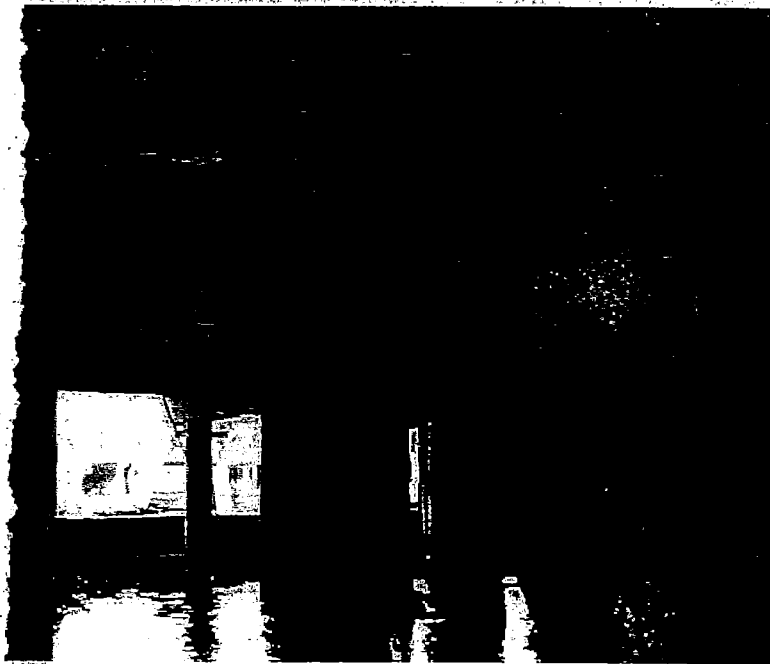


Photo 8--Broken Batter Pile at the North face ("X" mark in orange color)

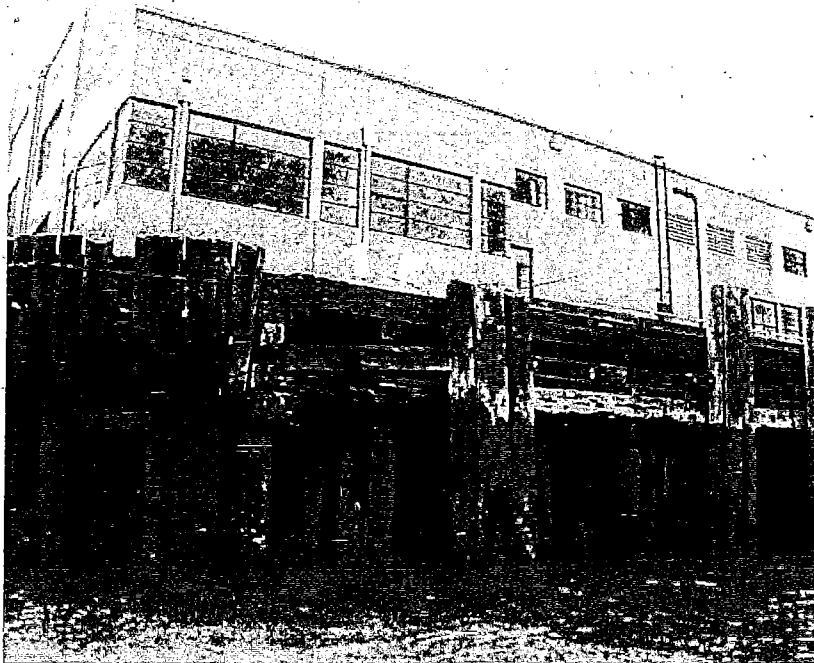


Photo 9--A one story building supported at the East End of North Apron. East End of North Apron has questionable integrity, requires further review and has been given a yellow rating.

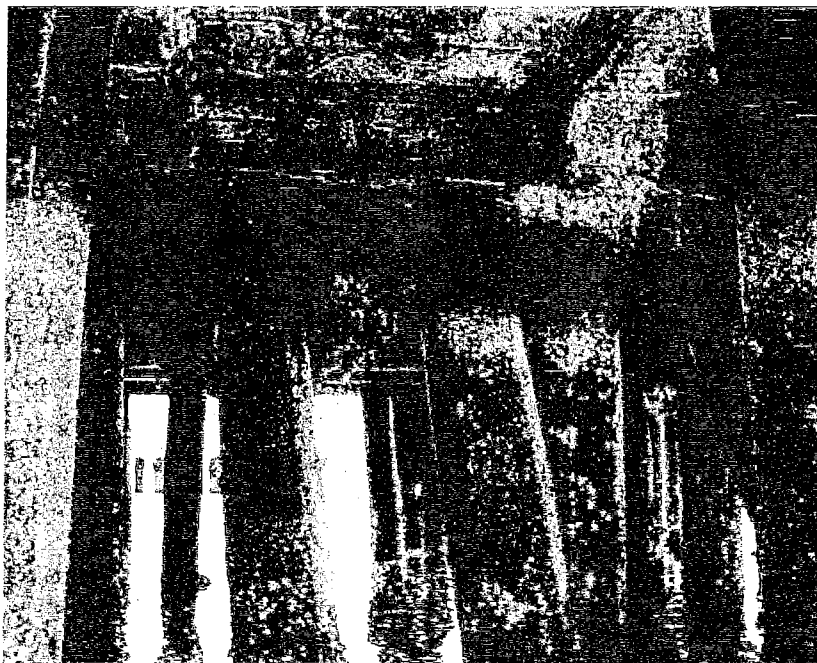


Photo 10: Deteriorated pile cap beam on North Apron in Bar Pilot lease area



Photo 11--South Apron (repaired section)

