File No. 260742 Committee Item No. 5
Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date** July 15, 2026
Board of Supervisors Meeting **Date** July 21, 2026

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

☒	☒	Existing Lease 5/5/1980
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Completed by: Brent Jalipa **Date** July 9, 2026
Completed by: Brent Jalipa **Date** July 16, 2026

[Real Property Lease - JPPF 1300 Battery, L.P. - 1300 Battery Street - $1,498,012.50 Total Base Rent]

Resolution approving Port Commission Lease No. L-17390 with JPPF 1300 Battery, L.P., a limited partnership, for approximately 4,635 square feet of a single-story restaurant space and 2,992 square feet of outdoor dining area located at 1300 Battery Street for a term effective upon approval of this Resolution and expiring on May 5, 2046, for a monthly base rent of $5,000 with a 15% base rent increase every five years, for a total base rent of $1,498,012.50; Percentage Rent of 1% of gross sales, and rent credit of up to $1,568.26 a month for 120 months of actual documented cost of landlord work and tenant improvements; and authorizing the Acting Executive Director of the Port to enter into any additions, amendments or other modifications to the Lease that do not materially increase the obligations or liabilities of the City or the Port and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution.

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

WHEREAS, JPPF 1300 Battery Street, L.P. ("JPPF") is a Port tenant in good standing under Lease No. L-10388 ("Existing Lease") at 1300 Battery Street in the City and County of San Francisco; and

WHEREAS, JPPF acquired the Existing Lease in 2019, with subtenant Fog City Diner; and

WHEREAS, Fog City Diner closed on May 31, 2025, and JPPF has continued to pay the Port the required rent under the existing lease; and

WHEREAS, Port Staff and JPPF have negotiated a new lease, Lease No. L-17390 ("New Lease"), that preserves restaurant use while maintaining stable revenue to the Port; and

WHEREAS, JPPF will invest in tenant improvements to the leased premises that will enhance the property's value, support the success of a new operator, attract foot traffic, and stimulate activity at nearby Port properties; and

WHEREAS, At its May 12, 2026 meeting, the Port Commission authorized the Acting Executive Director of the Port, or his designee, to enter into the New Lease with a term expiring on May 5, 2046; and

WHEREAS, Charter, Section 9.118, requires Board of Supervisors' approval of certain leases that either have a term of 10 years or more or have anticipated revenue to the City of $1,000,000 or more and the term of Lease No. L-17390, including extension options, will be 10 years; and

WHEREAS, Other key terms of Lease No. L-17390 are described in the Port staff report to the Port Commission, dated May 8, 2026, and the New Lease, both of which are on file with the Clerk of the Board of Supervisors in File No. 260742, which is hereby declared to be a part of this resolution as if set forth fully herein; now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves Lease No. L-17390 and authorizes the Acting Executive Director of the Port, or his designee, to execute Lease No. L-17390 in a form approved by the City Attorney and in substantially the same form on file with the Clerk of the Board of Supervisors in File No. 260742; and, be it

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

No. L-17390 that the Port Acting Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port or materially reduce the benefits to the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Port Acting Executive Director of such documents; and, be it

FURTHER RESOLVED, That within thirty (30) days of Lease No. L-17390 being fully executed by all parties, the Port shall provide a copy of the New Lease to the Clerk of the Board for inclusion into the official file.

CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR

LEASE NO. L-17390

BY AND BETWEEN

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

AND

JPPF 1300 BATTERY, L.P., A DELAWARE LIMITED PARTNERSHIP

1300 BATTERY STREET

[JUNE 1, 2026]

MICHAEL MARTIN
ACTING EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

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EXHIBITS AND SCHEDULES

BASIC LEASE INFORMATION

Lease Date:	[June 1, 2026] for reference purposes only
Lease Number:	**L-17390**
Landlord or Port:	**City and County of San Francisco**, a municipal corporation, operating by and through the **San Francisco Port Commission**
Landlord's Address:	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
Tenant:	**JPPF 1300 Battery, L.P.**, a Delaware limited partnership
Tenant's Main Contact Person and Mailing Address:	Erin Bravo Senior Property Manager Levi's Plaza Management 1105 Battery St San Francisco, CA 94111 Telephone: (415) 956-5384 Cell: (510) 230-3546 Email: levisplazamanagement@lpc.com
Tenant's Billing Contact and Address:	Sarah Pena-Garfias Assistant Property Manager Levi's Plaza Management 1105 Battery St San Francisco, CA 94111 Email: levisplazamanagement@lpc.com
Tenant's Emergency and Insurance Contact and Address:	Same as Main Contact.
Contact Information for Tenant's Agent for Service of Process (including address) :	JPPF 1300 Battery, L.P. c/o Jamestown General Counsel and Asset Manager, Levi's Plaza 675 Ponce de Leon Ave, NE, 7th Floor Atlanta, GA 30308

Premises:	1300 Battery Street, San Francisco, CA SWL 319		
Premises Rentable Square Footage:	• Parcel A: Approx 4,635 rentable square feet of restaurant/retail space • Parcel B: Approx. 2,992 square feet of outdoor dining space. Total rentable square footage is 7,627 square feet.		
Length of Term:	Approximately two hundred forty (240) months starting on the Commencement Date		
"Commencement Date" and "Rent Commencement Date":	February 1, 2026.		
Anniversary Date:	The first and each subsequent anniversary of the Commencement Date.		
Expiration Date:	January 31, 2046. [***Note: May be extended to mirror expiration date of existing lease***]		
Base Rent:	Years	Sq. Ft.	Total Monthly Base Rent
Parcel A: Parcel B:	1-5	4,635 2,992	$5,000.00 $0.00
Parcel A: Parcel B:	6-10		$5,750.00 $0.00
Parcel A: Parcel B:	11-16		$6,612.50 $0.00
Parcel A: Parcel B:	16-20		$7,604.38 $0.00

Percentage Rent:	Twenty percent (20%) of any percentage rent received by Tenant from a Subtenant pursuant to a Sublease or if there is no Sublease and Tenant is directly operating the Premises for the Permitted Use, one percent (1%) of Gross Revenues after deducting the Break Point attributable to the applicable Lease Year, as further described in Section 5.2. As used herein, "**Break Point**" means the "natural breakpoint" calculated by dividing the Base Rent payable during the applicable Lease Year by five percent (5%).
Security Deposit:	No Security Deposit required as long as JPPF 1300 Battery, L.P. is a Tenant. In the event of a Transfer, the transferee must deliver to Port on or before the effective date of the Transfer, a Security Deposit in an amount equal to Fifteen Thousand Two Hundred Nine Dollars ($15,209.00)
Rent Credit for Certain Improvements:	Tenant is entitled to a rent credit ("**Rent Credit**") for its actual costs to prepare the Premises for occupancy by its subtenant, Moon Child Restaurant LLC ("**Moon Child**"), in accordance with this Lease ("**Eligible Work**"). The Rent Credit is subject to satisfaction of all of the following and ***Section 5.12*** (Rent Credit): (i) Available only during the first ten (10) years of the Term; (ii) Tenant must provide evidence of its actual costs for the Improvements and proof of payment of the costs, as further described in ***Section 5.12***; (iii) Monthly Rent Credit is capped at $1,568.26; (iv) Total Rent Credit is capped at $188,191.20; (v) If the annual Gross Revenues from the Subtenant's (or if there is no Subtenant, Tenant) operation of a restaurant and bar equals or exceeds Five Million Dollars ($5,000,000) during any calendar year, any unapplied or outstanding Rent Credit will be terminated as of January 1 of the immediately following calendar year. If the annual Gross Revenues from the restaurant is determined after January 1 of the immediately following year, then any Rent Credit applied against monthly Rent will be paid by Tenant to Port with the next month's Rent payment; (vi) No Rent Credit will be applied during any period Tenant is in default; (vii) [No Rent Credit will be applied retroactively (other than for any period prior to the execution of this Lease by both Parties); and] [***Note: Subject to further discussion***]

	(viii) Any unapplied or outstanding Rent Credit will terminate at the end of the first ten (10) years of the Term.
Permitted Use:	Premises shall be used solely for a first-class full-service restaurant and bar (including outdoor dining), open to the public, and for no other purpose.
Additional Prohibited Uses:	In addition to, and without limiting, the Prohibited Uses specified in ***Section 8.2***, Tenant shall be prohibited from using the Premises for any of the following activities without the prior written consent of Port in its sole discretion: a. Use of garbage disposal or garbage grinder; b. Disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drains leading to sewer laterals; c. Storage of Hazardous Materials or hazardous waste other than janitorial, office, and restaurant supplies in limited amounts customarily used for janitorial services or in connection with general office and restaurant purposes, handled in accordance with ***Section 15***; d. Discharge of any material into Bay waters or storm drains; e. Washing floor mats, kitchen equipment, or other items outdoors; f. Pressure washing or hosing down the sidewalk for cleaning; and g. Parking/storage of catering vehicles. Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.
Additional Environmental Requirements:	Without limiting Tenant's obligations to comply with Laws, Tenant shall: a. Comply with San Francisco's Fats, Oils, Grease (FOG) Control Ordinance. b. Comply with San Francisco's Mandatory Recycling and Composting Ordinance. c. Comply with the Port's "Restaurant Rules and Regulations" attached hereto as ***Exhibit D***.

	d. Use a mop / brush and bucket for sidewalk cleaning. e. Designate an indoor area to manage recyclable, compostable, and landfill waste. f. Obtain a SF Department of Public Health, Hazardous Materials Unified Program Agency (HMUPA) Permit or file a Disclaimer Notice with the Agency. g. Obtain a San Francisco Fire Department permit for the handling, use, or storage of more than 5 gallons of flammable liquids or 25 gallons of combustible liquids. WASTE DISPOSAL Businesses may be able to use a drop-off program by making an appointment to take their own waste to the City's Household Hazardous Waste Facility. Drop-off days are held once or twice a month (usually the last Wednesday of the month). Motor oil can be dropped off during all business hours. To schedule an appointment, call SF Recycling & Disposal at (415) 330-1425.
Maintenance and Repair:	Tenant's sole responsibility, including every component of the Premises including structural and non-structural elements, including the foundations and roof, as further described in ***Section 11***.
Utilities:	Tenant's sole responsibility, as further described in ***Section 12***.
Hazardous Materials Disclosure:	See attached ***Schedule 3***.
Resilience Project:	Tenant understands and acknowledges that the City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is leading the Waterfront Resilience Program (the **"Resilience Project**"), a citywide effort to create a more sustainable and resilient waterfront. The Resilience Project includes the construction or relocation of district/public infrastructure projects. San Francisco faces coastal flood risks today. These risks will increase in the future due to sea level rise and extreme storms, threatening buildings, small businesses, jobs, and critical services such as BART and Muni. To defend San Francisco from current and future flood risk, there is a need to adapt shoreline elevations to address 3 to 7 feet of sea level rise expected by 2100. Any effort aimed at long-term sea level rise resilience will also need to strengthen the waterfront against urgent earthquake risk today.

	The Resilience Project is focused on addressing current and future flood and seismic risks over time for the Embarcadero Seawall which stretches from Fisherman's Wharf to Mission Creek ("**Seawall**"). The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: https://www.sfportresilience.com. In addition, as part of the Resilience Project, the U.S. Army Corps of Engineers (USA CE), in collaboration with the City and the Port, are conducting a Flood Study to analyze the coastal flood risk and effects of sea level rise for the 7.5 miles of waterfront within the Port of San Francisco's jurisdiction, from Aquatic Park to Heron's Head Park. The study is intended to identify vulnerabilities and recommend strategies to reduce current and future flood risks for consideration for federal investment and implementation along the Port's entire 7.5-mile jurisdiction. Final details of the Resilience Project are unknown at this time but will depend on, among other things, the outcomes of the Flood Study, available funding and future solutions approved by decision-makers at the local, state and federal level. Such solutions may, at Port's election, include the construction of district/public infrastructure projects and flood and resilience projects on Port-owned property including areas that may be located near or around Tenant's Premises (the "Resilience Project Site"). Tenant is entering into this Lease with the understanding that there may be significant impacts/effects from such future Resilience Projects on its tenancy and the Premises. Tenant further acknowledges and agrees that Port may, from time to time, at its sole election, construct (including, without limitation, additional buildings, structures, substructures, utility mains, transformers, conduits, shafts, columns, footings and pipes), reconstruct (including without limitation the replacement of certain improvements with other improvements), improve (including tenant improvements), modify, expand, or otherwise alter the Resilience Project (collectively, "**Resilience Work**"), or portions thereof; provided, however, in no event will Port have any obligation to initiate or perform any of the Resilience Work. Tenant acknowledges that any such Resilience Work will necessarily involve, among other things, the presence of workers within, near or around the Resilience Project Site, the generation of noise, dust, and vibrations, barricading portions of the Resilience Project Site, placement of scaffolding within the Resilience Project Site, demolition, structural alterations or construction, storage of materials and equipment within, near or around the Resilience Project Site, all of which may, among other

	things, require the temporary loss of access to the Premises, including, without limitation, parking areas, roadways, lighting facilities, and the re-direction of vehicular and pedestrian traffic. Tenant shall reasonably cooperate with Port's efforts. Tenant shall waive any and all Losses against Port arising from Construction Impacts related to the Resilience Work in accordance with Section 3.4 (Resilience Project; Nearby Projects and Event). In furtherance of the Resilience Project, Port right-of-entry provided under Section 25 (Entry by Port) shall include the right to enter the Premises, upon reasonable advance written notice, as may be reasonably required for inspection, surveying, inventory, or evaluating property conditions that may be affected by, or needed to implement, the Resilience Work; provided, however, Port will use its good faith efforts to minimize any unreasonable interference with Tenant's use, occupancy, or enjoyment of the Premises as contemplated by this Lease. Tenant waives any and all claims, defenses, rights of offset, or deductions based upon any inconvenience suffered by Tenant or any interruption of or interference with Tenant's business including, without limitation, any loss of business, damage to property, loss of revenue, lost profits, and loss of goodwill.
Development Project:	• Pier 31 Alcatraz Island Embarkation Project. • Sansome Street Outfall project • MTA Embarcadero Connectivity Project
Prior Lease:	The parties agree that as of the Commencement Date, Lease No. L-10388 dated as of May 5 1980 (the "**Prior Lease**"), between Tenant’s predecessor in interest Blue Jeans Equities West, a California joint venture, as amended and assigned to Tenant and Port is hereby terminated as of the Rent Commencement Date; provided, however, that the parties shall continue to be liable for any obligations under the Prior Lease which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Lease.
No Parking:	Tenant acknowledges that this Lease does not include parking rights or spaces.
Lease Prepared By:	Don Kavanagh, Senior Property Manager

LEASE AGREEMENT

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

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 16.6 below.

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

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

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

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

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

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

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

"**Audit Period**" is defined in Section 5.8 below.

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

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

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

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

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

“**CMD**” means the Contract Monitoring Division of the City’s General Services Agency.

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

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

“**Casualty**” is defined in Section 18.1.

"**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.

"**Concession**" is defined in Section 32.16 below.

"**Conduct Code**" is defined in Section 29.12 below.

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

“**Completion**” in reference to or to any Alteration or Restoration means the Port’s sign off on the Job Card or other customary documentation of completion by the Port’s Chief Harbor Engineer or his or her designee.

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

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

"**Core Benefits**" is defined in Section 29.1(c) below.

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

"**Demolish and Remove**" means the demolition of the Improvements and the removal and disposal of all debris in accordance with all Laws. "**Demolition and Removal**" and "**Demolished and Removed**" have correlative meanings.

"**disturbed or removed**" is defined in Section 14.2(f) below.

"**Eligible Work**" is defined in the Basic Lease Information and Section 5.12.

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

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

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

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

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

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

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

“**Excluded Transfer**” means any of the following: (i) the exercise of customary limited partner or non-managing member remedies under a partnership or limited liability company operating agreement, as applicable; (ii) a change resulting from death or legal incapacity of a natural person; (iii) the sale, transfer or issuance of less than the Controlling interest of stock listed on a nationally or internationally recognized stock exchange in a single transaction or a related series of transactions; or (iv) a transfer of direct or indirect equity interests in the Tenant so long as a party in Control immediately prior to the transaction remains in Control immediately after the transaction.

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

"**Event of Default**" is defined in ***Section 22***.

“**Financial Statements**” mean a current balance sheet and profit and loss statements prepared in accordance with generally accepted accounting practices consistently applied certified as accurate, complete and current by a financial officer or other accountant employed by the relevant party who is authorized and competent to make such statement.

“**goodwill**” means the value assigned to Tenant’s intangible business assets.

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

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

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

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

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

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

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

(vi) Intra and inter-company transfers of inventory and supplies between and among Tenant and Affiliates; and

(vii) Bona fide promotional discounts to Tenant's customers for food, beverages and other sales, up to a maximum of the lesser of five percent (5%) of Gross Revenues or ten thousand dollars ($10,000) in any single month; and

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

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

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

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

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

(xiii) discounts and complimentary meals or drinks provided to any owner, or investor, not to exceed one percent (1%) of Gross Revenues in any single month;

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

(xv) Ticket sales and cover charges, but only to the extent that such revenue is less than Tenant's actual monthly entertainment costs payable to promoters, musicians, performers, licensors, agents and booking companies and agents that are not Tenant's employees or Affiliates ("**Entertainment Costs**").

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

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

"**Hard costs**" is defined in Section 12.3 below.

"**Hazardous Material**" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to pose 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, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"**Hazardous Material Condition**" means the Release, or threatened Release of Hazardous Materials in, on, or about the Premises or the environment, or from any vehicles or vessels

Tenant, or its Agents and Invitees in, on, under or around the Premises use during Tenant's occupancy of the Premises.

"**HEPA**" is defined in Section 14.2(f) below.

"**Improvements**" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, 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 substantial damage to the property on which it is installed, regardless of the method of installation.

"**Indemnified Parties**" is defined in Section 20.1 below.

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

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

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises 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 in, on, under, around, or about the Premises or any Improvements thereon.

"**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 21 (Assignment and Subletting), "**Invitees**" excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

"**Late Charge**" means a fee of fifty dollars ($50.00) with respect to Base Rent and a fee equivalent to One Hundred Dollars ($100.00) with respect to Percentage Rent and Quarterly Percentage Rent Statements.

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

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

"**Material Systems**" is defined in Section 12.5(a).

"**Moon Child**" means Moon Child Restaurant LLC, as subtenant under the Moon Child Subleases, together with its successors and assigns.

"**Moon Child Sublease**" means that Standard Retail Lease between Tenant and Moon Child dated as of January 23, 2026, as the same may be amended, supplemented and modified from time to time.

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

"**Notice of Removal**" is defined in Section 14.4 below.

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

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

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

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

"**PACMs**" is defined in Section 16.6 below.

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

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

"**Personal Property**" means all fixtures, furniture, furnishings, equipment, machinery, supplies, software, and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or later located in, upon, or about the Premises, belonging to Tenant or any Subtenant and/or in which Tenant or any Subtenant has or may later acquire an ownership interest (other than any ownership interest of the Improvements granted to Tenant by Port pursuant to this Lease), together with all present and future attachments, replacements, substitutions, and additions.

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

"**Port program or project**" means (a) any infrastructure projects in, on or in the vicinity of the Premises lead by public parties (including but not limited to any Development Project described in the Basic Lease Information that are lead by public parties), or (b) the Resilience Work.

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

"**Premises**" means the real property described in Section 3.1 below and depicted on ***Exhibit A***, together with all Improvements thereon.

"**preservative–treated wood containing arsenic**" is defined in Section 29.11 below.

"**Prevailing party**" is defined in Section 24.1 below.

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

"**Quarterly Percentage Rent Statement**" is defined in Section 5.2.

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

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

"**Release**" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises 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 located in, on, under, or about the Premises or that have been, are being, or threaten to be Released into the environment, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "**Remediation**" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

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

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

“**Rent Credit**” is defined in the Basic Lease Information and ***Section 5.12***.

“**Restoration**” and “**Restore**” means the restoration, replacement, renovation, reconstruction, repair, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws (including any conditions or requirements resulting from review under the California Environmental Quality Act) then applicable. All Restoration shall be conducted in accordance with the provisions of Article 14 (Improvements and Alterations). “**Restored**” and “**Restoring**” have correlative meanings.

"**Rules and Regulations**" means the Rules and Regulations set forth in ***Exhibit D*** attached hereto, as may be amended from time to time.

"**saltwater immersion**" is defined in Section 29.11 below.

“**Seawall**” is defined in Section 3.7.

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

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

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

"**Subtenant**" means any Person leasing, using, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

"**SWPPP**" is defined in Section 16.8(a) below.

"**Tenant**" means the party identified as Tenant in the Basic Lease Information and its permitted successors and assigns to this Lease.

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

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

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

"**Transfer**" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) any sale, assignment, encumbrance, or other transfer of any of Tenant's interest in this Lease or in the Premises; (b) any Person other than Tenant or an approved or deemed approved Subtenant, occupies or claims a right of possession to any part of the Premises; or (c) if Tenant is a corporation, limited liability company, partnership or similar entity and is not traded on a nationally recognized security exchange, any change in Control of Tenant (including without limitation a dissolution, merger, consolidation, transfer or sale); provided, however, in no event will any Excluded Transfer be deemed a Transfer or a change in Control of Tenant.

"**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 17.4 below.

"**Work**" when used in reference to construction is defined in Section 14.2(c) below.

"**worth at the time of award**" is defined in Section 23.2 below.

3. PREMISES; AS-IS CONDITION.

3.1. *Premises*.

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

3.2. ***Accessibility Inspection Disclosure***.

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

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

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

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

(b) In addition to the Encroachment Area Charge, 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 (if Port determines in its sole discretion that a survey is required) 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. Each of the charges in this Section will increase by One Hundred dollars ($100.00) on the tenth (10th) Anniversary Date.

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

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

3.4. ***Resilience Project and Other Projects***. Tenant acknowledges that during the Term, projects involving development, removal, or renovation by public and/or private parties, or 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), including but not limited to the Resilience Project, other Port program or project, and/or the Development Project(s) described in the Basic Lease Information, are scheduled to be, or may be, constructed on the Premises or on property in the vicinity of the Premises. Tenant is aware that the Resilience Project and other construction projects of Port tenants, licensees, or occupants within or in the vicinity of the Premises and the activities associated with such construction and events held in the vicinity of the Premises and the activities associated with those events, may generate certain adverse impacts on access to the Premises, construction of Improvements, use and/or operation of the Premises, or may result in inconvenience to or disturbance of Tenant its Agents and Invitees. 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 (collectively, "**Construction Impacts**"). Tenant waives any and all Claims against the Indemnified Parties arising out of any adverse impacts, inconvenience or disturbance to Tenant, its Agents, or Invitees arising out of such Construction Impacts.

3.5. ***Reservation of Rights***. Without limiting Tenant's responsibilities under this Lease, Port reserves, and Tenant leases and accepts the Premises subject to Port's right of access to the Premises to the extent required to access the Flagpoles, if any, located thereon for the placement, replacement, and adjustment of flags, in accordance with Section 10.3 (Flags). Port will use commercially reasonable effort to ensure that any interruptions or disturbance to Tenant or its Subtenants for such access purposes will be temporary only and will not unreasonably interfere with or disturb Tenant's or any of its Subtenant's use of the Premises, but Tenant's use of the Premises may be subject to temporary interruption in cases of emergency. Port's access to the Premises under this subsection will be subject to the reasonable security procedures adopted by Tenant.

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

3.7. ***Unique Nature of Premises***. Tenant acknowledges that: (a)the Premises is located near the waterfront and the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.8; (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; (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (d) Port cannot guarantee that the Premises will remain accessible or be suitable for the Permitted Use leased occupancy during the entire Term of this Lease.

3.8. ***Seawall***. The City is engaged in an effort to prepare for a major earthquake and to create more resilient City infrastructure. As part of this effort, the Port is developing a plan to strengthen the Northern Waterfront Seawall which stretches from Fisherman's Wharf to Mission Creek ("**Seawall**") to maintain viability of Port's operations, increase protection of Port and City assets, and enhance life safety in the face of degradation, flooding, earthquakes, climate change, and security hazards. The Seawall was constructed over 100 years ago within the Bay and supports reclaimed land, or fill, and as a result is more vulnerable to seismic risk. Earthquake performance of reclaimed land is an issue for coastal communities worldwide. The *Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information about Port and City's resiliency goals and plans and improvements can be found on the Port's website at: https://www.sfportresilience.com. Tenant agrees that its waiver of Claims set forth in Section 20 below (Indemnity and Exculpation) is given with full knowledge of the direct or indirect, known or unknown, and foreseeable or unforeseeable losses and claims (including the potential additional risks of injury or death to persons or damage to property) due to the Seawall's condition or the proximity of the Premises to the Bay and the Seawall.

3.9. ***As-Is Condition***. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.8 including *The Seawall Earthquake Vulnerability Study of the Northern Waterfront Seawall*, San Francisco, California July 2016 and information on the Port's website; the FEMA disclosure notice attached as ***Schedule 2***. 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 (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

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

3.11. ***Rules and Regulations; Port's Rights Regarding Premises***. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Premises. Tenant acknowledges receipt of a copy of the Rules and Regulations currently in force for the restaurants on Port property attached hereto as ***Exhibit D*** and agrees to abide by them. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises or other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT.

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

4.2. ***Termination Rights***.

(a) If the Premises is either vacant or the restaurant has gone "dark" and no longer operational during the last ten (10) years of the Term or during the option periods under the Moon Child Sublease, Port has the right to terminate this Lease under this Section if the Premises is needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Section, upon no less than twelve (12) months' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the termination date set forth in such notice from Port, which termination date will not be less than twelve (12) months' from the date such notice is delivered to Tenant.

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

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

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

5. RENT.

Tenant shall pay to Port Rent as set forth in this Section:

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

5.2. ***Percentage Rent***.

(a) Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant, Percentage Rent as set forth in the Basic Lease Information. [***Note: Will need to include Annual Statement for reconciliation***]

(b) Percentage Rent shall be determined and paid by Tenant for each calendar quarter by the twentieth (20th) day of the second (2nd) month following the end of such calendar quarter, except that in the event this Lease expires or terminates on a day other than the last day of a calendar quarter, Percentage Rent for such period shall be determined and paid within twenty (20) days after such expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement (the "**Quarterly Percentage Rent Statement**") in the form attached hereto as ***Exhibit E***. Each Quarterly Percentage Rent Statement shall set forth in reasonable detail any percentage rent received by Tenant from a Subtenant for such immediately preceding calendar quarter, including a copy of any backup materials delivered to Tenant from the Subtenant pursuant to the terms thereof, and a computation of the Percentage Rent for the immediately preceding calendar quarter. If at any time there is no Sublease and Tenant is directly operating the Premises for the Permitted Use, each Quarterly Percentage Rent Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar quarter, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar quarter.

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

(d) If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; or (ii) submit the Quarterly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due), such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Quarterly Percentage Rent Statement within the time period set forth in this ***Section 5.2*** (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for five (5) business days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a CPA to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of percentage rent received by Tenant pursuant to a Sublease for the period in question or, if Percentage Rent is calculated based on Gross Revenues because there is no Sublease and Tenant is directly operating the Premises for the Permitted Use, Tenant's Gross Revenues for the period in question and, in each case, the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Quarterly Percentage Rent Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The Parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.

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

5.3. ***Books and Records***. Tenant agrees any Sublease will require that the Subtenant operate its business at the Premises with a point of sale system and Tenant will use its commercially reasonable efforts to enforce such provision. Furthermore, Tenant shall keep at the Premises or other principal place of business in the San Francisco Bay Area at all times during the Term complete and accurate Books and Records relating to percentage rent received by Tenant from a Subtenant, or if there is no Sublease and Tenant is directly operating the Premises for the Permitted Use, Gross Revenues that contain all information required to permit Port to verify the amount of Percentage Rent payable to Port that are in accordance with this Lease and with generally accepted accounting practices consistently applied with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each calendar year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the "**Audit Period**"). Tenant agrees any Sublease will require that the Subtenant keep at all times during the Term complete and accurate books, records and accounts of gross revenues in accordance with industry standard accounting principles consistently applied and shall retain such books, records and accounts for at least three (3) full years after a statement is rendered to Tenant pursuant to the Sublease. Port agrees to maintain the confidentiality of any Books and Records of Tenant provided to Port pursuant to this Lease except (i) as may be required by Law and (ii) to Port's Agents as may be reasonably necessary in connection with this Lease.

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

5.5. ***Audit***.

(a) Tenant agrees to make its relevant Books and Records available to Port, or to any City auditor, or to any auditor or representative designated by Port or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than fifteen (15) business days prior written notice to Tenant, for the purpose of examining said Books and Records to the extent reasonably necessary to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after a Percentage Statement is delivered to the Port. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office during regular business hours, or at such other location in the San Francisco Bay Area where the Books and Records are kept, and no books or records may be removed by Port Representative without the prior express written consent of Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and

Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Premises through one or more Subtenants or Agents, Tenant shall require each such Subtenant or Agent to provide the Port with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, Port shall deliver a copy of the audit report to Tenant.

5.6. If an audit reveals that Tenant has understated Percentage Rent owed to Port for said audit period, Tenant shall pay Port, within thirty (30) days of such reveal, the difference between the amount Tenant has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Tenant has overstated its Percentage Rent for said audit period, Tenant shall be entitled to a credit against rent for either Base Rent or Percentage Rent next owed equal to the difference between the amount Tenant has paid and the amount it should have paid to Port. If Tenant understates its Percentage Rent for any audit period by three percent (3%) or more, Tenant shall pay the cost of the audit; otherwise, the cost of the audit shall be borne by Port. A second understatement within any three (3) calendar year period of the first such understatement shall be considered an Event of Default.

5.7. ***Default Interest***. Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant. Without duplication of amounts payable by Tenant pursuant to Section 23.4. Tenant shall also pay any costs, including attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

5.8. ***Late Charges/Habitual Late Payer***. Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Tenant fails to pay Rent within five (5) business days of the date due, such failure shall be subject to a Late Charge at Port's discretion. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of Tenant's failure to timely pay Rent. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Tenant.

5.9. ***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 Port) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5.10. ***Net Lease***. It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this

Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, other than the Rent Credit described in the Basic Lease Information, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises, any Improvements, or any interest under this Lease. No occurrence or situation arising during the Term, nor any Law, whether foreseen or unforeseen, and however extraordinary, will relieve Tenant from 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 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.

5.11. ***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: 13.1 (Utilities), 16.3 (Tenant's Environmental Condition Notification Requirements), 16.8 (Storm Water Pollution Prevention), 29.1(d) (CMD Form), and 34 (Estoppel Certificate) or to provide evidence of the required insurance coverage described in Section 17 below, then upon written notice from Port of such failure, Tenant will 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 will 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 5.11 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 5.11 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.11 and the reasonableness of the amount of the charges described in this Section 5.11. Each of the charges in this Section will increase by One Hundred dollars ($100.00) on the tenth (10th) Anniversary Date.

5.12. ***Rent Credit***. [***Note: May change if work is complete before execution of this Lease***]

(a) Tenant is entitled to receive the Rent Credit for its actual costs to prepare the Premises for occupancy by Moon Child (the "**Eligible Work**") and Port shall provide Tenant the Rent Credit only if all of the following conditions are met:

(i) Tenant has fully completed the work eligible for any Rent Credit by the end of the 2026 calendar year;

(ii) Within thirty (30) days following completion of the Eligible Work Tenant has provided to Port and Port has reviewed and approved copies of receipts, cancelled checks, invoices marked "**Paid**," unconditional lien waivers from all contractors, subcontractors, suppliers and materialmen who provided any labor, materials or services related to the Tenant Work, and other items reasonably acceptable to Port evidencing proof of such expenditures; and

(iii) Tenant complies with all the conditions set forth in the "*Rent Credit*" section of the Basic Lease Information.

(b) From and after all the terms and conditions of Section 5.12(a) have been met, the Monthly the Rent Credit shall be applied against the immediately following monthly installment of Base Rent due until the earlier to occur of (i) the Rent Credit being fully applied,

(ii) the expiration or earlier termination of this Lease, (iii) the date immediately prior to the tenth (10^{th}) anniversary of the Commencement Date, or (iv) a default by Tenant of any term or condition of this Lease. Application of Monthly Rent Credit against monthly Base Rent will be suspended during any period of an Event of Default. If Tenant cures all Events of Default, such cure will re-start the application of Monthly Rent Credit on the first day of the immediately following calendar month.

(c) Tenant agrees and acknowledges that any right or claim Tenant may have to any form of Rent Credit that has not yet been actually applied against Base Rent ("**unused rent credit**") shall, upon the earlier to occur of (a) the expiration or earlier termination of this Lease or (b) the date immediately prior to the tenth (10^{th}) anniversary of the Commencement Date, be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.

6. TAXES AND ASSESSMENTS.

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

6.2. ***Possessory Interest Tax***. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's use of the Premises that may be imposed upon Tenant by Law, all of which will be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the

Commencement Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

7. SECURITY DEPOSIT.

Other than in connection with an Excluded Transfer, any Transferee of JPPF 1300 Battery, L.P. will pay to Port upon the effective date of the Transfer, the Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. If Base Rent is increased beyond the amount set forth in the Basic Lease Information for the last year of the Term, then from and after such increase, Tenant shall increase the amount of the Security Deposit to maintain the same ratio of the Security Deposit to Base Rent as existed on the date immediately prior to such Base Rent increase. Any increase in the Security Deposit shall be delivered to Port on the same date that such increase in Base Rent is first due.

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

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

8. USE OF THE PREMISES.

8.1. ***Permitted Use***. The Premises will 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 or consistent with the Permitted Use unless otherwise previously approved by Port;

(b) any activity or operational object which will materially overload or cause material damage to the Premises (other than which would be considered reasonable wear and tear or which is otherwise repaired by Tenant in accordance with the terms of this Lease);

(c) Unless previously approved by Port, use of the Premises for (i) raves, D.J. parties, or other public dances/events that use live or amplified music outside of normal business hours (i.e., on business days between 8 am and 5 pm); (ii) activities that are managed by an outside promoter; or (iii) charging a cover charge or requiring a donation to gain entry to the Premises; provided, however, if Port has not timely responded to a request for approval for an individual event or series of events within ten (10) business days following Tenant's request, and without limiting any other requirements under this Lease applicable to the conduct of such events (including compliance with applicable Laws and issuance of necessary permits from the Port or the City, each in their regulatory capacity), the use of the Premises for the applicable event or series of events shall be deemed approved;

(d) Any activity, or the maintaining of any object, that would restrict use of the public access areas, sidewalks, or open space areas adjacent to the Premises, or would unreasonably interfere or impede the use of such areas by the public, Port, or other Port tenants, licensees, or other users;

(e) 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;

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

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

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

(k) the washing of any vehicles or equipment on sidewalks or other right of ways near the Premises; or

(l) 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 that Prohibited Uses are occurring, then Tenant shall immediately cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section. Each of the charges in this Section will increase by One Hundred dollars ($100.00) on the tenth (10th) Anniversary Date.

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved are related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 14 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. TENANT’S MANAGEMENT AND OPERATING COVENANTS.

10.1. ***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 the prudent business practices of the landlord of a first-class, full service restaurant and bar in San Francisco. Tenant is solely responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 11, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, and (d) security services for the Premises.

10.2. ***Continuous Operations***. Tenant shall use commercially reasonable efforts (based on prudent business practices of the landlord of a first-class, full service restaurant and bar in San Francisco) to ensure that the Premises are used continuously during the Term for the Permitted Use (operating a minimum of five (5) days a week for dinner service upon restaurant opening) and prevent any portion of Parcel A to remain unoccupied or unused unless Tenant has received the prior written consent of Port, which consent may be withheld in Port’s sole and absolute discretion; provided, however, that it shall not be a violation of this Section 10.2 if the Premises fail to be continuously used on a temporary basis to the extent determined necessary by Tenant to (i) maintain, repair and operate the Premises in accordance with the requirements of this Lease; or (ii) undertake or install subsequent construction; nor shall it be a violation of this Section 10.2 to the extent that continuous operations cease due to (1) Casualty or other Force Majeure event;

(2) periodic vacancies or cessation of operations due to unfavorable commercial rental market conditions from time to time; or (3) a default by a Subtenant, provided that Tenant uses the prudent business practices of the landlord of a first-class, full service restaurant and bar in San Francisco to enforce its rights under such Sublease. Notwithstanding the foregoing, the Port shall not unreasonably withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become reasonably untenantable due to fire or other casualty, (b) as may be necessary in connection with performing repairs to the Premises, (c) while conducting periodic inventory of Tenant's goods and merchandise, or (d) up to three (3) months to refresh, renovate, and/or reposition its operations at the Premises. Any such closure will have no impact on Tenant's continuing obligation to pay Base Rent during such period of closure.

10.3. ***Flags***. Throughout the Term, a Port flag will fly on each flagpole within the Premises, if any ("Flagpoles"). Port will provide the Port flags to Tenant and will replace worn Port flags. Tenant will promptly, at no charge, install, raise, lower, and remove Port flags at Port's request. The dimensions of Port flags will be similar to the dimensions of Port flags flown on the roofs of Port buildings. Tenant also may use the Flagpoles to fly other flags on each Flagpole, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag and Port must first reasonably approve the dimensions, color, text, design, and materials for each flag. If Port determines that Tenant's response to Port's request to raise or lower Port flags is inadequate, then at Port's election, Port may exercise its rights to access the Flagpoles as further described in Section 3.5.

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

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

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

11.2. ***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 Premises or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

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

Without limiting the terms and conditions of Sections 11.1 and 11.2, by signing this Lease, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Premises. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

12. MAINTENANCE AND REPAIRS.

12.1. ***Covenants to Repair and Maintain the Premises***. Throughout the Term, Tenant will maintain and repair, at no cost to Port, the Premises and all Improvements in accordance with the prudent business practices of institutional landlords of buildings of comparable age, size, type and use located in San Francisco (less reasonable wear and tear), and in compliance with all applicable Laws and the requirements of this Lease. Tenant will with reasonable promptness make (or cause others to make) all necessary or appropriate repairs, renewals, and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen. For purposes of this Lease, the term “reasonable wear and tear” will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant’s failure to comply with the terms and conditions of this Lease.

12.2. ***Removal of Non-Permitted Improvements***. Removal of Non-Permitted Improvements. To the extent any Alterations constructed by Tenant do not comply with applicable Law or are otherwise installed in violation of the requirements of this Lease, then, in addition to any other remedy available to Port, Port, upon prior written notice to Tenant, may require Tenant to remove, at Tenant’s expense, any or all such Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned by the removal. Tenant will pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of this Section 9.2 will survive the expiration or earlier termination of this Lease.

12.3. ***Facilities Condition Report***.

(a) Preparation. No less than ninety (90) days before the tenth (10th) Anniversary Date hereof, Tenant will deliver to Port for Port's approval a facilities condition report (the "**Facilities Condition Report**") prepared by a qualified team of construction professionals chosen by Tenant including a structural and mechanical engineer each with at least ten (10) years of experience in constructing, renovating and/or evaluating major commercial buildings in California. The Facilities Condition Report will describe at a minimum the condition and integrity of the Premises, the foundation and structural integrity of each of the building and all Material Systems serving the building, and other Improvements within the Premises, a list of repair needs and estimated timeframe and an estimated cost to address them. To the extent the Facilities Condition Report identifies any deficiencies in Tenant's obligations pursuant to Section 12.1 (Covenants to Repair and Maintain the Premises), Tenant will perform the repairs recommended in the Facilities Condition Report when and as needed to resolve such deficiencies. Additionally, if a Facilities Condition Report is prepared by Tenant or another party in connection with any Transfer, then Tenant will provide or cause the other party to provide, a copy of such Facilities Condition Report to Port.

(b) Failure to Revise or Submit Report. If Port reasonably believes the Facilities Condition Report does not adequately describe the condition and integrity of the Premises as required or the timing and estimated cost for the required repairs, then Port will notify Tenant of such deficiency within forty-five (45) days following receipt of the deficient Facilities Condition Report and Tenant will cause the Facilities Condition Report to be revised to address Port's concerns within sixty (60) days following receipt of Port's deficiency notice. If Tenant fails to provide a Facilities Condition Report or a revised Facilities Condition Report to Port within such period of time, in addition to all other remedies provided by this Lease or by Law, Port will have the right, but not the obligation, to cause the preparation of a Facilities Condition Report by a team of construction professionals of Port's choice including a structural and mechanical engineer each with at least ten (10) years of experience in constructing, renovating and/or evaluating major commercial buildings in California, at Tenant's sole cost. To the extent the Port-prepared Facilities Condition Report identifies any deficiencies in Tenant's obligations pursuant to Section 12.1 (Covenants to Repair and Maintain the Premises), Tenant will perform the repairs recommended in the Port-prepared Facilities Condition Report as and when needed to resolve such deficiencies.

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

12.5. ***Port's Right to Repair.***

(a) Repair Right. If Tenant fails to maintain and repair the foundation, the structural integrity of the Improvements, the roofs, and building systems necessary for the operation of the Improvements (including water, sewer, heating, ventilation and air conditioning; security; data and telecommunications; and mechanical, electrical and other utility systems) (collectively, "**Material Systems**") within the Premises in accordance with this Lease and such failure is likely to cause imminent physical harm to any Person or constitutes a violation of applicable Law, in either case as determined by either (a) a qualified team of construction professionals, including a structural and mechanical engineer, each with at least ten (10) years of experience in constructing, renovating and/or evaluating major commercial buildings in California or (b) any Regulatory Agency with applicable expertise, then Port may repair the same at Tenant's cost and expense and Tenant will reimburse Port as provided in this section. Except in the event of an emergency, Port will first provide no less than forty-five (45) days' prior notice to Tenant before commencing any maintenance or repair under this Section 12.5 ("**Repair Notice**"). If Tenant does not commence maintenance or repair of the Material Systems or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the Material Systems within such forty-five (45) day period or such longer period of time as is necessary to address such maintenance or repair provided Tenant is diligently prosecuting a cure of the same, then Port may proceed to take the required action. If Port elects to proceed with such repair or maintenance, (x) if Port has sufficient funds to complete the repair or maintenance , then promptly following completion of any work taken by Port pursuant to this Section 12.5, Port will deliver a reasonably detailed invoice of the work completed, the materials used and the costs relating thereto, or (y) if Port does not have sufficient funds to complete the repair or maintenance, then Port will provide Tenant with an estimate of the cost of the repair or maintenance and Tenant will pay Port the estimated cost within fifteen (15) days of Port's delivery of such estimate. Tenant also will pay to Port an administrative fee equal to ten percent (10%) of the total "hard costs" of the work. "Hard costs" include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. If Port proceeds pursuant to clause (x) above, Tenant will pay to Port the amount set forth in the invoice as Additional Rent within thirty (30) days after delivery of Port's invoice. If Port proceeds pursuant to clause (y) above, after completion of the repair or maintenance work, Port will provide a reasonably detailed invoice of the work completed, the materials used and the costs relating thereto and either (i) Tenant will pay to Port any invoiced amount above the estimated amount paid by Tenant pursuant to clause (y) within thirty (30) days after delivery of Port's invoice or (ii) Port will refund to Tenant any estimated amount paid by Tenant pursuant to clause (y) in excess of the invoiced amount within thirty (30) days after delivery of Port's invoice.

(b) Failure to Maintain. If Port notifies Tenant of a failure to maintain and repair the Premises ("Maintenance Notice"), then Tenant will pay to Port, as Additional Rent, Three Hundred Fifty Dollars ($350) upon delivery of the Maintenance Notice. If Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this Article 9, then Tenant will pay to Port, as Additional Rent, Four Hundred Fifty Dollars ($450) for each additional Maintenance Notice delivered by Port to Tenant following each inspection. By signing this Lease, each Party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense that Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with a Maintenance Notice and Port's right to impose the foregoing charges is in addition to and not in lieu of any other rights and remedies of Port under this Lease, at Law, or in equity. The amounts set forth in this Section 12.5(b) are due within five (5) days following delivery of the applicable Maintenance Notice. Each of the charges in this Section will increase by One Hundred dollars ($100.00) on the tenth (10th) Anniversary Date.

13. UTILITIES AND SERVICES.

13.1. *Utility*. Tenant, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use all of the Improvements and any other portion of the Premises for their intended use, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which all of the Improvements and the Premises are put (it being acknowledged that City (including its SFPUC) is the sole and exclusive provider to the Premises of certain public utility services), and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant agrees and acknowledges that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. Tenant also must coordinate with the respective utility service provider with respect to the installation of utilities, including providing advance notice to appropriate parties of trenching requirements. Tenant will purchase all electrical service (to the extent not provided by a PV System, if any) for the Improvements and the Premises from SFPUC unless SFPUC first determines that such service is not feasible for the Premises.

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

13.2. *On-Site Renewable Energy*. Tenant will have the right but not the obligation to install or cause to be installed on the roof(s) of Buildings a photovoltaic energy generation facility for the generation and delivery of electrical energy to the Premises and if excess energy is available, potentially to other sites (the "PV System"). Before commencing installation of a PV System, Tenant must obtain Port's consent and all required permits and Regulatory Approvals for the PV System, which may include, among other things, requirements to strengthen the roof of the applicable Building(s). The design, construction and installation of any PV System will be done in accordance with this Lease.

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

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

14. IMPROVEMENTS AND ALTERATIONS.

14.1. *Port Consent Required*.

(a) To the extent Tenant has the right to approve of a Subtenant making Alterations or Improvements to the Premises pursuant to a Sublease, Tenant shall submit (or cause the applicable Subtenant to submit) to the Port such plans and specifications for the Port's approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Port hereby acknowledges and agrees that it approves of the Alterations described in the Work Letter (as defined in the Moon Child Sublease).

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

(c) As a condition to giving consent pursuant to Section 14.1(b), Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and/or (ii) a payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount up to one hundred percent (100%) of the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

(d) At least thirty (30) days before Tenant commences any Alterations or Improvements to the Premises, Tenant shall notify Port.

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

14.2. ***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 expense of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics.

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

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

(e) Without limiting Section 16 below (Hazardous Materials), in the event that asbestos-containing materials ("**ACM**") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all Laws relating to asbestos, including but not limited to, Cal-OSHA regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

(f) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("**HEPA**") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 14.2(f), lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

14.3. ***Improvements Part of Realty***. Except as set forth in Section 13.4 below and except for trade fixtures, and other personal property of Tenant or its Subtenant), all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 26 (Surrender).

14.4. *Removal of Improvements*. Prior to the Expiration Date or earlier termination of this Lease, all Personal Property of Tenant or its Subtenant must be removed from the Premises. Port may give written notice to Tenant (herein "**Notice of Removal**") specifying any special and unique (in other words, Alterations and Improvements that a subsequent user of the Premises for the Permitted Uses will likely demolish) Alterations or Improvements provided for in approved building permits which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 26. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor. [***Note: Under discussion between the parties***]

14.5. *Removal of Non-Permitted Improvements*. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with Section 14.2 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 14 shall survive the expiration or earlier termination of this Lease.

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

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

14.8. *Rooftop Equipment*. Prior to installing any equipment on the roof of any of the Buildings within the Premises, Tenant must first obtain a Port building permit and all required Regulatory Approvals. In connection with its application for a Port building permit, Tenant will provide to Port the size, location, dimensions, design, color, text (if any), screening, materials, reflectivity, and method of installation of the rooftop equipment to enable Port to evaluate the proposed rooftop equipment.

15. 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 forty-five (45) days following Tenant's knowledge 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 upon demand. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port and the Premises from mechanics' and materialmen's liens. Tenant shall give to Port at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to Indemnify Port, City and their respective Agents from and against any Claims for mechanic's, materialmen's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

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

16. HAZARDOUS MATERIALS.

16.1. ***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, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: (i) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (ii) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of any Alterations, and which are reported to, and approved by Port before any such Handling, (iii) supplies or materials in such limited amounts as are customarily used for general landscaping purposes, (iv) any janitorial, office, or restaurant supplies, or similar materials in such limited amounts as are customarily used for janitorial services or in connection with office or restaurant uses.

16.2. ***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 except as permitted under Section 16.1;

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

(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 or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws;

(d) Will, as necessary or if required by Regulatory Agencies, Remediate Hazardous Materials;

(e) Will be the "Generator" of any waste, including hazardous waste, resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises.

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

(a) Tenant must promptly notify Port , 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 16.1, Handled, in, on, or about the Premises, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

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

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

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

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

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

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

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

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the 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. Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies and copies of investigation reports conducted by Environmental Regulatory Agencies 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.

16.4. ***Requirement to Remediate***.

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

(i) After notifying Port in accordance with Section 16.3(a), Tenant must Remediate at its sole cost in compliance with all applicable Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

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

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

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

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

16.5. ***Port's Right to Audit***. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 25 (Port's Entry on Premises). Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of Tenant’s obligations under this Lease.

16.6. ***Notification of Asbestos***. Port hereby notifies Tenant, in accordance with the OSHA Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and Cal-OSHA General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("**ACMs**") and/or presumed asbestos-containing materials ("**PACMs**") (as such terms are defined in Cal-OSHA General Industry Safety Order for

Asbestos), in the locations identified in the summary/table, if any, set forth in ***Schedule 1*** attached hereto.

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

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 16.6 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 20 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and the removal or non-removal by Port of all or a portion of the asbestos in the Premises, whether in the Premises or elsewhere in the Premises, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant.

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

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

Tenant agrees that its waiver of Claims set forth in Section 20 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of lead in or about the Premises may limit Tenant's ability to perform any Improvements or Alterations to the Premises without Tenant first performing abatement of such lead. The presence of lead in the Premises and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

16.8. ***Storm Water Pollution Prevention***.

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources

Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("**SWPPP**"), and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning operations on the Premises.

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

16.9. ***Presence of Hazardous Materials***. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in ***Schedule 1*** attached hereto, and the Hazardous Materials described in the reports listed in ***Schedule 3***, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 78700 and related Laws. Tenant must disclose the information contained in this Section 16.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 78700 as well as the penalties that apply for failure to meet such obligations.

16.10. ***Survival***. Tenant's obligations under Section 16 shall survive the expiration or earlier termination of this Lease.

For purposes of this Section 16, the term "**Commencement Date**" shall mean the commencement date (including any early entry period, if any) of the Prior Lease.

17. INSURANCE.

17.1. *Property and Liability Coverage*.

(a) Required Types and Amounts of Insurance. Except as more specifically provided in this Section 17.1, Tenant will, at no cost to Port, obtain and maintain, and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 17.1(a)), the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times during construction of Alternations costing more than Five Hundred Thousand Dollars ($500,000), as Indexed, Tenant will maintain, or require to be maintained, on a form reasonably approved by Port, builders risk insurance (or its equivalent for any Alterations, which may include coverage under a property insurance program as referenced under Section 17.1(a)(ii)) in the amount equal to the 100% replacement cost value of any existing structures being Restored, and 100% of all new construction, including all materials and equipment to be used/incorporated on or about the Premises, and in transit or storage off-site, against all risk or "special form" hazards, and earthquake and flood insurance (subject to Section 17.1(a)(ii)) including risks from any and all testing of any equipment, including as named insureds, Port and Tenant, with any deductible not to exceed Two Hundred Fifty Thousand ($250,000) (except as to earthquake and flood insurance for which the deductible will be in accordance with the requirements of Section 17.1(a)(ii)). Such builders risk insurance also will extend to cover soft costs and loss of business income for any delayed completion period as caused by any of the perils or hazards set forth in and required to be insured pursuant to Section 17.1(a)(i), for a delay period of not less than two (2) years with a limit of not less than One Million Dollars ($1,000,000). If available at commercially reasonable rates, such builders risk insurance also will extend to cover the peril of terrorism.

(ii) Property Insurance; Earthquake and Flood Insurance.

(1) Tenant will maintain property insurance policies with coverage at least as broad as Insurance Services Office form CP 10 30 06 95 ("Causes of Loss Special Form" (or its replacement) f/k/a all-risk), in an amount not less than 100% of the then-current full replacement cost of the Improvements within the Premises including any foundations, pilings, excavations, and footings, including increased cost of construction and demolition of damaged and undamaged structures due to the enforcement of Laws, (with any deductible not to exceed Two Hundred Fifty Thousand Dollars ($250,000) (except as to earthquake and flood insurance). If available at commercially reasonable rates, such insurance will extend to cover the peril of terrorism. In addition to the foregoing, Tenant may insure its Personal Property in such amounts as Tenant deems appropriate; and Port will have no interest in the proceeds of such Personal Property insurance, and the proceeds of such insurance will not be subject to Section 18.7.

(2) Earthquake Insurance. Earthquake insurance will be in an amount equal to at least the lesser of (i) the Probable Maximum Loss to the Improvements, or (ii) the amount that is available at commercially reasonable rates from recognized insurance carriers, in each case, with a deductible of up to but not to exceed an amount that is necessary to make such earthquake insurance available at a commercially reasonable rate.

"**Probable Maximum Loss**" means the scenario upper loss (SUL) estimate of damage that may occur to the structures with a ninety percent (90%) confidence of non-exceedance as a result of an earthquake with a return period of 224 years as determined as of the Commencement Date and thereafter not less frequently than every ten (10) years through a Probable Maximum Loss report (the "PML Report") prepared by a structural engineer chosen and paid for by Tenant who is reasonably satisfactory to Port; and

(3) Flood Insurance. For any building, flood insurance will be in an amount equal to at least the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make flood insurance available at commercially reasonable rates.

(4) Exceptions for Earthquake and Flood Insurance. No earthquake insurance shall be required hereunder so long as the PML Report prepared by Tenant from time to time, pursuant to Section 17.1(a)(ii)(2), indicates a Probable Maximum Loss of twenty percent (20%) or less. Subject to the foregoing, if Tenant determines that earthquake or flood insurance should not be carried on the Improvements because it is not (or no longer) available at commercially reasonable rates (or through the NFIP for flood insurance) or, in Tenant's reasonable business judgment, is imprudent, then Tenant will request in writing Port's consent to the absence or deletion thereof. Any request for Port's consent required under this Section will include with such request evidence supporting Tenant's determination of commercial unreasonableness or imprudence as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco. Port will approve or disapprove the absence or deletion of earthquake or flood insurance within forty-five (45) days after Tenant's request. If Port disapproves such request, Port will state the basis for its disapproval. If Tenant elects not to carry or to discontinue such coverage with Port's approval, and Port later determines that due to changes in the industry or other changed circumstances, earthquake insurance or flood insurance, as applicable, has become commercially available at reasonable rates, then Port may notify Tenant thereof, and Tenant will add such coverage to its policy as soon as reasonably practicable thereafter.

(iii) Commercial General Liability Insurance. Tenant will maintain, or require to be maintained "Commercial General Liability" insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) that includes coverage extending to the Indemnity in Article 20, broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than Fifteen Million Dollars ($15,000,000) per occurrence and annual aggregate, and Fifteen Million Dollars ($15,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. In addition, Tenant will maintain or require to be maintained liquor liability coverage with limits not less than Three Million Dollars ($3,000,000) each occurrence and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence and Tenant will require any Subtenant or operator who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverages. All such insurance may be provided under a combination of primary and umbrella excess policies and may be provided under policies with a "claims made" trigger as provided in Section 17.1(b)(viii).

(iv) Workers' Compensation Insurance. During any period in which Tenant has employees, as defined in the California Labor Code, Tenant will maintain or require to be maintained policies of workers' compensation insurance providing statutory limits, including employer's liability coverage with limits not less than One Million Dollars ($1,000,000) each accident and policy limit by disease (except that such insurance in excess of One Hundred Thousand ($100,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy) covering liability for all persons directly employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

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

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

(vii) Business Income Insurance. For any Building, Tenant will maintain business income insurance, including loss of rents and extra expense caused by any of the perils or hazards set forth in and required to be insured pursuant to Section 17.1(a)(ii) covering an interruption period of not less than two (2) years, with a limit of not less than twenty-four (24) months' of monthly Base Rent and Percentage Rent.

(viii) Contractor's Pollution Legal Liability Insurance. Tenant will cause to be maintained during the period of construction of Alterations requiring Port's prior approval, Contractor's Pollution Legal Liability Insurance for any and all Losses caused by pollution conditions, that are sudden, accidental or gradual, resulting from the contractor's operations, or for which contractor is legally liable, in connection with the construction of the Existing Improvements or Alterations, whether such operations be by Tenant or Tenant's contractors, subcontractors, consultants or suppliers of the contractor. The foregoing policy will contain minimum liability limits of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) in the aggregate with a deductible not to exceed Two Hundred Fifty Thousand Dollars ($250,000). The foregoing policy will at a minimum contain coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from construction of the Existing Improvements or any Alterations; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with construction of the Existing Improvements or any Alterations, including transportation of any Hazardous Materials to or from the project site, including any interim or temporary storage or transfer sites (such transportation coverage will also include loading/unloading of materials); (iii) claims by third parties (other than a disposal site owner) for bodily injury or property damage arising from any disposal location or facility, both final and temporary, to which any waste that is generated in connection with the construction of the Existing Improvements or any Alterations under this Lease or in connection with any Remediation obligation of Tenant pursuant to Article 16 is delivered; all such disposal locations/facilities, both final and temporary, will be scheduled to the foregoing policy as Non-Owned Disposal Sites for coverage under such policy. The foregoing policy will be written on an occurrence form and be in effect during the construction periods described above, or, if not available on an occurrence form, then on a claims-made form. If the foregoing policy is written on a claims made form, then the foregoing policy will be maintained for, or contain an extended reporting period of, at least five (5) years. The foregoing policy definition of "Covered Operations" or any other such designation of services or operations performed by Tenant's contractors must include all work or services performed by Tenant's contractors and their respective subcontractors, consultants, or suppliers.

(ix) Professional Liability. Tenant will maintain or require to be maintained, project-specific professional liability (errors and omissions) insurance, with limits not less than Five Million Dollars ($5,000,000) each claim and annual aggregate, with respect to all professional services, including architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to any Alterations requiring Port's prior approval with any deductible not to exceed Two Hundred Fifty Thousand Dollars ($250,000) each claim (the "lead policy"). Notwithstanding the foregoing, however, Tenant may elect, instead of obtaining the foregoing coverages in this Section 17.1(a)(ix), to require that any architects, contractors and sub-contractors performing professional services in connection with such Existing Improvements or Alterations, as applicable, carry professional liability insurance (errors and omissions) in an amount not less than Five Million Dollars ($5,000,000) each claim and annual aggregate with any deductible not to exceed Two Hundred Fifty Thousand Dollars ($250,000). Such insurance will provide coverage during the period when such professional services are performed and for a period of three (3) years after completion of the Existing Improvements or Alterations requiring Port's prior approval, as applicable.

(x) Other Insurance. Tenant will obtain such other insurance or increase the coverage limits set forth in this Section 17.1(a) as is reasonably requested by City's Risk Manager.

(b) General Requirements.

(i) As to all insurance required under this Lease, such insurance will be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A—:VIII or better by the latest edition of Best's Key Rating Guide (or a comparable successor rating) and legally authorized to sell such insurance within the State;

(ii) As to property insurance required under this Lease, such insurance will name Tenant as the first named insured, and will name Port as an insured as its interest may appear. As to general liability, automobile liability, and umbrella or excess liability insurance, such insurance will name as additional insureds by written endorsement: "**THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS**."

(iii) As to all insurance required under this Lease, such insurance will be evaluated by Port and Tenant for adequacy not less frequently than every five (5) years from the Commencement Date. Following consultation with Tenant, Port may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco to carry insurance for facilities of comparable size and use to the Premises in amounts substantially greater than the amounts being carried by Tenant with respect to risks comparable to those associated with the uses of the Premises. If the City's Risk Manager determines that the insurance limits required under this Article 17 may be decreased in light of such commercial practice and the risks associated with the uses of the Premises, Port will notify Tenant of such determination, and Tenant will have the right to decrease the insurance coverage required under this Lease accordingly. In such event, Tenant will promptly deliver to Port a certificate evidencing such new insurance amounts and additional insured endorsements in form satisfactory to Port;

(iv) As to all insurance required under this Lease, such insurance will provide that no cancellation, material modification or termination of such insurance will be effective until at least thirty (30) days after mailing or otherwise sending written notice of such cancellation, modification or termination to Port;

(v) As to commercial general liability and automobile liability insurance, such insurance will provide that it constitutes primary insurance with respect to claims insured by such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought. The policies must name the **CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AS ADDITIONAL INSUREDS**;

(vi) As to liability, automobile, worker's compensation, and property insurance required under this Lease, such insurance will provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses of the type covered under the policies required by Section 17.1(a);

(vii) All insurance will be subject to the approval of Port, which approval will be limited to whether or not such insurance meets the terms of this Lease;

(viii) If any of the policies of liability required under this Lease is provided under a claims-made form of policy, Tenant will maintain such coverage continuously throughout the Term, and following the expiration or earlier termination of the Term, Tenant will maintain, or require to be maintained, such coverage without lapse for a period of three (3) years beyond the expiration or earlier termination of this Lease, or, in the case of construction, for ten (10) years after issuance of a Certificate of Occupancy for the Existing Improvements or Alterations, as applicable.

(c) Certificates of Insurance; Right of Port to Maintain Insurance. Tenant will furnish Port certificates with respect to the policies required under this Article 17 and additional insured endorsements in form satisfactory to Port, (i) on or before the Commencement Date (to the extent such policy is required to be carried as of the Commencement Date), (ii) for such policies required to be carried after the Commencement Date, on or before the date such policies are required, and (iii) with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy. Within thirty (30) days after Port's request, Tenant also will provide Port with copies of each such policy, or will otherwise make such policy available to

Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to this Article 17, or fails to deliver certificates and/or endorsements as required then, upon ten (10) days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within ten (10) days following demand, Tenant will reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors, or others in connection with their use or occupancy of, or their activities in, on, under, around, or about the Premises, Tenant will require that such policies be endorsed to include the **CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS** as additional insureds by written endorsement. Notwithstanding the foregoing, Tenant will require all contractors and subcontractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the following coverages: (i) commercial general liability with limits of no less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual general aggregate, (ii) workers' compensation in amounts required by law, (iii) employer's liability coverage in an amount not less than One Million Dollars ($1,000,000) per accident, per employee and policy limit for injury by disease, covering all employees employed at the Premises, (iv) automobile insurance in an amount not less than One Million Dollars ($1,000,000) combined single limit covering use of owned, non-owned or hired vehicles utilized in the performance of work in, on, under, around, or about the Premises.

17.2. ***Port Entitled to Participate***. With respect to property insurance, Port is entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any Loss in excess of Two Million Dollars ($2,000,000), as Indexed, covered by the insurance required to be carried under this Lease; provided, however, that (i) Port's consent will not be unreasonably withheld, and (ii) no consent of Port will be required in connection with any such settlement, compromise, or agreement concerning damage to all or any portion of the Improvements if Tenant will have agreed in writing to commence and Complete Restoration.

17.3. ***No Limitation***. The Indemnification requirements under this Lease will not be limited by the insurance requirements.

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

18. DAMAGE AND DESTRUCTION.

18.1. *General; Notice; Waiver*.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "**Casualty**"), the rights and obligations of the Parties is as set forth in this Article 18.

(b) Notice. If there is any Casualty (i) that would materially impair use or operation of any material portion of the Improvements for their intended purpose for a period of thirty (30) days or longer, or (ii) the repair of which would exceed in an individual instance Five

Hundred Thousand Dollars ($500,000) or One Million Dollars ($1,000,000) in the aggregate (which amount includes both hard and soft costs of a Restoration as Indexed annually), Tenant will promptly, but not more than ten (10) days after the occurrence of any such Casualty, give written notice thereof to Port describing with reasonable specificity, the nature and extent of the damage from such Casualty ("**Casualty Notice**").

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

18.2. ***No Release of Tenant's Obligations***. Except as set forth in Section 18.4, no damage to or destruction of the Premises or any part thereof from any Casualty will permit Tenant to surrender this Lease or relieve Tenant from any obligations, including the obligation to pay Rent. In the event of any damage or destruction to the Improvements that does not result in a termination of this Lease, and at all times before completion of Restoration, Tenant will pay to Port all Rent at the times and in the manner described in this Lease. If this Lease does not terminate pursuant to this Article 18, proceeds of rental interruption or business interruption insurance will be applied first to unpaid Rent due or coming due before completion of the Restoration and then to costs of Restoring the Premises with any remaining balance to be retained by Tenant. If this Lease terminates pursuant to this Article 18, proceeds of rental interruption or business interruption insurance will be applied first to unpaid Rent coming due before termination of this Lease and then such proceeds will be distributed pursuant to Section 18.4(b).

18.3. ***Tenant's Obligation to Restore***. Except in the event of an Uninsured Casualty or a Major Casualty for which Tenant elects to terminate this Lease under Section 18.4, if all or any portion of the Improvements are damaged or destroyed by Casualty, Tenant will promptly (allowing for securing necessary Regulatory Approvals), commence and diligently Restore the Improvements, subject to Force Majeure Tenant's Restoration obligations hereunder shall require Tenant to Restore the Improvements to substantially the condition they were in immediately before such Casualty or at Tenant's election. All Restoration must be performed in accordance with the procedures set forth in Article 14 relating to Alterations and must be at Tenant's sole expense. In connection with any Restoration, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified subject to Permitted Uses and Regulatory Approvals, provided that the Improvements as so redesigned are at least equivalent in quality, public safety, and durability to and in all other material respects consistent with the Improvements existing before the Casualty, and so long as similar public benefits (such as areas of publicly-accessible open space and circulation) continue to be provided and the rentable square footage or the anticipated Gross Revenues to be generated by the new Improvements will not be materially reduced from the Improvements existing immediately prior to such Casualty. If insurance proceeds are available for such Restoration and Tenant is obligated to Restore or elects to Restore, Tenant will have the right to negotiate an insurance settlement for claims in connection with such Restoration, provided however, that Tenant will use commercially reasonable efforts to ensure that such settlement does not materially interfere with or delay Tenant's obligation and ability to pay Rent to Port or otherwise meet its obligations under this Lease.

18.4. ***<u>Termination due to Major Casualty or Uninsured Casualty</u>***.

(a) Tenant's Election to Terminate. If an event of Major Casualty occurs during the last ten (10) years of the Term or if an event of Uninsured Casualty occurs at any time during the Term (other than as set forth in Section 18.4(c)), then within ninety (90) days following Tenant's delivery to Port of the Casualty Notice, Tenant must notify Port of Tenant's election to: (1) commence and Complete Restoration of the Improvements, or (2) terminate this Lease (subject to Section 18.4(b)).

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate this Lease in accordance with Section 18.4(a), Tenant will do all of the following:

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

(ii) Unless the Improvements are to be Demolished and Removed as set forth in Section 18.4(b)(i), Tenant will provide Port the estimated cost of Restoration, and, with respect to the Uninsured Casualty only, the amount by which the estimated cost of Restoration plus the amount of any applicable policy deductible (subject to the limitations on the policy deductible for damage or destruction caused by earthquake or flood as set forth in Section 17.1(a)(ii) exceeds insurance proceeds payable (or those insurance proceeds which would have been payable but for Tenant's default in its obligation to maintain insurance required under this Lease);

(iii) Cure all monetary Events of Defaults and any Events of Default or Unmatured Events of Default relating to the provisions of Article 16 (Hazardous Materials);

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

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

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

(2) Second, to Port, for all accrued and unpaid amounts owed to Port, if any, by Tenant (including, without duplication, any payment owed to Port by Tenant pursuant to Sections 18.4(b)(v));

(3) Third, to Port and Tenant as follows: the balance of the insurance proceeds will be divided proportionately between Port and Tenant .for the value of Port's reversionary interest in the Premises and Improvements (in their condition immediately prior to the Casualty event) as of the date the Term would have expired but for the Casualty event, and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term (in their condition immediately prior to the event of damage or destruction).

(vi) Pay to Port any Rent due and payable as of the proposed termination date (to the extent any Rent due and payable remains unpaid after application of insurance proceeds pursuant to Section 18.4(b)(v)(2); and

(vii) Upon termination in accordance with this Article 18, Tenant will deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements.

(c) Port's Election Upon Notice of Termination. Notwithstanding Section 18.4(a), if Tenant elects to terminate this Lease solely due to an Uninsured Casualty, then within sixty (60) days after Port's receipt of the Casualty Notice, Port may elect by giving written notice to Tenant, to continue this Lease and pay the amount to Tenant by which the cost of Restoration will exceed the net proceeds of any insurance payable under the policies of insurance that Tenant is required to carry under Article 17 (or which would have been payable but for Tenant's failure to maintain such insurance) by more than One Million Dollars ($1,000,000), as Indexed. If Port elects to continue this Lease as set forth in this Section 18.4(c), then notwithstanding Tenant's election to terminate this Lease, this Lease will not be terminated and Tenant will be obligated to Restore the Premises in accordance with Section 18.3.

18.5. ***Date and Effect of Termination***. If Tenant elects to terminate this Lease under Section 18.4(a) and Port elects not to continue this Lease under Section 18.4(c), then on the date that Tenant fully complies with all provisions of Section 18.4(b) to the reasonable satisfaction of Port, this Lease will terminate and Tenant will deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and in any remaining Improvements. Upon such termination, the Parties will be released without further obligations to the other Party as of the effective date of such termination; provided, however, that the Indemnification provisions and any other provisions that explicitly state they will survive expiration or earlier termination of this Lease will survive any termination.

18.6. ***Distribution Upon Lease Termination***. If Tenant is obligated to and fails to Restore the Improvements and commits a Tenant Event of Default in failing to Restore the Improvements and Port terminates this Lease due to such Tenant Event of Default, all insurance proceeds held by Port and Tenant, or not yet collected, will be paid to and retained by Port.

18.7. ***Use of Insurance Proceeds***. Except in the event of termination of this Lease in accordance with Section 18.4, all special form (f/k/a all-risk) coverage insurance proceeds, earthquake and flood insurance proceeds, boiler and machinery insurance proceeds, and any other insurance proceeds paid to Tenant by reason of Casualty (other than business or rental interruption insurance), must be first used by Tenant for Restoration of the Premises.

19. EMINENT DOMAIN.

19.1. *General; Notice; Waiver*.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises or property located outside the Premises the loss of which would substantially and materially eliminate access to the Premises, the rights and obligations of the Parties will be determined pursuant to this Article 19.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises or property located outside the Premises the loss of which would substantially and materially eliminate access to the Premises during the Term, the Party learning of such proceedings will promptly give written notice of such proceedings or negotiations to the other Party. Such notice will describe with reasonable specificity, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation that might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this Article 19, the Parties intend that the provisions of this Lease will govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease in accordance with this Article 19, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

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

19.3. ***Substantial Condemnation; Partial Condemnation; Rent Abatement***. If there is a Condemnation of any portion but less than all of the Premises or the Leasehold Estate, the rights and obligations of the Parties will be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation, this Lease will terminate at Tenant's option (which must be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port) in accordance with this Section 19.3(a). Notwithstanding the foregoing, Tenant has no right to terminate this Lease under this Section 19.3(a) if the Substantial Condemnation as the case may be: (x) can be cured by the performance of Restoration (unless such Substantial Condemnation occurs during the last ten (10) years of the Term or if Tenant reasonably anticipates, based upon a schedule of performance for such Restoration prepared with due diligence by Tenant in consultation with Port that at the time of completion of the Restoration, less than ten (10) years would remain in the Term), and (y) the cost of such Restoration does not exceed by at least One Million Dollars ($1,000,000.00), as Indexed, the portion of the Award fairly allocable to severance damages suffered by Tenant. In such case, this Lease will not terminate, and, upon a determination that the Lease will continue based upon the availability and amount of Award, Tenant will commence and complete such Restoration as promptly as reasonably practicable by using commercially reasonable diligence and pursuant to the provisions of Article 14 and Section 19.4, subject to events of Force Majeure.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or the Leasehold Estate which does not result in a termination of this Lease under Sections 19.2 or 19.3(a) (a "Partial Condemnation"), this Lease will terminate only as to the portion of the Premises (or the Leasehold Estate) taken in such Partial Condemnation effective as of the Condemnation Date and this Lease will remain in full force and effect as to the portion of the Premises remaining immediately after such Condemnation. Tenant will promptly commence and Complete any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration will be performed in accordance with the provisions of Article 14.

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

19.4. ***Awards***. Except as provided in Sections 19.5 and 19.6, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees, and expenses of either Port or Tenant (including reasonable Attorneys' Fees and Costs) incurred in the collection thereof ("Net Awards and Payments") will be allocated between Port and Tenant as follows:

(a) In the event of a Partial Condemnation, first, to pay costs of Restoration, in which case, the portion of the Net Awards and Payments allocable to Restoration will be payable to Tenant or trustee in accordance with the requirements governing payment of insurance proceeds set forth in Section 18.7;

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

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

(d) Fourth, to Tenant in an amount equal to the value of Tenant's Leasehold Estate, not including the value of the Improvements on the Premises, for the remaining unexpired portion of the Term to the original scheduled Expiration Date; and

(e) Fifth, the balance of the Net Awards and Payment will be divided proportionately between Port, for the value of Port's reversionary interest in the Improvements (based on the date the Term would have expired but for the event of Condemnation), and Tenant, for the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date.

(f) Notwithstanding anything to the contrary set forth in this Section 19.4, any portion of the Net Awards and Payments that has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the Condemned Land Value, the value of Port's reversionary interest in the Improvements, Tenant's Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term, will be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment.

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

19.6. ***Relocation Benefits, Personal Property***. Notwithstanding Section 19.4, Port will not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants.

20. INDEMNITY AND EXCULPATION.

20.1. ***General Indemnity***. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of:

(a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises or any other Port property, from any cause whatsoever;

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

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

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

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

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

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy and is caused directly or indirectly by any acts or omissions of Tenant or any of its Agents, Invitees, or Subtenants.

20.2. ***Hazardous Materials Indemnity***.

(a) In addition to its obligations under Section 20.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Exacerbation of any Hazardous Material Condition by Tenant, its Agents, Subtenants and/or Invitees or their respective Agents and Invitees.

(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; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand.

(c) Nothing in this Lease is intended in any way to preclude or limit Tenant from pursuing any remedies Tenant may have with regard to the existence of Hazardous Materials in, on, under, or pertaining to the Premises, against any third party; provided, however, Tenant may pursue remedies against third parties only at Tenant's sole cost and expense and with advance written notice to, and approval from, Port. Port will have the right, in its sole election and at its sole cost, to join in any such suit or claim.

20.3. ***Scope of Indemnities***. Except as otherwise provided in this Section 20.3 or Section 20.4, the Indemnification obligations of Tenant set forth in this Lease will be enforceable regardless of the joint or concurrent, active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease will 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. All losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port and is due and payable from time to time immediately upon Port's request, as incurred. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease will exclude Claims to the extent caused by the intentionally harmful or grossly negligent acts committed solely by the Indemnified Parties while in, upon or adjacent to, or in any way connected with the Premises.

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

20.4. ***Exculpation and Waiver***. To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims to the extent caused by the intentionally harmful or grossly negligent acts committed solely by the Indemnified Parties while in, upon or adjacent to, or in any way connected with the Premises. Subject to the exclusion of Claims caused by the intentionally harmful or grossly negligent acts committed solely by the Indemnified Parties while in, upon or adjacent to, or in any way connected with the Premises, the Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Port property 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 Material Systems, (v) Premises defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises or any other Port property for any cause arising at any time, (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the commencement date of the Prior Lease, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) alleged facts or circumstances of the Premises or Port's obligations under the Prior Lease or any claims arising under the Prior Lease; and (xi) any other acts, omissions or causes to the fullest extent permitted by law.

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

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

Initials: ____________ ______________
Tenant *Tenant*

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

20.5. ***Survival***. The provisions of Section 20 shall survive the expiration or earlier termination of this Lease.

21. ASSIGNMENT AND SUBLETTING.

21.1. ***Transfer to Affiliate***.

(a) Tenant may make a Transfer to an Affiliate without obtaining Port's consent, provided: (1) at the time Tenant provides Port with notice, there is no Event of Default nor is there an event that with notice or the passage of time or both would constitute an Event of Default if not cured; (2) if the proposed Transferee is a successor to Tenant by purchase, such proposed Transferee shall acquire all or substantially all of the stock or assets of Tenant's business or, if such proposed Transferee is a successor to Tenant by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Tenant; (3) such proposed Transferee must have a net worth which is at least equal to the greater of Tenant's net worth as of the Commencement Date or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization as evidenced to Port's reasonable satisfaction; (4) such proposed Transferee operates the business in the Premises for the Permitted Use and no other purpose; and (5) Tenant gives Port written notice at least sixty (60) days prior to the effective date of the proposed Transfer and provides copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within five (5) days after the actual Transfer Date. A Transfer to an Affiliate that does not meet the criteria specified in this Section 21.1(a) shall be subject to Port's prior written consent under Section 21.2.

(b) Port will have the right to: (i) request additional documentation and information relating to Tenant's relationship with the Transferee for forty-five (45) days after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Transfer on the grounds that the Transferee is not an Affiliate as defined in this Lease, if written notice is delivered to Tenant within forty-five (45) days after Port's receipt of all required and requested information.

(c) For purposes of this Section 21.1, "**Affiliate**" shall include a Person who possesses, directly or indirectly, the power to direct or cause the direction of the day to day management, policies or activities of Tenant whether through ownership of voting securities or ownership interest in such Person (excluding customary limited partner or non-managing member approval rights) and any Person who is controlled by or under common control with such Person.

21.2. ***Transfer to Non-Affiliate***.

(a) Except for a Transfer to an Affiliate meeting the requirements of Section 21.1, Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (3) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any City or Port interest materially and adversely; (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; or (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.

(ii) Tenant also agrees that Port will have the right to impose reasonable conditions to a requested consent to a Transfer.

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

(c) If Port consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within one-hundred eighty (180) days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 180-day period, then Port's consent will expire, unless Tenant gives Port a new Transfer Notice, in which case Tenant will need to obtain Port's consent to the proposed Transfer in accordance with this Section.

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

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

21.3. ***Sublease***.

(a) Qualifying Subleases. Tenant has the right to sublet all or any portion of the Premises to one or more Subtenants by written Subleases from time to time without the prior consent, written or otherwise, of Port for each applicable Sublease upon satisfaction of all of the applicable conditions set forth in this Section 21.3(a).

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

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

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

(iv) The Sublease contains an Indemnification and waiver of claims provision benefitting Port that is substantially and materially the same as Article 20 (Indemnity and Exculpation) except that the term "Tenant" in such provision means "Subtenant" and the term "Premises" in such provision means the demised premises that is the subject of the Sublease;

(v) The Sublease requires that under all liability and other insurance policies "**THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR RESPECTIVE OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES AND AGENTS**" are additional insureds by written endorsement. In addition, Tenant agrees that the Port may require increased insurance coverage consistent with a subtenant's business activities on the Premises, to the extent available at commercially reasonable rates from recognized insurance carriers;

(vi) The Sublease requires Subtenant to pay the Sublease rent and other sums due under the Sublease directly to Port upon receiving written notice from Port that a Tenant Event of Default has occurred and has not been cured;

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

(viii) The Sublease contains a provision similar to Article 25 (Port's Entry on Premises) requiring Subtenant to permit Port to enter its subleased space for the purposes specified in such article;

(ix) The Sublease contains a provision similar to Article 34 (Tenant Estoppel Certificates) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached as ***EXHIBIT D*** (Estoppel Certificate) in accordance with the requirements of Article 34;

(x) The Sublease requires Subtenant to comply with all applicable City and Port Requirements set forth in Article 29 (City and Port Requirements);

(xi) The Sublease contains a provision that if for any reason whatsoever this Lease is terminated prior to the expiration of the Term, such termination will result in the automatic termination of the Sublease and any existing sub-subleases for the Subleased Space; and

(xii) Pursuant to Section 5.3 (Books and Records), the Sublease requires that the Subtenant operate its business at the Premises with a point of sale system, and that the Subtenant keep at all times during the Term complete and accurate books, records and accounts of gross revenues in accordance with industry standard accounting principles consistently applied and shall retain such books, records and accounts for at least three (3) full years after a statement is rendered to Tenant pursuant to the Sublease.

(b) Pre-Approved Sublease. A copy of Port's consent to the Moon Child Sublease is attached as ***Exhibit E***.

21.4. ***Notice to Port and Assessor*** Within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant will comply with Section 6.2

21.5. ***No Further Amendment, No Further Consent Implied***. No material terms of a Transfer agreement or Sublease, after approval by Port, may be amended without Port's prior written consent. Consent to one Transfer or Sublease will not be construed as consent to a subsequent Transfer or Sublease.

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

21.7. ***Assignment of Sublease Rents***. Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any present or future Subtenant, hereunder prior to actual receipt thereof by Tenant; provided, however, until an Event of Default, Tenant has the right to collect all such rents and other payments of any kind.

21.8. ***Acknowledgement***. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitation on Tenant's right to assign or sublet for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 21.

21.9. ***Survival***. The provisions of this Article 21 regarding payments to Port will survive the earlier termination or expiration of this Lease. Additionally, any release by Port of Tenant's obligations under this Lease in connection with any Transfer is conditioned on Port's receipt of Port's share of proceeds as provided by this Article.

22. 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 by Tenant to deliver the Quarterly Percentage Rent Statement or Annual Statement** when due and such default continues for a period of five (5) business days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12) month period shall, at the option of Port, constitute an Event of Default by Tenant hereunder without any further action by Port (including, but not limited to, notice to Tenant of such failure) or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

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

(d) failure to comply with Tenant's covenants set forth in ***Article 10*** (Tenant's Management and Operating Covenants), as determined by Port in its reasonable discretion and such failure continues for a period of five (5) business days following written notice from Port; or

(e) abandonment of the Premises by Tenant, provided, the foregoing does not include any closure to refresh/renovate/reposition the Premises as provided in this Lease; or

(f) 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 five (5) business days following written notice from Port; provided, however, if such default cannot reasonably be cured within such five (5) business day period, Tenant will not be in default of this Lease if Tenant promptly commences to cure the default within such five (5) business day period and diligently and in good faith continues to cure the default; or

(g) 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

(h) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provisions of Section 21 above; or

(i) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 17 above, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within five (5) business days following written notice from Port; or

(j) failure by Tenant to comply with the provisions of Section 16 above and such failure(s) continues for a period of ten (10) business days following written notice from Port; provided, however, if such default cannot reasonably be cured within such ten (10) business day period, Tenant will not be in default of this Lease if Tenant promptly commences to cure the default within such ten (10) business day period and diligently and in good faith continues to cure the default; or

(k) failure by Tenant to discharge any lien or encumbrance placed on the Premises in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Premises, or if Tenant has no knowledge of such lien, within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; 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 not specifically enumerated in this Section 22, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(m) Tenant files a petition for relief, or an order for relief is entered against Tenant, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or brings or has 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;

(p) without limiting the provisions of Sections 22(f) or 22(j) above or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and such failure(s) continues for a period of ten (10) business days following written notice from Port; provided, however, if such default cannot reasonably be cured within such ten (10) business day period, Tenant will not be in default of this Lease if Tenant promptly commences to cure the default within such ten (10) business day period and diligently and in good faith continues to cure the default.

23. PORT'S REMEDIES.

Upon the occurrence and during the continuance of 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:

23.1. ***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 continuance of an Event of Default by

Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of the Event of Default by Tenant and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 23.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. During the continuance of an Event of Default by Tenant 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.

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

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

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

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

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

The "**worth at the time of award**" of the amounts referred to in Sections 23.2(a) and 23.2(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 23.2(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%).

23.3. ***Appointment of Receiver***. After the occurrence of and during the continuation of an Event of Default by Tenant, 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.

23.4. ***Port's Right to Cure Tenant's Default***. Port, at any time after the occurrence of and during the continuation of an Event of Default by Tenant, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of an Event of Default by Tenant, 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.

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

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

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

23.8. ***Remedies Not Exclusive***. The remedies set forth in Section 23 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law or in equity. Tenant's obligations hereunder shall survive any termination of this Lease.

24. LITIGATION EXPENSES; ATTORNEYS' FEES.

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

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

24.3. ***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.

25. PORT'S ENTRY ON PREMISES.

25.1. ***Entry for Inspection***. Port and its authorized Agents shall have the right to enter the Premises upon no less than twenty-four (24) hours' prior notice, except no prior notice is required in the event of an emergency, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

25.2. ***General Entry***. In addition to its rights pursuant to Section 25.1, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

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

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

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

(d) On an occasional basis during the last six (6) months of the Term or during any period in which there is a continuing Event of Default by Tenant, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

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

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

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

25.4. ***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 25 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

25.5. ***Nondisturbance***. Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in Section 25 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

26. SURRENDER AND QUITCLAIM.

26.1. ***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 18 and 19 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 26 and Section 14.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 27.2 or 27.3 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

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

26.4. *Survival*. Tenant's obligation under this Section 26 shall survive the expiration or earlier termination of this Lease.

27. HOLDING OVER.

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

27.2. *With Consent*. If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred fifteen percent (115%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease plus the average Percentage Rent payable hereunder for the three (3) calendar years immediately preceding.

27.3. *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 plus the average Percentage Rent payable hereunder for the three (3) calendar years immediately preceding.

28. MINERAL RESERVATION.

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

29. 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.

29.1. ***Nondiscrimination***.

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

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 29.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 131.2(a), 131.2(c) – (k), and 132.3 of the Labor and Employment Code (formerly, sections 12B.2 (a), 12B.2(c) - (k) and 12C.3 of the Administrative Code) and shall require all subtenants and other contractors to comply with such provisions.

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

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

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

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

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 121.3(e) of the HCAO, it shall have no obligation to comply with Section 29.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 121.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

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

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

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

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

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

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

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

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

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

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

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

29.9. ***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.

29.10. ***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.

29.11. ***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.

29.12. ***Notification of Limitations on Contributions***. If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 29.12 shall apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars ($100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this Section 29.12 applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

29.13. ***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.

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

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

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

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

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

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

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

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

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

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

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

Tenant will also pay, and will require its subtenants, and Contractors and Subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for work as required by San Francisco Labor and Employment Code Article 102, including a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in San Francisco Labor and Employment Code Section 102.3); a Show (as defined in San Francisco Labor and Employment Code Section 102.4); a Special Event (as defined in San Francisco Labor and Employment Code Section 102.8); Broadcast Services (as defined in Section 102.9); Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in San Francisco Labor and Employment Code Section 102.10); and Security Guard Services for Events (as defined in San Francisco Labor and Employment Code Section 102.11).

29.17. *Local Hire*. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Labor and Employment Code Division II, Articles 101 and 108 (formerly Administrative Code Section 23.62) (the "**Local Hiring Requirements**"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than the Threshold Amount (as defined in San Francisco Administrative Code Section 6.1) per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the

Local Hiring Requirements. Tenant agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvements or Alterations, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.

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

29.18. ***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 Premises and encouraging use of such facilities, all at Tenant's sole expense.

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

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

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

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

29.23. ***Tenant's Compliance with City Business and Tax Regulations Code***. Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 29.23 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

30. 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.

31. REPRESENTATIONS AND WARRANTIES OF TENANT

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

(a) Valid Existence, Good Standing. Tenant is a limited partnership duly formed and validly existing under the laws of the State of Delaware. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

(c) No Limitation on Ability to Perform. To the actual knowledge of Tenant, no applicable Law prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

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

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

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received written notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, and (iv) Tenant has not suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

The representations and warranties herein shall survive any termination of this Lease.

32. MISCELLANEOUS PROVISIONS.

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

32.2. ***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.

32.3. ***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.

32.4. ***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.

32.5. ***Interpretation of Lease***.

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

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

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

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

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

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

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

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

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

32.6. ***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.

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

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

32.9. ***Authority***. Tenant hereby covenants and warrants that (A) each of the persons executing this Lease on behalf of Tenant is duly authorized to execute this Lease and (B) Tenant is at the time of execution and at all times while this Lease is in effect will continue to be: (1) a duly authorized and existing entity, (2) qualified to do business in California; and that Tenant has full right and authority to enter into this Lease. Upon Port’s request, Tenant shall provide Port with evidence that is reasonably satisfactory to Port confirming the foregoing representations and warranties, and covenants.

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

32.11. ***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.

32.12. ***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.

32.13. ***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.

32.14. ***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.

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

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

33. LIMITATION ON LIABILITY.

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

33.2. *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.

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

34. TENANT ESTOPPEL CERTIFICATES.

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

35. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE

DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

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

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

Date Signed: ________________________

TENANT: JPPF 1300 Battery, L.P. a Delaware limited partnership

By: ___________________________________
Name: _________________________________
Title: _________________________________

Date Signed: ____________________________

By: ___________________________________
Name: _________________________________
Title: _________________________________

Date Signed: ____________________________

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _________________________
Name: Grace H. Park
Deputy City Attorney

Lease Prepared By: Don Kavanagh, Sr. Property Manager ____________
(initial)

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

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

PORT:

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

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

Date Signed: __________________________

Tenant:

By: ______________________________________
Name: ____________________________________
Title: _____________________________________

Date Signed: ________________________________

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: _____________, 20___.

[Name of Tenant]

By:

Name:

Title:

EXHIBIT D

RULES AND REGULATIONS

[To Be Attached]

SCHEDULE 1

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

[Attachment on following page(s)]

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SCHEDULE 2
FEMA DISCLOSURE NOTICE

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

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

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

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

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

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

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

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

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

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

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

SCHEDULE 3

HAZARDOUS MATERIALS DISCLOSURE

Item 5 JPPF 1300 Battery, L.P., Proposed Ground Lease Amendment

Request approval of a proposed amendment of ground lease L-10388 (“Lease No. 10388 or “Ground Lease”) with JPPF 1300 Battery, L.P., a Delaware limited partnership (“JPPF”), which Lease includes a sublease for approximately 4,635 square feet of a single-story restaurant space along with 2,992 square feet of outdoor dining area at 1300 Battery Street.

July 15, 2026

Presented by: Scott Landsittel, Deputy Director of Real Estate and Development

PORT OF SAN FRANCISCO

Background

Underlying Issue

- JPPF 1300 Battery, L.P., ("JPPF") is sublessor to Fog City under its Ground Lease. The ground lease and sublease terms were linked with interdependent financial structure. Fog City closed in May 2025.
- JPPF was faced with an immediate loss of revenue and a restaurant market weakened by COVID. The property was marketed by JPPF through Maven and found good demand from prospects, but no prospect could replace what Fog City was paying.
- A new subtenant, Moon Child, was found for the space, but at materially lower rent than Fog City paid. JPPF will incur legal fees, pay for landlord and tenant improves, a leasing commission, and offered 12-months of free rent to secure the Moon Child sublease.
- JPPF approached the Port to consent to this sublease, but requested a lower lease rent restructure under its to avoid ongoing operating losses – including lower base and percentage rent and assistance in the up-front costs
- Port and JPPF arrived at an agreement for the rent restructure and consent that reduced rent paid to Port.

Proposed Ground Lease (L-17390) Terms

Current Ground Lease Terms

- Monthly base rent is $16,172 (~$3.49 psf/mo)
- Percentage rent is 6.75% of gross sales
- JPPF continues to pay Port the ground rent until new sub lease is in place.

Moon Child Description and Sublease Terms

Moon Child's husband and wife team has professional experience at restaurants including Quince, Benu, and Scribe Winery. Financial terms are:

- Monthly base rent of $12,000 (approximately $3.00 per square foot), with 3% annual increases
- Percentage rent: 5% of gross sales

Proposed Amendments to JPPF Ground Lease for Port

- Base rent of $5,000 with 15% increases every five years
- Percentage rent: 1% of gross sales
- Rent credit: Up to $1,568 per month for 120 months, based on approximately 50% of JPPF paid landlord base building and tenant improvement costs.

Proposed Ground Lease (L-17390) - Discussion

Market Context

- **Challenges:** High office vacancies and low foot traffic continue to pressure the district (e.g., Pier 23 Café).
- **Recovery:** Stabilization is emerging, driven by strong leasing interest from the AI sector.

Strategy & Risk Mitigation

The priority is to re-tenant the former Fog City restaurant space to support district growth. While the new lease terms reduce short-term revenue for the Port, they avoid the high costs and risks of recovering a vacant asset, including:

- Extended property downtime and loss of neighborhood activation.
- Landlord costs for base-building improvements, leasing commissions, and legal fees.
- Market uncertainty regarding future tenant performance.

Staff Recommendation

Approve the new ground lease (L-17390) with JPPF to replace the existing lease (L-10388).

Note: A new lease is required because the City Attorney's office determined the legacy agreement is too old to legally amend.

LEVI'S PLAZA LEASE

TABLE OF CONTENTS

THIS LEASE, made on the 5 day of May, 1980, between the CITY AND COUNTY OF SAN FRANCISCO, hereinafter called "CITY," a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION, hereinafter called "PORT," Landlord, and BLUE JEANS EQUITIES WEST, a California Joint Venture, hereinafter called "TENANT," who agree as follows:

1. Leased Premises. PORT hereby leases to TENANT the real property and improvements thereon situated in CITY, State of California, more particularly described as Parcels "A" & "B" on Exhibit "A" attached hereto and incorporated herein by this reference, and all replacements of and additions to said improvements. Said real property, the improvements thereon and all replacements thereof and additions thereto are hereinafter collectively called the "Premises." PORT agrees that so long as TENANT is not in default hereunder TENANT shall have the quiet enjoyment of the leased premises throughout the term of the LEASE without let or hindrance on the part of PORT, and PORT will warrant and defend tenant in the peaceful and quiet enjoyment of the leased premises against all persons claiming by, through or under PORT. PORT further agrees that at the time of the commencement of the term hereof possession of the leased premises will be delivered to TENANT.

2. Term of Lease. The term of this LEASE shall be for a period of sixty-six (66) years commencing on May 5, 1980, and terminating at midnight on May 5, 2046.

3. Rent. As consideration for the rights hereinabove granted, TENANT will pay to PORT in the manner herein described without abatement, deduction, setoff, prior notice or demand, except as provided herein, the following rent:

(a) Minimum Rental. TENANT agrees to pay a minimum rental for Parcel "A" of the Premises in the amount of Eight Hundred Sixty-Nine and 06/100 Dollars ($869.06) per month from the commencement date of this LEASE through December 31, 1980 and a minimum rental of One Thousand Seven Hundred Thirty Eight and 13/100 Dollars ($1738.13) per month commencing on January 1, 1981, which sum is subject to adjustment as provided in subparagraph (d), payable in advance no later than the first day of each and every calendar month, commencing on the date the term commences and continuing during the term. If the term commences on other than the first day of the month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date of this LEASE will, however, in that case, be the first day of the month following the date on which the term commences. If the term commences on the first of the month the anniversary date will be that date.

(b) Percentage Rental. The monthly percentage rental shall be that amount by which the sum of the specific percentages of gross receipts, as hereinafter described, exceeds the above-prescribed monthly minimum rental as adjusted. TENANT agrees to pay, subject to later adjustments as hereinafter described, that percentage of gross receipts received by TENANT for the following uses which percentage is set forth opposite such respective use in the following table:

USE	Percentage Rental For Such Use
Alcoholic beverages and all other items sold through the bar	10
Food	8
All Other Uses	10

Gross receipts means all amounts received and receivable from all sales and business transacted on or from the Premises and all services performed on or from the Premises for which a charge is made by TENANT or by any other person, firm or corporation, including concessionaires, conducting sales or business or performing services of any sort in, upon or from any part of the Premises and all rent and other sums received and receivable from each and every subtenant, licensee, permittee, individual, business or other entity TENANT allows to conduct a business or otherwise occupy the Premises or any portion thereof or which otherwise occupy space on the Premises or any portion thereof, shall include sales and charges for cash and credit, regardless of collections in the case of the latter, including the gross amount received by reason of orders taken on the Premises although filled elsewhere and whether made by store personnel or vending machines, shall exclude returns and refunds and the amount of any sales tax or similar tax or imposition imposed on such sales or charges where such sales tax or similar tax or imposition is billed to the purchaser as a special item and shall exclude meals served to employees of TENANT during the course of employment whether such meals are served with or without charge or whether such meals are treated as meals sold for any other purpose. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. Gross receipts also shall include any sums that TENANT receives from pay telephones, stamp machines, music machines, amusement machines or public toilet locks. Such percentage rental shall be determined by TENANT for each month of the year and shall be payable by the twentieth (20th) day of the following month. The percentage rental shall commence as soon as sales are made on the Premises and shall continue so long as sales are made on the Premises. In the event this LEASE terminates during a month, payment of the percentage rental for that portion of the month during which sales are made on the Premises shall be determined and reported by TENANT to PORT within twenty (20) days after TENANT ceases to make sales on the Premises but, in the event this LEASE terminates for the fault of TENANT, including insolvency, any amounts due hereunder shall be payable forthwith.

At the time of paying the percentage rental TENANT shall furnish a statement showing the computation of the percentage rental for the period covered by such payment. Each statement shall be signed and certified to be correct by TENANT or its authorized representative and, if TENANT is a corporation, the statement shall be signed and certified to be correct by an officer of TENANT. TENANT shall, and shall require its sub-tenants and licensees to, keep in CITY full and accurate books of account, records, cash receipts and other pertinent data showing its gross receipts. TENANT shall install and maintain accurate receipt printing cash registers and shall record on the cash registers every sale and other transaction made from the Premises. Such books of account, records, cash receipts and other pertinent data shall be kept for the purposes of auditing or re-auditing for three years after the end of each lease year, except that if an audit is made within that time and PORT claims that errors or omissions have occurred, the data shall be retained and made available until the matter is finally determined. TENANT agrees to make all of this data available to PORT or any auditor designated by PORT. The receipt by PORT of any statement or any payment of percentage rent for any period shall not bind PORT as to the correctness of the statement or the payment. TENANT shall also furnish to PORT copies of its quarterly California Sales and Use Tax Returns at the time each is filed with the State of California. Such return shall be made available for purposes of conducting the audit. PORT shall keep confidential, so far as legally possible, all such information obtained from TENANT and TENANT shall not be required to keep records for more than three years. If the audit shows that there is a deficiency in the payment of any percentage rent, the deficiency shall become immediately due and payable. The cost of the audit shall be paid by PORT unless the audit shows that TENANT understated its gross receipts for any month by more than two percent (2%), in which case TENANT shall pay all PORT's costs of the audit. If TENANT understates its gross receipts for any month with knowledge of such understatement or by reason of gross negligence or gross carelessness, in addition to the foregoing, on the first such occasion TENANT shall pay PORT ten (10) times the amount PORT should have received. A second such understatement made with the knowledge thereof or by reason of gross negligence or gross carelessness shall result in the cancellation of this LEASE.

During such times as a restaurant is not operating on the demised premises TENANT shall not be liable for the loss of or the failure to pay percentage rent under this LEASE. However, if the failure of the restaurant to operate is due to the breach of a sublease of the premises or any part thereof, TENANT shal use its best efforts to collect damages from the subtenant thereunder on account of such breach.

(c) Monthly Rental. TENANT agrees to pay a monthly rental for Parcel "B" of the Premises in the amount of Five Hundred Sixty-One Dollars ($561.00) per month from the commencement date of this LEASE through December 31, 1980 and a monthly rental of One Thousand One Hundred Twenty Two Dollars ($1122.00) per month commencing on January 1, 1981, which sum is subject to adjustment as provided in subparagraph (d), payable in advance no later than the first day of each and every calendar month, commencing on the date the term commences and continuing during the term. If the term commences on other than the first day of the month, the rent for that month will be apportioned as the number of days of occupancy bears to the month. The anniversary date of this LEASE will, however, in that case, be the first day of the month following the date on which the term commences. If the term commences on the first of the month the anniversary date will be that date.

(d) Rental Adjustment.

(i) The minimum rental due each month and the monthly rental described in subparagraphs (a) and (c) respectively shall be adjusted at the rate of five per cent (5%) compounded annually on January of each year commencing with 1982. Thus, on January 1, 1982, the minimum rental of $1738.13 per month for Parcel "A" shall be adjusted at the rate of 5% compounded annually and the monthly rental of $1122.00 for Parcel "B" shall be adjusted at the rate of 5% compounded annually. The resulting figures of $1825.04 and $1178.10 respectively shall be adjusted at the rate of 5% compounded annually on January 1, 1983. This process shall continue annually throughout the term of this LEASE except as provided in subparagraph (d)(ii).

(ii) TENANT shall have the option during 1990 to petition the PORT for cancellation of the LEASE with respect to Parcel "B" of the Premises as of January 1, 1991. The PORT may elect to grant said petition for cancellation or may require TENANT to continue performance pursuant to the terms of the LEASE. If PORT fails to respond by January 1, 1991, it will be deemed that PORT has required TENANT to continue performance pursuant to the terms of the LEASE. In the event that the PORT requires TENANT to continue performance, the monthly rental for Parcel "B" shall be that sum calculated, pursuant to the provisions set forth in paragraph 3(d)(i) herein, for the date January 1, 1991. Said monthly rental shall not thereafter be adjusted. Provided, however, the PORT shall reserve the right thereafter to cancel the LEASE with respect to Parcel "B" upon thirty (30) days' written notice to TENANT. Provided further, however, that upon receipt of such notice to cancel LEASE with respect to Parcel "B", TENANT may within ten (10) days elect to continue the LEASE of Parcel "B". If TENANT so elects, then such letting shall continue and the rental for Parcel "B" from the date of PORT's notice to TENANT shall be calculated under the provisions of paragraph 3(d)(i) as if the adjustment set forth in paragraph 3(d)(i) for Parcel "B" had not been suspended after January 1, 1991.

(iii) If either party so elects, the percentage rental used in this paragraph shall be reviewed on or before the anniversary date each year during the term of this LEASE but not more often than every year. If PORT determines that the percentages for like uses in CITY in the vicinity of the leased premises have increased or decreased as of the date of determination, the percentages provided for herein shall likewise be increased or decreased. In the event that TENANT does not agree with PORT as to the proper percentage, it shall so advise PORT and TENANT may terminate this LEASE within six (6) months after the refusal of PORT to accept the percentage rent proposed by TENANT, but, in the interim, TENANT shall pay the percentage rent established by PORT. Provided, however, that this clause shall only be invoked by PORT to increase the percentage of rents when the percentage rates of all other PORT restaurant tenants will be increased by the same amounts.

(e) Delinquent Rental. A charge equivalent to ten percent (10%) per annum (.833 monthly) of all rent, charges and fees or any portion thereof due and unpaid for more than thirty (30) days will be paid by TENANT for each month that such rent, charges and fees or any portion thereof remain due and unpaid. Such charge shall commence with the date on which such rent, charges and fees first become due.

4. Faithful Performance Bond. Prior to this LEASE becoming effective, TENANT shall, in addition to the advance payment of the first month's minimum rent, deliver to PORT a Faithful Performance Bond in the sum of fifteen thousand dollars ($15,000) or three month's rent, whichever is greater, executed by a surety company which meets the written approval of PORT and in form approved by the City Attorney of San Francisco, under which bond said surety company guarantees to PORT full and complete performance of all the terms, conditions and covenants herein to be performed on the part of TENANT, including the payment of rental. Said bond shall be maintained at the cost of TENANT throughout the existence of this LEASE and shall be renewed annually. Whenever the rent is increased, the amount of the bond shall be simultaneously increased in an amount equal to three times the rent increase. Said surety shall give PORT thirty (30) days prior notice of cancellation or material change in sid bond. In lieu of such surety bond or bonds, TENANT may deposit with City treasury bonds of the United States of America, or such other securities acceptable to City, or an irrevocable letter of credit, in the above amounts as security for faithful

performance by TENANT as hereinabove provided, and TENANT may have the right to reserve to itself interest payable on said United States bonds or other such securities.

5. Default and Re-entry.

Regardless of the provisions of subparagraph 3(e), if any rental or other payment shall be due and unpaid for thirty (30) days or if any other material default shall be made by TENANT in any of the conditions or convenants of this LEASE and said other material default shall continue for thirty (30) days after notice thereof in writing to TENANT, then PORT, in addition to any other rights or remedies it may have, shall have the right of immediate re-entry and may remove all persons and property from the Premises. Providing, however, if the default cannot be cured within thirty (30) days and TENANT commences to remedy such default within said thirty (30) days and continues to so remedy such default with due diligence, then TENANT shall have such additional time as may be required. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of TENANT. Should PORT elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this LEASE or it may from time to time, without terminating this LEASE, relet said premises or any part thereof to a tenant suitable to PORT for such term or terms (which may be for a term extending beyond the term of this LEASE) and such reasonable conditions as PORT in its sole discretion may deem advisable, with the right to make alterations and repairs to said premises. Upon each such reletting, (i) TENANT shall be immediately liable to pay to PORT, in addition to any indebtedness other than rent due hereunder, the cost and expense of such reletting incurred by PORT, including the cost of alterations or repairs to the extent that TENANT was obligated by this LEASE to make such alterations or repairs, and the amount, if any, by which the rent reserved in this LEASE for the period of such reletting (up to but not beyond the term of this LEASE) exceeds the amount agreed to be paid as rent for the leased premises for such period on such reletting; or (ii) at the option of PORT, rents received by PORT from such reletting shall be applied, first, to the payment of any indebtedness, other than the rent due hereunder from TENANT to PORT; second, to the payment of said costs and expenses of such reletting; third, to the payment of rents due and unpaid hereunder; and the residue, if any, shall be held by PORT and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting under option (ii) during any month be less than that to be paid during that month by TENANT hereunder, TENANT shall pay any such deficiency to PORT. Such deficiency shall be calculated and paid monthly. The yearly percentage rental value of the Premises shall be deemed to be the rent payable for the previous twelve (12) months prior to breach plus any adjustments provided by subparagraph 3(d). If the breach occurs before twelve (12) months of percentage rent has become due and is paid, the monthly amount payable as percentage rent shall be averaged and extended on a twelve-month basis. Monthly rent shall be one-twelfth (1/12th) of the yearly amount. No such re-entry or taking possession of said premises by PORT shall be construed as an election on its part to terminate this LEASE unless a written notice of such intention be given to TENANT or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, PORT may at any time thereafter elect to terminate this LEASE for such previous breach. Should PORT at any time terminate this LEASE for any breach, in addition to any other remedy it may have, it may recover from TENANT all damages it may incur by reason of such breach, including the cost of recovering the Premises and including the worth at the time of such termination of the excess, if any, of the amount of rent reserved in this LEASE for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from TENANT to PORT.

6. Use of Premises. The Premises shall be used only for a restaurant and a park open to the public on Parcel "A", and a park open to the public on Parcel "B". Changes in the type or class of business or changes in other uses shall be made only upon the express written consent of PORT.

7. Requirement that Premises be Used. TENANT shall cooperate to secure the maximum economic return based on the uses specified. Continuation of existing restaurant on Parcel "A" will not be deemed a violation of the preceding sentence. It is the intent hereof that TENANT shall not acquire the use of the property through a lease and then not use it. Accordingly, if TENANT fails to use the property for the purposes for which the property is leased, or in the manner set forth herein, PORT shall serve a written notice by certified mail upon TENANT personally or by mail, postage prepaid, to TENANT's address set forth hereinafter requesting that TENANT use the property as required. If such failure shall continue for thirty (30) days after the mailing of such notice and unless such failure shall be for reasons beyond the control of TENANT, then PORT at its option may terminate this LEASE.

8. Maintenance of Improvements.

(a) Improvements on the Premises shall be maintained by TENANT in good operating condition throughout the term of this LEASE. PORT shall have no obligation whatever to maintain the Premises during the term of this LEASE, even though PORT elects to take title to the improvements at the termination of this LEASE.

(b) At PORT's election TENANT shall be obligated at its own expense to demolish and remove down to ground level such improvements that TENANT has made which are not or will not be reasonably capable of continued occupancy without substantial repairs or renovations for three (3) or more years immediately following the termination of this LEASE. TENANT shall leave the Premises free from debris at the termination of this LEASE.

(c) Within ninety (90) days but not less than sixty (60) days prior to the termination of this LEASE, unless termination should be the result of loss or destruction of the improvements, in which event only written notice shall be required of PORT, PORT shall advise TENANT as to which improvements or portions of improvements it elects to have demolished and removed in accordance with subparagraph (b). In the event that removal or demolition is required under subparagraph (b) and TENANT fails to make such demolition and removal within sixty (60) days after the expiration or prior termination of the LEASE, PORT may perform such work at TENANT's expense.

(d) Trade fixtures installed on the Premises shall be and become a part of the realty and shall be maintained by TENANT, except that trade fixtures may be removed by TENANT at the termination of this LEASE, providing TENANT repairs any damage such removal may make to the Premises and leaves the Premises free and clear of debris. The buildings, fences, parking lots and similar structures shall not be regarded as trade fixtures but as "improvements."

(e) TENANT shall keep said Premises and appurtenances, including but not limited to all glazing, in good and sanitary order, condition and repair. TENANT shall maintain the Premises so as to insure an appropriate operation.

(f) Utilities. TENANT shall procure electricity and power from utility companies providing such services. It is TENANT's obligation to transmit electrical power into the Premises from the nearest electrical distribution system, whether such system is on or off the Premises, and to pay all connection charges. Said electrical system shall be installed only after obtaining the prior written permission of the Chief Engineer of PORT, which permission will not be unreasonably withheld, and according to the standards established by PORT for such improvements. It is agreed that said electrical improvements shall become part of the realty and are not trade fixtures.

During the term of this agreement TENANT shall be obligated to maintain said electrical system within the Premises.

Telephone and natural gas shall be procured from the utility companies providing such services. PORT shall have no obligation to extend such services to the Premises.

TENANT will procure water service from CITY and shall have the responsibility for the maintenance of water pipes on the Premises and water pipes from the meter to the Premises.

TENANT will procure sewer service from CITY and shall have the responsibility for the maintenance of all sewer lines up to CITY's connection and for the payment of connection, service, discharge and other sewer fees and charges.

PORT is not responsible for furnishing any other utilities.

9. Alterations and Improvements.

(a) Except for nonstructural changes, TENANT shall not make, nor suffer to be made, any alterations or improvements to the Premises without first obtaining the written consent of the Chief Engineer of PORT, which shall not be unreasonably withheld, for the plans concerning such alterations or improvements, any other permits the Chief Engineer of PORT deems necessary and the approval of all regulatory agencies having jurisdiction over the Premises. Nonstructural changes shall not include electrical or other wiring and plumbing or other piping. Any additions to or modifications of the Premises which may not be removed without substantial injury to the Premises shall become a part of the realty and shall belong to PORT unless PORT first waives its rights hereunder in writing. Notwithstanding subparagraphs 8(b) and 8(d), PORT may require TENANT to remove any or all such additions or modifications not approved by PORT upon the termination of this LEASE and PORT may require TENANT to repair any damage occasioned thereby at TENANT's expense. At any termination of this LEASE, TENANT shall leave the Premises free and clear of all debris and shall repair any damage to the Premises for which TENANT is liable under this LEASE, subject to such adjustments as may be mutually agreed by the parties hereto in writing. If TENANT fails to remove any improvements, furniture or trade fixtures when requested to do so by PORT or fails to leave the property in the condition required herein, PORT may remove such items and correct such condition at TENANT's expense and charge said costs against the guarantee deposit, TENANT being required to pay any expenses or portions thereof not compensated by the guarantee deposit.

(b) It is understood and agreed that TENANT will improve Parcel "B" and the adjacent portion of Front Street into a public park area. TENANT will be permitted to deduct $130,000 by deducting from the percentage rentals due to PORT from Parcel "A" those amounts over and above the minimum or adjusted minimum rent on Parcel "A" until said deduction is complete.

10. Prohibited Uses. TENANT shall not use or permit the Premises or any part thereof to be used for any purposes other than the purpose or purposes for which the Premises are leased. TENANT agrees not to perform any act on the Premises which will cause a cancellation of any insurance policy covering the Premises or any part thereof. TENANT agrees not to violate any law, ordinance, rule or regulation affecting the occupancy and use of the Premises of any governmental agency having jurisdiction over the Premises.

11. Assignment and Subletting.

(a) TENANT shall not assign this LEASE or any interest therein and shall not sublet the Premises or any part thereof or any right or privilege appurtenant thereto nor suffer any other person to occupy or use any portion of the Premises without first obtaining the written consent of PORT, which consent shall not be unreasonably withheld. Provided, however, TENANT has the right to continue the occupancy of the current restaurant on that portion of Parcel "A" it presently occupies. A consent to one assignment, subletting, occupation or use by one person shall not be construed as a consent to a subsequent assignment, subletting, occupation or use by another. Each such assignment or subletting without consent shall be void. No interest in this LEASE shall be assignable as to TENANT's interest by operation of law without PORT's written consent.

(b) When assignment or subletting occurs, TENANT shall have the same rights to cure a default of sublessee as a lender would have under paragraph 12 of this LEASE.

(c) In the event of any assignment which is permitted under the provisions of this paragraph 11, and such assignment is evidenced by an instrument delivered to PORT in which the assignee expressly assumes all of the obligations of TENANT contained in this LEASE, then on the third anniversary date of such assignment TENANT automatically shall be released from any and all obligations thereafter arising or occurring under this LEASE without the need for the execution or recording of any further document so long as (i) this LEASE has not been previously terminated by PORT on account of any breach thereof and (ii) there is not then in effect any breach of the terms hereof by such assignee.

12. Security Interest.

The parties acknowledge that the TENANT may from time to time in bona fide transactions related to the improvement of the premises encumber TENANT's leasehold estate to all or in part by the lien of a mortgage, deed of trust or other security instrument to institutional lenders only after obtaining PORT's written permission, which shall not be unreasonably withheld. For the express benefit of all such secured parties (hereinafter referred to as "LENDER"), the parties agree as follows:

(a) The execution of any mortgage, deed of trust or other security instrument, the foreclosure thereof, any sale thereunder, any conveyance by TENANT to LENDER or the exercise of any right, power or privilege reserved therein shall not constitute a violation of any of the LEASE terms or conditions or assumption by LENDER personally of TENANT's obligations hereunder except as provided in subparagraph (c) below.

(b) LENDER, at its option, may at any time before

PORT's exercise of any of its rights pursuant to paragraph 5 hereof or before the expiration date of the period specified in subparagraph (f) below, whichever last occurs, perform any of the covenants and conditions required to be performed hereunder by TENANT, to the extent that such covenants and conditions are applicable to the portion of the Premises encumbered by such lien. Any performance of TENANT's duties by LENDER shall be effective to prevent the termination of this LEASE.

(c) PORT hereby agrees with respect to any such security instrument that LENDER may record such security instrument, may enforce such security instrument and upon foreclosure sell and assign TENANT's interest in the Premises and improvements thereon to another from whom it may accept a purchase price subject, however, to first securing written approval of the proposed assignee from PORT, which approval shall not be unreasonably withheld. LENDER, furthermore, may acquire title to the leasehold and improvements in any lawful way and, if the LENDER so does LENDER may, subject to first securing written approval from PORT, which approval shall not be unreasonably withheld, sell or assign said leasehold and TENANT's interest in any improvements thereon. If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a proper conveyance from TENANT, LENDER shall take subject to all of the provisions of this LEASE and shall assume personally all the obligations of TENANT hereunder during only such time as LENDER retains ownership of said leasehold estate.

(d) If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a conveyance from TENANT in lieu of foreclosure, LENDER may sublease such portion for any period or periods within the term of this LEASE or may assign TENANT's leasehold estate hereunder by sale or otherwise after first having obtained approval in writing of the proposed assignee from PORT, which approval shall not be unreasonably withheld, provided that all others taking through LENDER and their respective successors in interest shall take said leasehold estate and / / / / / / / / / / / / / / / / / /

PORT's exercise of any of its rights pursuant to paragraph 5 hereof or before the expiration date of the period specified in subparagraph (f) below, whichever last occurs, perform any of the covenants and conditions required to be performed hereunder by TENANT, to the extent that such covenants and conditions are applicable to the portion of the Premises encumbered by such lien. Any performance of TENANT's duties by LENDER shall be effective to prevent the termination of this LEASE.

(c) PORT hereby agrees with respect to any such security instrument that LENDER may record such security instrument, may enforce such security instrument and upon foreclosure sell and assign TENANT's interest in the Premises and improvements thereon to another from whom it may accept a purchase price subject, however, to first securing written approval of the proposed assignee from PORT, which approval shall not be unreasonably withheld. LENDER, furthermore, may acquire title to the leasehold and improvements in any lawful way and, if the LENDER so does LENDER may, subject to first securing written approval from PORT, which approval shall not be unreasonably withheld, sell or assign said leasehold and TENANT's interest in any improvements thereon. If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a proper conveyance from TENANT, LENDER shall take subject to all of the provisions of this LEASE and shall assume personally all the obligations of TENANT hereunder during only such time as LENDER retains ownership of said leasehold estate.

(d) If LENDER acquires TENANT's leasehold estate hereunder by foreclosure or other appropriate proceedings or by a conveyance from TENANT in lieu of foreclosure, LENDER may sublease such portion for any period or periods within the term of this LEASE or may assign TENANT's leasehold estate hereunder by sale or otherwise after first having obtained approval in writing of the proposed assignee from PORT, which approval shall not be unreasonably withheld, provided that all others taking through LENDER and their respective successors in interest shall take said leasehold estate and /

assume all of the covenants and conditions therefor and agree to perform all such covenants and conditions.

(e) Except as otherwise provided in this LEASE, no such foreclosure or other transfer of TENANT's leasehold estate nor the acceptance of rent by PORT from another shall relieve, release or in any manner affect TENANT's liability hereunder.

(f) If an event of default under paragraph 5 hereof occurs (after taking into account the curative period provided in said paragraph), LENDER shall have thirty (30) days after receipt of written notice from PORT specifying TENANT's default to remedy such default. If LENDER shall have commenced appropriate proceedings in the nature of foreclosure (including sale under power of sale) within such thirty (30) days' period and is diligently prosecuting the same, LENDER shall have a reasonable time beyond thirty (30) days within which to cure such default. PORT's right to exercise its rights pursuant to paragraph 5 hereof shall at all times, while TENANT is indebted to LENDER, be subject to and conditioned upon PORT's furnishing LENDER such written notice and LENDER having failed to cure such default as provided herein. The fact that the time has expired for performance of a covenant by TENANT shall not render performance by LENDER or a purchaser impossible. If LENDER or any purchaser shall promptly undertake to perform TENANT's defaulted obligation and shall diligently proceed with such performance, the time for such performance shall be extended by such period as shall be reasonably necessary to complete such performance. If LENDER is prevented by any process, injunction or other order issued by any court having jurisdiction in any legal proceedings, it shall be deemed to have prosecuted said proceedings for purposes of this subparagraph (f); provided, however, that LENDER shall use reasonable efforts to contest and appeal the issuance of any such process, injunction or other order.

(g) LENDER shall give PORT written notice of its address and the existence and nature of its security interest. Failure to give such notice shall constitute a waiver of LENDER's rights to receive written notice hereunder.

(h) PORT and TENANT hereby agree that at such times that the leased premises are encumbered by a security instrument which complies with the terms of this paragraph, the leasehold premises shall not be surrended nor shall this LEASE be terminated other than as provided for in paragraph 5 hereof or amended without the consent of the lender of such security instrument first had and obtained.

13. Insolvency. (a) If (i) the appointment of a receiver to take possession of all or substantially all of the assets of TENANT is made and such assets are not released within thirty (30) days, if (ii) a general assignment is made by TENANT for the benefit of creditors or if (iii) any action is taken or suffered by TENANT under any insolvency or bankruptcy act, unless TENANT, within thirty (30) days cures or proceeds with diligence to cure such action, any of such occurrences shall, at the option of PORT, constitute a material breach of this LEASE. However, this LEASE shall be void upon the TENANT's filing of a petition seeking the jurisdiction of the Bankruptcy Court over TENANT's assets, possessions and operaations.

(b) Notwithstanding anything to the contrary contained in paragraph (a) hereof, in the event of the occurrence of an event referred to in paragraph (a) hereof PORT shall not exercise any remedy it may have for breach of this LEASE until it has given written notice to LENDER of its intention so to do and if thereafter (i) LENDER promptly undertakes to perform all TENANT's obligations hereunder (including the cure of any existing breach) and thereafter diligently proceeds with such performance and (ii) LENDER commences appropriate proceedings in the nature of foreclosure (including sale under power of sale) within thirty (30) days after the receipt of such notice and diligently prosecutes the same to conclusion. If LENDER is prevented by any process, injunction or other order issued by any court having jurisdiction in any legal proceedings, it shall be deemed to have prosecuted said proceedings for the purposes of this paragraph (b); provided, however, that LENDER shall use reasonable efforts to contest and appeal the issuance of any such process, injunction or order.

14. Comprehensive Public Liability Insurance. TENANT shall maintain and pay premiums on a policy or policies of liability insurance which name PORT, CITY and their officers, agents and employees as additional insureds with a company or companies acceptable to PORT. Such policy or policies shall cover the Premises and its operation against claims in an amount of not less than $1,000,000.00 combined single limit for bodily injury, death or property damage in any one incident. TENANT shall furnish PORT with a copy of each policy which shall establish that the insurance described in this paragraph has been obtained, that it is endorsed to name PORT, CITY and their officers, agents and employees as additional insureds, that such insurance is primary to any coverage PORT presently has contracted for or may in the future contract for, that such insurance is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without the insurer first furnishing thirty (30) days' advance written notice to PORT. TENANT shall promptly notify PORT of any change in the terms of each policy and shall provide PORT with copies thereof. Each policy shall either contain a broad form of contractual liability coverage, including leases, or there shall be attached to the policy or policies an endorsement providing that such insurance as is provided for therein shall apply to the obligations assumed by TENANT under this LEASE. This coverage shall not be construed to be a substitute in any respect for TENANT's obligations under this LEASE. TENANT and PORT shall periodically review the amount of the public liability insurance carried pursuant to this paragraph but in any event not less than every five (5) years during the term of this LEASE. If it is found to be the general commercial practice in CITY to carry public liability insurance in an amount substantially greater or lesser than the amount then being carried by TENANT with respect to risks comparable to those

associated with the Premises, the amount carried by TENANT shall be increased or decreased to conform to such general commercial practice.

15. Indemnification. PORT, CITY and their officers, agents and employees shall, except as hereinafter provided, be free from all liabilities, claims for damages and suits for or by reason of any injury or injuries to any person or persons or to any property of any kind whatsoever from any cause or causes whatsoever, occuring while in, upon or adjacent to the Premises or in any way connected with the Premises or with any occupancy of the Premises by TENANT including the negligence of but excluding intentionally harmful acts committed solely by PORT, CITY or their officers, agents or employees while in, upon, adjacent to or in any way connected with the Premises and TENANT hereby convenants and agrees to save harmless PORT, CITY and their officers, agents and employees from all such liabilities, claims for damages, suits and litigation expenses.

16. Environmental Hold Harmless. TENANT agrees to hold PORT harmless from any violation or alleged violation of any environmental quality law, act, regulation or rule which is violated or purportedly violated by, arising out of or in the course of TENANT's operation on the Premises.

17. Waiver of Claims. TENANT, as a material part of the consideration to be rendered to PORT, hereby waives, as of the date of this agreement, all claims against PORT, CITY and their officers, agents and employees, except for intentionally harmful acts committed solely by PORT, CITY or their officers, agents or employees, and agrees to hold PORT, CITY and their officers, agents or employees harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment and business opportunities and by persons in, upon or about said premises from any cause arising at anytime, including the negotiations, drafting or finalization of this LEASE and all claims arising out of the negligence of PORT, CITY or their officers, agents or employees but excluding any intentional acts committed solely by

PORT, CITY or their officers, agents or employees.

18. Waiver of Relocation Assistance Rights. TENANT agrees to and does hereby waive any rights, benefits or privileges of the California Relocation Assistance Law as more particularly set forth in Section 7260 et seq. of the California Government Code, as it is presently stated or as it may hereinafter be amended.

19. Liens. TENANT shall keep the Premises and the improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by TENANT.

20. Fire Insurance.

(a) TENANT shall maintain and pay premiums on a policy or policies of fire and extended coverage insurance on Parcel "A" of the Premises, which name PORT, CITY and their officers, agents and employees as additional insureds, with a company or companies acceptable to PORT. TENANT shall furnish PORT with a copy of each policy which shall establish that the insurance described in this paragraph has been obtained, that it is endorsed to name PORT, CITY and their officers, agents and employees as additional insureds, that such coverage is primary to any coverage PORT has presently contracted for or may in the future contact for, that such insurance is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without the insurer first furnishing thirty (30) days' advance written notice to PORT. TENANT shall promptly notify PORT of any change in the terms of each policy and shall provide PORT with copies thereof. Each policy shall cover the improvements on Parcel "A" of the Premises in an amount of at least ninety percent (90%) of the replacement value thereof. If TENANT cannot obtain insurance coverage of at least ninety percent (90%) of the replacement value at a reasonable cost, then TENANT shall so notify PORT and shall be entitled to carry such lesser insurance as is prudent under the circumstances.

(b) Any funds received by TENANT for any damage which is covered by any insurance policy shall be immediately deposited by TENANT in a trust account in the names of TENANT and PORT for repair or replacement of the improvements on Parcel "A" of the Premises. The funds in said account shall be used solely for repairs and replacements on Parcel "A" of the Premises. TENANT agrees to further make such repairs and replacements to the full extent of the funds recovered under each policy. The prior written approval of the Chief Engineer of PORT must be obtained for all plans and specifications for such repairs and replacements, which approval shall not be unreasonably withheld. If TENANT declines to repair the damage or replace the improvements to the full extent of the proceeds, the portion of the proceeds representing payment for damage for which title has vested in PORT shall be conveyed to PORT free of all claims. If TENANT fails to repair as provided herein, PORT may elect to make such repairs and replacements itself from such funds but PORT shall not be required to use the funds for such repairs or replacements. TENANT may, if it so elects, repair and replace in an amount greater than the funds derived from the policy but in that event it shall have no claim against PORT for any excess funds spent. Title to all improvements including trade fixtures, other than trade fixtures removable without injury to the Premises, shall immediately vest in PORT on repair on replacement.

(c) TENANT shall cause to be maintained throughout the term of this LEASE a standard policy of insurance against the loss of income or revenue to PORT as a result of the loss of use of Parcel "A" of the Premises caused by the perils insured against in the policy or policies for fire and extended coverage on Parcel "A" of the Premises. The income loss to PORT shall be, for each month, one-twelfth (1/12th) of the annual average rental paid by TENANT for Parcel "A" in the preceding twelve calendar months plus any adjustment provided in subparagraph 3(d) and said payment shall continue to PORT as rent due hereunder for the period from the date of the damage to the date business is recommenced on Parcel "A" of the Premises.

21. Taxes. TENANT recognizes and understands that this

LEASE may create a possessory interest subject to property taxation and that this LEASE may be subject to the payment of property taxes levied on such interest. TENANT agrees to pay, when due, to the proper authority any and all taxes, assessments and similar charges on the Premises in effect at the time this LEASE is entered into or which become effective thereafter, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. TENANT shall not permit any such taxes, charges or other assessments to become a defaulted lien on the Premises or the improvements thereon.

22. Compliance with Law. The Premises are not to be used in such manner nor shall business be conducted thereon which shall in any way conflict with any valid law, ordinance, rule or regulation applicable to the Premises affecting the occupancy or use of the Premises. TENANT's failure to abide by any law, ordinance, rule or regulation imposed on the Premises will be deemed a violation of a condition of this LEASE.

23. Entry. The right is hereby reserved to PORT, its officers, agents and employees to enter upon the Premises at any reasonable time for the purpose of reasonable inspection and inventory and when otherwise deemed reasonably necessary for the protection of its interests. TENANT waives all claims against the PORT or any officer, agent or employee thereof for damages caused by PORT's reasonable exercise of its right hereunder. There shall be no claim against PORT nor any rebate of rent for any loss of occupation or quiet enjoyment of the Premises occasioned by such inspection and inventory.

24. Condemnation.

(a) If title to the entire Premises is taken for any public or quasi-public use under any statute, by right of eminent domain or by private purchase in lieu of eminent domain or if title to so much of the Premises is taken that a reasonable amount of reconstruction of the Premises will not result in the Premises being a practical improvement and reasonably suitable for TENANT's continued occupancy for the uses and purposes for which the Premises are leased, then, in either event, this LEASE shall terminate on the date that possession of the Premises or part of the Premises is taken.

(b) If any part of the Premises shall be so taken and the remaining part of the Premises (after reconstruction of the then existing building on the Premises) is reasonably suitable for TENANT's continued occupancy for the purposes and uses for which the remainder of the Premises are leased, this LEASE shall, as to the part so taken, terminate as of the date that possession of such part is taken and the minimum rent shall be reduced in the same proportion that the land area of the portion of the Premises so taken (less any additions to Premises by reconstruction) bears to the original land area of the Premises. PORT shall, at its own cost and expense, make all necessary repairs or alterations to the building on the Premises so as to constitute the portion of the building not taken a complete architectural unit and the remaining Premises a complete operating unit. There shall be no abatement of rent during such restoration except to the extent otherwise provided herein.

(c) Except as provided in subparagraph (d) or (e) hereof, all compensation awarded or paid upon a total or partial taking of the fee title shall belong to PORT, whether such compensation be awarded or paid as compensation for diminution in value of the leasehold or of the fee. However, in no event whatsoever shall PORT be entitled to any award made to TENANT for loss of business or unamortized improvements and depreciation to and costs of removal of stock and fixtures.

(d) If this LEASE is terminated under the provisions of subparagraph (a) hereof and the leasehold estate is encumbered by a security instrument in compliance with the provisions of paragraph 12 of this LEASE, the compensation awarded or paid shall be divided in order of priority as follows:

(i) An amount equal to the fair market value of the leased premises, exclusive of all buildings and other improvements thereof, shall be paid to PORT;

(ii) The full amount necessary to pay the indebtedness secured by such security instrument, including any charges relating thereto, shall be paid to the lender of such security instrument; and

(iii) The balance shall be paid to PORT.

(e) If this LEASE is not terminated under the provisions of subparagraph (b) hereof and the leasehold estate is encumbered by a security instrument in compliance with the provisions of paragraph 12 of this LEASE, the compensation awarded or paid shall be divided in order of priority as follows:

(i) An amount equal to the cost of the reconstruction and restoration of the leased premises and all buildings and other improvements thereof by PORT as aforesaid shall be paid to PORT;

(ii) An amount equal to the fair market value of the portion of the leased premises that is taken, exclusive of all buildings and other improvements thereon, shall be paid to PORT;

(iii) An amount equal to the sum payable in such event under the provisions of said security instrument shall be paid to the LENDER thereof; and

(iv) The balance shall be paid to PORT.

25. Maintenance by Tenant. Title to the real property and all buildings and other improvements located thereon is in PORT. The term "improvements" shall include all trade fixtures where title has vested in PORT but shall exclude trade fixtures where title has not vested in PORT and where removal may be had without structural injury to the Premises. Despite the fact that title is in PORT, PORT shall have no obligation to maintain the Premises or any part thereof including utility service within the Premises. In the event of damage to the improvements by ordinary wear and tear or deterioration or if the improvements do not meet the standard of maintenance required by PORT for such uses as TENANT is making of the Premises, then, in that event, TENANT has

the independent responsibility to and shall promptly undertake such maintenance or repair and complete the same with due diligence. Also PORT will make periodic inspections of the Premises and will advise TENANT when maintenance or repair of the improvements is required but such right of inspection shall not relieve TENANT of its independent responsibility to maintain the improvements in first class condition. TENANT shall thereupon promptly undertake such maintenance or repairs and complete the same with due diligence. If TENANT fails to do so after reasonable notice in writing from PORT, PORT, in addition to the remedies it has hereunder, may make such maintenance or repairs and TENANT shall reimburse PORT therefor. Nothing contained herein, however, shall require either TENANT or PORT to repair or replace the improvements as a result of damages caused by acts of war, earthquake, tidal wave or other acts of God, except that this provision shall not affect the obligations of TENANT to make repairs to the improvements for damages required to be covered by insurance by TENANT under paragraph 20 hereof. In the event of damages in this category, TENANT's obligations shall be as set forth in paragraph 20.

In the case of damage by third persons, the party receiving such reimbursement shall devote such reimbursement to the repairs. If reimbursement for damages by third persons is made to TENANT, TENANT shall deposit the proceeds and use the funds in the same manner as required in paragraph 20 hereof. PORT does not warrant that the improvements will last during the term of this LEASE.

On the termination of this lease, the Premises must be usable and in substantially as good a condition as when the Premises were first tendered to TENANT hereunder after adjustment is made for normal deterioration over the term. If TENANT fails to leave the Premises in such condition, PORT may make such repairs or replacements and TENANT shall pay the cost therefor. Nothing herein contained shall relieve TENANT of its obligation to submit plans to the Chief Engineer of PORT and obtain PORT's approval therefor or to obtain such other permits from governmental bodies as may be required.

26. Nondiscrimination Provisions. The Human Rights Ordinance of CITY, attached hereto as Exhibit "B" and as amended from time to time, is incorporated herein by this reference and is made a part hereof. Where the term "contractor" is used therein it shall be deemed to mean "TENANT."

27. Attorney's Fees. TENANT shall pay PORT reasonable attorney's fees, which shall be fixed by the Court, if any suit shall be brought for an unlawful detainer concerning the Premises, for the recovery of any rent due under the provisions of this LEASE or because of the breach of any other covenant of this LEASE required to be performed by TENANT.

28. Waiver of Breach. The waiver by PORT of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition with respect to any prior or subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by PORT shall not be deemed to be a waiver of any term, covenant or condition of this LEASE, other than the failure of TENANT to pay the particular rental so accepted, regardless of PORT's knowledge of such preceding breach at the time of the acceptance of such rent. No act or omission by either PORT or TENANT shall constitute a modification of this LEASE, it being understood by all parties that this LEASE may be changed or otherwise modified only by the written agreement of all the parties.

29. Successors. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

30. Modification of Lease. Whenever it appears to be in the public interest, the parties hereto, by mutual agreement in writing, may alter or modify the terms of this LEASE or may

terminate the same with such adjustments and for such considerations as may be fair and equitable in the circumstances.

31. Holding Over. Any holding over after the expiration of the term of this LEASE shall be deemed a month-to-month tenancy and upon each and every one of the terms, conditions and covenants of the within LEASE, including adjustments in the minimum rental. In the event of a month-to-month tenancy, PORT may cancel the same upon thirty (30) days' notice left at the Premises and TENANT shall have the privilege of cancelling the same upon thirty (30) days' notice to PORT, all notices to be in writing.

32. Quit Claim. TENANT will, upon expiration or earlier termination of this LEASE, peaceably and quietly leave, surrender and yield up to PORT, all and singular, the Premises and, if requested, execute and deliver to PORT a good and sufficient quit claim deed to the rights arising hereunder. Should TENANT fail or refuse to deliver to PORT a quit claim deed, as aforesaid, a written notice by PORT reciting the failure or refusal of TENANT to execute and deliver said quit claim deed as herein provided shall from the date of recordation of said notice be conclusive evidence against TENANT and all persons claiming under TENANT of the termination of this LEASE.

33. 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 that Statute, PORT shall and hereby does grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from the areas located by the California Grid System, Zone 3, beginning at a point where x equals 1,450,756.18 and y equals 480,417.87 for Parcel"A" and where x equals 1,451,189.31 and y equals 479,782.70 for Parcel "B" which areas were not improved on June 1, 1979. In the event that PORT exercises its right to explore, drill for or extract minerals as

provided in this paragraph, PORT agrees promptly and from time to time to repair the leased premises and all improvements thereon damaged by any such activity.

34. Notices. All notices to be given pursuant to this LEASE shall be sent by registered or certified mail, allowing seventy-two (72) hours for delivery, and be addressed, if to PORT to:

Commercial Property Manager
San Francisco Port Commission
Ferry Building
San Francisco, California 94111

and if to TENANT to:

Blue Jeans Equities West
411 Borel Avenue, Suite 600
San Mateo, California 94402

or as may from time to time otherwise be directed in writing by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapped, addressed as aforesaid, and deposited, postage prepaid, in a post office or branch post office regularly maintained by the United States Postal Service.

35. Time is of Essence. Time is of the essence of this LEASE.

36. Captions. The captions in this LEASE are for convenience only, are not a part of this LEASE and do not in any way limit or amplify the terms and provisions of this LEASE.

37. Certificates. PORT and TENANT shall, without charge, at any time and from time to time, within twenty (20) days after receipt of written request, deliver a written instrument to the party requesting same or to any other person, firm or corporation specified in said request, duly executed and acknowledged, certifying:

(a) that this LEASE is unmodified and in full force and effect, or, if there has been any modification, that the same is in full force and effect as modified and stating any such modification;

(b) that TENANT is not in default under the terms of this LEASE, or, if in default, the details thereof;

(c) whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions of this LEASE and any modification thereof upon the part of PORT or TENANT, to be performed or complied with, and, if so, specifying the same; and

(d) the dates to which the net rent, additional rent and other charges hereunder have been paid.

Any such statement delivered pursuant to this paragraph may be relied upon by any prospective buyer of the fee or mortgagor or assignee or any mortgage upon the fee of the demised premises, or by any purchaser of the leasehold estate, or by any sublessee, or mortgagee of such leasehold estate.

38. Memorandum of Lease. The parties will at any time, at the request of either one, promptly execute and acknowledge duplicate originals of an instrument, in recordable form, which will constitute a short form of lease, setting forth a description of the leased premises, the term of this LEASE and any other portions thereof, excepting the rental provisions, as either party may request.

/ / / /

/ / / /

/ / / /

IN WITNESS WHEREOF, PORT and TENANT have executed this LEASE on this 5 day of May, 1980, in the City and County of San Francisco, California.

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

By ______________________
PORT

BLUE JEANS EQUITIES WEST,
a California Joint Venture,

____
GERSON BAKAR
General Partner

____
JIM S. JOSEPH
General Partner

____
ALFRED S. WILSEY
General Partner

By: THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,
a New York corporation

By ______________________
Its
General Partner

APPROVED AS TO FORM:

____
Deputy City Attorney

2664b

CHAPTER 12B.
of the
San Francisco Administrative Code
Nondiscrimination in Contracts.

Sec. 12B.1 All Contracts to include Nondiscrimination Provisions: Definitions.

All contracting agencies of the City and County of San Francisco, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts, franchises, leases, concessions or other agreements involving real or personal property, hereafter negotiated, let awarded, granted, renegotiated, extended or renewed, in any manner or as to any portion thereof, a provision obligating the contractor, franchisee, lessee, concessionaire, or other party of said agreement not to discriminate on the ground or because of race, color, creed, national orgin, ancestry, age, sex, sexual orientation or disability, against any employee of, or applicant for employment with, such contractor, franchisee, lessee or concessionaire to include a similar provision in all subcontracts, subleases or other subordinate agreements let, awarded, negotiated or entered into thereunder.

(a) Definitions. As used in this chapter the term: "Age" refers to and shall include any employee or applicant for employment who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years. For the purposes of this section, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his/her age, if such person has attained the age of forty (40) years and has not attained the age of sixty-five (65) years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this section.

"Contract" shall mean and include an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the City and County of San Francisco.

"Contractor" means any person or persons, firm partnership, corporation, or combination thereof, who submits a bid and/or enters into a contract with department heads and officers empowered by law to enter into contracts on the part of the City and County for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a contract or agreement with the contractor to perform a substantial specified portion of the contract for public works, improvements, supplies, goods or services, or for a lease, franchise or concession, let, granted or awarded for or on behalf of the City and County in accordance with the plans and specifications of such contracts. Such term shall include any contractor who enters into a contract with any subcontractor for the performance of 10 per cent or more of the subcontract.

"Subcontract" shall mean and include an agreement or contract under or subordinate to a prime contract, franchise lease or concession granted, let or awarded for or on behalf of the City and County of San Francisco.

"Concession" includes a grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant.

"Concessionaire" shall mean and include a person who is the grantee or beneficiary of a concession as herein defined.

"Franchise" shall mean and include a right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in said grant.

"Franchisee" shall mean and include a person who is the grantee or beneficiary of a franchise as herein defined.

"Lease" shall mean and include a contract by which the City and County of San Francisco, or any contracting agency thereof, grants to a person the temporary possession and use of property, for reward, and the latter agrees to return the same to the former at a future time.

"Lessee" shall mean and include a person or tenant taking possession of property under a lease as herein provided, and further includes a bailee under a bailment agreement providing a rental for personal property.

"Sublease" shall mean and include a lease by which a lessee or tenant grants or lets to another person part or all of the leased property for a shorter term and under which said lessee or tenant retains some right or interest under the original lease.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the choice of human adult sexual partner according to gender.

"Disability" is a physical or mental impairment which does not make the person incapable of adequately performing his or her duties with a reasonable accommodation to his or her disability, and does not make the person incapable of performing such duties in a manner which would not endanger his or her health and safety or the health and safety of others.

"Supplies" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the awarding agency of the City and County or who submits a bid or enters into a contract with any contractor, subcontractor, lessee, sublessee, franchisee or concessionaire engaged in the performance of a contract let, awarded or granted by or on behalf of the City and County, for the supplying of goods, materials, services, equipment or furnishings.

Sec. 12B.2 Nondiscrimination Provisions of Contract.

Every contract or subcontract for or on behalf of the City and County of San Francisco, as provided in Sec. 12B.1 hereof, shall contain the provisions following, which shall be known as the nondiscrimination provisions of such contract. In the performance of this contract, the contractor, subcontractor or supplier agrees as follows:

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation or disability. The contractor, subcontractor or supplier will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry, national origin, age, sex, sexual orientation or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this section with respect to age shall not apply /1/ termination of employment because of the terms or conditions of any bona fide retirement or pension plan, /2/ operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, /3/ operation of the terms or conditions of any bona fide group or insurance plan. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) Except as in this section provided or in cases where the law compels or provides for such action any provisions in any contract agreement or undertaking entered into on or after the effective date of this chapter which prevent or tend to prevent the employment of any person solely by reason of his/her age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years shall be null and void.

(c) The contractor, subcontractor or supplier will in all solicitations or advertisements for employees placed by or on his/her behalf, state that qualified applicants will receive consideration for employment without regard to race, creed, color, ancestry, national origin, age, sex, sexual orientation or disability. Any solicitations or advertisements that satisfy similar requirements under Federal law, subject to the approval of the awarding authority, will also satisfy this requirement.

(d) The contractor, subcontractor or supplier will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union of workers' representative of the contractor's, subcontractor's or supplier's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The contractor, subcontractor or supplier will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the awarding authority, the Fair Employment Practices Commission, or the San Francisco Human Rights Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this contract and on request pr evidence that he/she has or will comply with the nondiscrimination provisions of contract.

(f) That contractor, subcontractor or supplier shall be deemed to have breac nondiscrimination provisions of this contract upon:

(1) A finding by the Director of the San Francisco Human Rights Commissi such other official who may be designated by the Human Rights Commission, that c tor, subcontractor, or supplier has wilfully violated such nondiscrimination pro

(2) A finding by the Fair Employment Practices Commission of the state o fornia that contractor, subcontractor or supplier has violated any provision of t Employment Practice Act of California or the nondiscrimination provisions of this tract, provided that the Fair Employment Practices Commission has issued a final pursuant to Section 1426 of the Labor Code or has obtained a final injunction pur to Section 1429 of the Labor Code, provided further, that for the purposes of this vision, an order of injunction shall not be considered final during the period wi which /1/ appeal may be taken, or /2/ the same has been stayed by order of court, /3/ further proceedings for vacation, reversal or modification are in progress be a competent administrative or judicial tribunal.

(3) Upon such finding by the Director of the Human Rights Commission, or official designated by the Human Rights Commission, or the Fair Employment Pract Commission, the awarding authority shall notify contractor, subcontractor or sup that unless he/she demonstrates to the satisfaction of the Director of the San F Human Rights Commission, or other official designated by the Human Rights Commis within such reasonable period as the Human Rights Commission shall determine, th violation has been corrected, action will be taken as set forth in subparagraph (h) hereof.

(4) The Human Rights Commission shall, within ten days of the date of is of any finding by the Director of the Human Rights Commission or other official nated by the Commission in the enforcement of this chapter, mail to any person o sons affected by said finding, a copy of said finding, together with written not his right to appeal. Notice of appeal must be filed in writing with the chairma Commission within 20 days of the date of mailing said copy and notice.

(5) For purposes of appeal proceedings under this Section, a quorum shall sist of eight members of the Commission. The vote of the majority of the full C shall be necessary to affirm, reverse or modify such decisions, order or other a rendered hereunder. Should a member of the Human Rights Commission be designated Sec. 12B.2 (f) (1) of this contract, that Commissioner may not participate in an a under this Section except as a witness.

(6) The presiding officer of the Commission shall have the power to admin oath to witnesses in appeals before the Commission under this Section. In the eve any person shall fail or refuse to appear as a witness in any such proceeding aft ing requested to do so, and if it shall appear to the Commission that his/her tes or books, records, documents or other things under his/her control are material a levant as evidence in the matter under consideration by the Commission in the pro the presiding officer of the Commission may subpoena such person, requiring his/h sence at the proceeding, and requiring him/her to bring such books, records, docu other things under his/her control.

(7) All appeals to the Human Rights Commission shall be open to the publi cords and minutes shall be kept of such proceedings and shall be open to public i tion. Upon reaching a decision in any appeal, the Commission shall give written thereof to the Director of the Human Rights Commission, or other official designa the Human Rights Commission, and the appellant or appellants. The decision of th mission shall be final unless within 15 days of the filing and service of written tice thereof appropriate legal proceedings are filed in a court of competent juri tion by any party to this contract.

(8) If any contractor, subcontractor or supplier under contract to the Ci County of San Francisco shall fail to appear at an appeal proceeding of the Commi after having been given written notice to appear, such failure to appear shall be for cancellation of the contract or subcontract and such contractor, subcontracto supplier shall be deemed to have forfeited all rights, benefits and privileges th under.

(9) The Human Rights Commission of San Francisco shall promulgate rules a regulations for the implementation of the nondiscrimination provisions of this contrac such rules and regulations shall, so far as practicable, be similar to those adopted i licable Federal executive orders.

SAN FRANCISCO PORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 80-8

WHEREAS, by Resolution No. 79-38 adopted May 23, 1979, the Port Commission directed the City Attorney to prepare a document in final form for the lease of Sea Wall Lots 319 and 320 to the firm of BJW Associates;

WHEREAS, by Resolution No. 79-69 adopted August 22, 1979, the Port Commission reviewed terms and conditions of the proposed lease document and revised certain language contained therein;

WHEREAS, the prospective Lessee has requested a change of legal name from "BJW ASSOCIATES to that of "BLUE JEANS EQUITIES WEST, a California Joint Venture"; and certain changes affecting the rights and obligations of the lender; and

WHEREAS, the Port and prospective Lessee have negotiated all terms and conditions to their mutual satisfaction and have reduced same to final form prepared by the City Attorney; now, therefore, be it

RESOLVED, that this Commission approves the terms and conditions of and authorizes the Director to execute that certain lease referred to as "Levi's Plaza Lease", a copy of which is on file with the Commission Secretary, and be it

RESOLVED further that the Director is requested to seek formal approval by Ordinance from the City's Board of Supervisors.

James E. Huntsman

Secretary

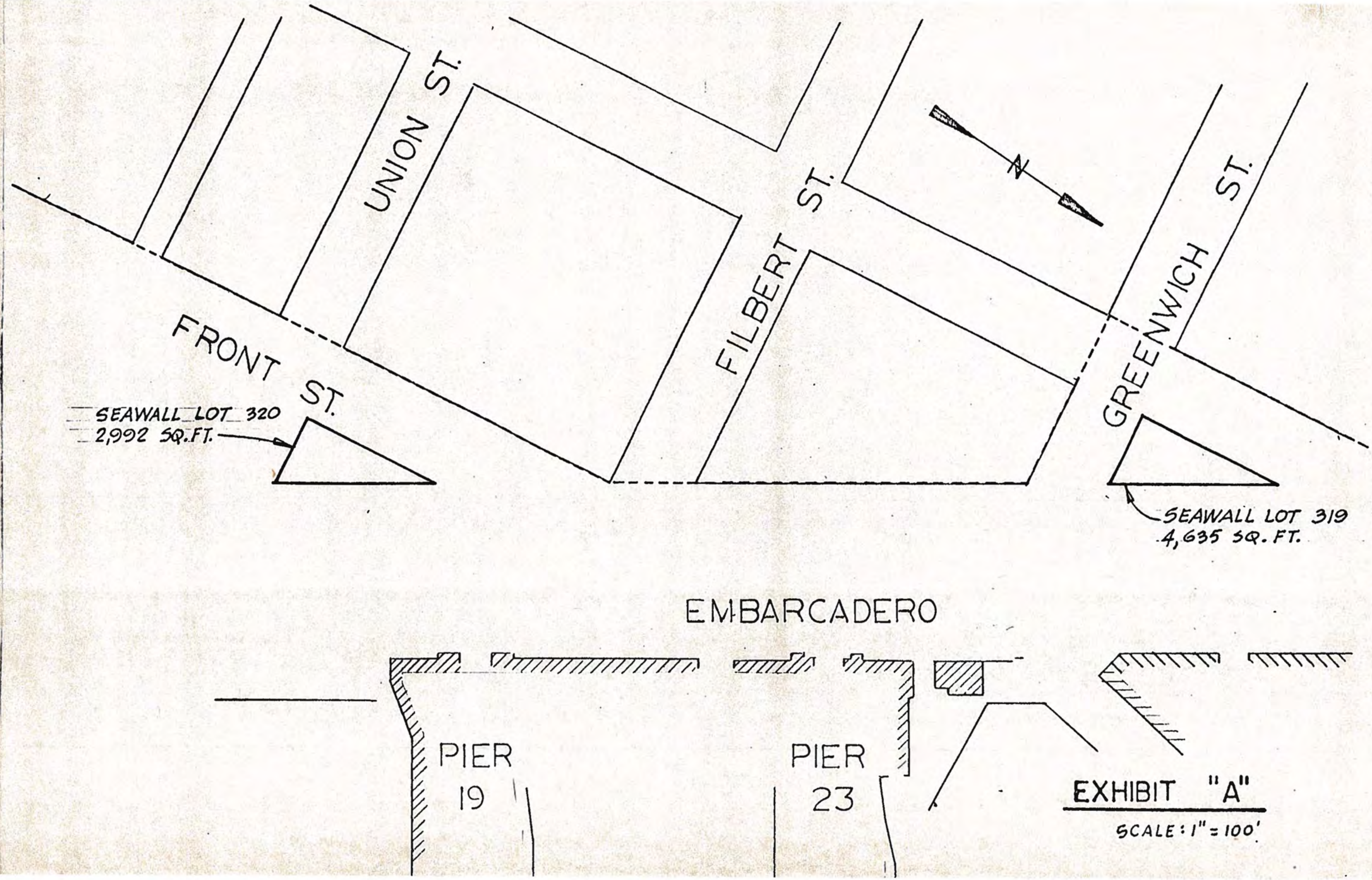

EXHIBIT "A"

SCALE: 1" = 100'

FILE NO. 65-80-4

ORDINANCE NO. 134-80

APPROVING THE LEASE BETWEEN BLUE JEANS EQUITIES WEST, A CALIFORNIA JOINT VENTURE, AND THE CITY AND COUNTY OF SAN FRANCISCO OPERATING BY AND THROUGH THE SAN FRANCISCO PORT COMMISSION.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Pursuant to Section 7.402-1 of the Charter, the Board of Supervisors hereby approves the lease between Blue Jeans Equities West, a California joint venture, and the City and County of San Francisco operating by and through the San Francisco Port Commission, a copy of which lease is contained in the Board of Supervisors' file number 65-80-4.

Passed for Second Reading
Board of Supervisors, San Francisco

MAR 24 1980

Ayes: Supervisors Bardis, Britt, Horanzy, Hutch, ~~Kopp~~, Lawson, Molinari, Renne, Silver, Walker, Ward.

~~Noes: Supervisors~~

Absent: Supervisors KOPP

G.H. Boreman Clerk

Read Second Time and Finally Passed
Board of Supervisors, San Francisco

APR 1 1980

Ayes: Supervisors Bardis, Britt, Horanzy, Hutch, Kopp, Lawson, Molinari, ~~Renne~~, Silver, Walker, Ward.

~~Noes: Supervisors~~

Absent: Supervisors RENNE

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.

G.H. Boreman Clerk

65-80-4
File No.

APR 07 1980
Approved

Dianne Feinstein
Mayor

Pier 1 The Embarcadero
San Francisco, CA 94111
www.sfport.com
415-274-0400

May 8, 2026

To:
President Gail Gilman
Vice President Stephen Engblom
Commissioner Willie Adams
Commissioner Steven Lee
Commissioner Ken McNeely

From:
Michael Martin, Acting Executive Director

DocuSigned by:
Michael Martin
20E5EEC1DEFF477...

Subject:
Request approval to terminate existing Lease No. L-10388 with JPPF 1300 Battery, L.P., a Delaware limited partnership ("JPPF") and enter into new Lease No. L-17390 with JPPF retroactive to February 1, 2026, that reduces both base and percentage rent and provides JPPF with up to $188,192 in rent credits for tenant improvements on the same lease term, for approximately 4,635 square feet of a single-story restaurant space along with 2,992 square feet of outdoor dining area at 1300 Battery Street between Greenwich and Lombard Streets.

Acting Executive Director's Recommendation:
Approve the Attached Resolution No. 26-27

EXECUTIVE SUMMARY

JPPF 1300 Battery, L.P., a Delaware limited partnership ("**JPPF**"), is a Port tenant in good standing and assumed Lease No. L-10388 (the "**Existing Lease**") in 2019, with Fog City Diner as subtenant. The premises represent a stand-alone restaurant suitable for only one tenant.

The Existing Lease was originally conceived as a retail development opportunity, and as such, the ground rent was structured with a base and percentage - effectively, the sublease rent was passed through to pay the ground rent.

Currently, the ground rent stands at a base rent of $16,172/month ($3.50 PSF), and percentage rent of 6.75%. This rent is well above current retail restaurant market levels. Fog City Diner ceased operations on May 30, 2025, after 40 years, citing declining post-pandemic sales and the burden of "a very high rent". In advance of closure, Fog City reached out to the Port for a rent reduction to facilitate continued operation. The structure of the original ground lease to JPPF and subtenancy prevented an easy/quick resolution. Despite the closure, JPPF has continued paying full base rent due under the Ground Lease without the sublease income to support it.

As JPPF solicited new tenants for the property in 2025, it became evident that without a significant adjustment to the ground rent structure, a deal with a new tenant "at market" would leave JPPF underwater on the ground rent payments, and with no ability to recover investments for needed capital improvements, tenant allowances, and commissions necessary to secure the operator. It would make more financial sense to walk away from the ground lease (which is independent of other JPPF affiliate holdings such as the nearby Waterfront Plaza lease with Port). However, JPPF was motivated as a steward of the district, as was the Port, to reopen the landmark site to support the improving post-pandemic office environment of the North Waterfront.

To facilitate new investment and occupancy of the premises with a new sublease, Port staff propose entering a new Lease No. L-17390 (the "**New Lease**") with JPPF, with terms described below that provide an incentive for JPPF to remain a tenant of the premises:

- Base Rent paid to Port is $5,000/month, with 15% increases every five years (including option periods). Under the Existing Lease, base rent paid to Port is $15,628/month, but that was based on the rent paid by Fog City to JPPF.

- Percentage Rent is 1% of gross sales (20% of new sublease's 5% percentage rent). This compares to 6.75% under the Existing Lease.

- Rent Credit: Up to $1,568.26/month for 120 months, of the actual documented cost of landlord work and tenant improvements.

    - The rent reduction is terminated from and after the year after annual gross sales are $5 million or more.

This revised structure ensures continued Port revenue while avoiding the return of the restaurant while mitigating downtime, lease-up, and operational risks involved in taking back and leasing the premises.

Figure 1 Fog City Diner in its heyday

STRATEGIC PLAN ALIGNMENT

Entering into the New Lease that restructures the terms of the Existing Lease at 1300 Battery Street will support the Port's following Strategic Objectives:

Exceptional Service:
Port Staff are engaged with JPPF on restructuring the ground lease. The restructured lease enables JPPF to move forward with a new sublease, preserving restaurant use and maintaining stable - though reduced - revenue to the Port.

Economic Growth:
JPPF's investment in tenant improvements will enhance the property's value, support the success of the new operator, attract foot traffic, and stimulate activity at nearby Port properties, including Pier 23 Café.

Evolve:
Fog City Diner was a beloved local institution. Its replacement will generate public interest and reinforce the Port's efforts to stabilize and revitalize its restaurant portfolio.

Equity:
The new restaurant will create jobs and support local suppliers - such as food vendors, beverage distributors, and service providers, all contributing to broader economic inclusion.

Figure 2 - JPPF 1300 Battery - Ground Lease location

BACKGROUND

JPPF 1300 Battery L.P. (Ground Lessor)
JPPF's general partner, JPPF 1300B GP, LLC, is based in Atlanta, GA, and is owned and managed by Jamestown L.P., a private real estate investment firm with over 40 years of experience in managing office, retail, and residential properties nationwide. JPPF's affiliate is the Port's master tenant of Waterfront Plaza under Lease No. L-17224.

JPPF assumed the Existing Lease in 2019, with Fog City Diner as the subtenant. Fog City Diner closed on May 30, 2025, after 40 years of operation, due to declining post-pandemic sales.

JPPF has entered a new sublease dated January 23, 2026 (the "**Sublease**"), with Moon Child Restaurant LLC ("**Moon Child**"). See sublease terms in the next section. However, the Sublease terms reflect current market conditions and do not support the financial structure of the Existing Lease.

Figure 2 - Current appearance of the JPPF leasehold

Moon Child Restaurant LLC (Subtenant)
Moon Child is a husband-and-wife team with professional experience at acclaimed establishments, including Quince, Benu, and Scribe Winery. Their background reflects a strong foundation in fine dining, hospitality, and culinary innovation.

Under the working name “Moon Child”, the team plans to open a chef-led, wine-focused restaurant that will bring a vibrant and refined dining experience to San Francisco’s waterfront. The concept emphasizes seasonality, creativity, and hospitality, designed to appeal to a broad audience - residents, office workers, visitors, and culinary enthusiasts - while contributing to the vitality of the Port’s restaurant landscape.

Moon Child plans to design the space to be welcoming, polished, and unpretentious, where food, wine, and atmosphere come together in harmony. The project aligns with the Port’s strategic goals of fostering high-quality, locally rooted businesses that enhance the public