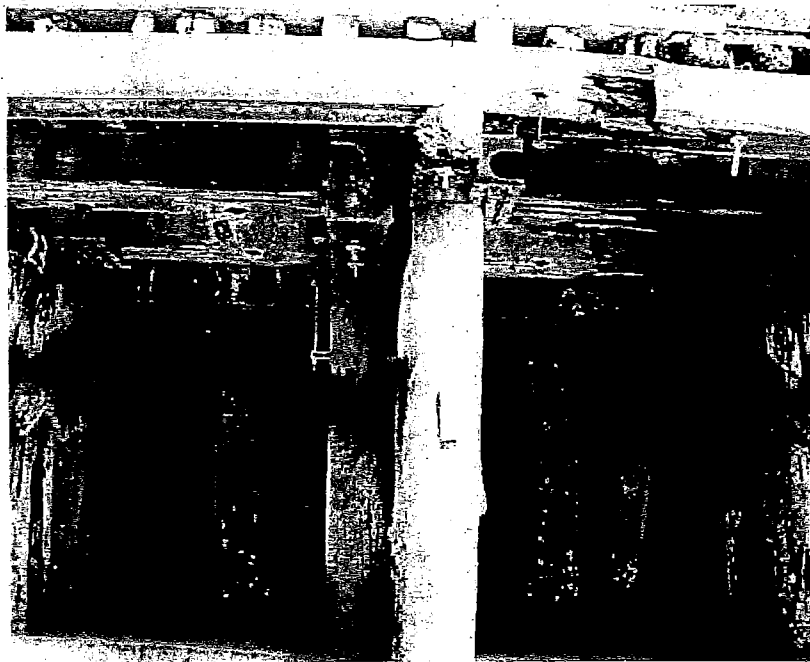


Photo 12--South Apron-(Repaired section)

SCHEDULE 3

FEMA Disclosure Notice

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

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

Because FEMA has not previously published a FIRM for the City and County of San Francisco, there are no identified SFHAs within San Francisco's geographic boundaries. FEMA has completed the initial phases of a study of the San Francisco Bay. On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco for review and comment by City. FEMA has tentatively identified SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the City of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands and an area adjacent to Islais Creek. City has submitted comments on the preliminary FIRM to FEMA.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. Participation in the NFIP is based on an agreement between the local government and the federal government that requires the local government to adopt and enforce a floodplain management ordinance to reduce future flood risks. As part of the floodplain management ordinance, the local jurisdiction must impose significant restrictions on construction of new or substantially improved structures located in SFHAs and ban construction of certain new structures seaward of the mean high tide line, unless appropriate variances can be granted. Federally backed lenders must require the purchase of flood insurance for residential and commercial structures located in SFHAs. Otherwise, purchase of flood insurance is voluntary.

In August 2008, the San Francisco Board of Supervisors adopted Ordinance No. 188-08, a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP. In accordance with the ordinance, the City Administrator's Office has issued maps of flood prone areas. Specifically, the ordinance requires that any new construction or substantial improvement of structures in city-designated flood zones be constructed in accordance with specified requirements intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

The legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14.

In addition, FEMA publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines."

Additional information about the San Francisco legislation can be found on the city's website (<http://www.sfgov.org>), File Nos. 080823 (floodplain management ordinance) and 080824 (NFIP participation resolution).

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

12/1/70

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information (Please print clearly.)	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information (Please print clearly.)	
Name of contractor: Autodesk, a Delaware Corporation	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
<p>1. Board of Directors: <u>Carl Bass</u>, Autodesk; <u>Crawford W. Beveridge</u>, Independent Consultant; <u>J. Hallam Dawson</u>, IDI Associates; <u>Dr. Per-Kristian Halvorsen</u>, Intuit; <u>Mary T. McDowell</u>, Nokia; <u>Lorrie M. Norrington</u>, Independent Consultant; <u>Charles J. Robel</u>, Independent Consultant; <u>Stacy J. Smith</u>, Intel Corporation; <u>Steven M. West</u>, Emerging Company Partners LLC.</p> <p>2. Company Executive Officers: <u>Andrew Anagnost</u>, Senior Vice President, Industry Strategy & Marketing; <u>Carl Bass</u>, President and Chief Executive Officer; <u>Jan Becker</u>, Senior Vice President, Human Resources and Corp Real Estate; <u>Steve Blum</u>, Senior Vice President, Worldwide Sales and Services; <u>Chris Bradshaw</u>, Chief Marketing Officer and Senior Vice President, Reputation, Consumer & Education; <u>Moonhie Chin</u>, Senior Vice President, Global Customer Support & Operations; <u>Pascal Di Fronzo</u>, Senior Vice President, General Counsel and Secretary; <u>Amar Hanspal</u>, Senior Vice President, IPG Product Group; <u>Mark Hawkins</u>, Executive Vice President and Chief Financial Officer; <u>Jeff Kowalski</u>, Vice President, Chief Technology Officer; <u>Robert "Buzz" Kross</u>, Senior Vice President, Design, Lifecycle & Simulation; <u>Marc Petit</u>, Senior Vice President, Media & Entertainment; <u>Joseph Chen</u>, Vice President Real Estate Facilities, Travel Security.</p> <p>3. NA</p> <p>4. NA</p> <p>5. NA</p>	
Contractor address: 111 McLnnis Parkway. San Rafael, California 94903	
Date that contract was approved: (By the SF Board of Supervisors)	Amount of contract: \$7,200,000.00
Describe the nature of the contract that was approved: Approximately 27,190 square feet of office and workshop located at Pier 9, San Francisco CA	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed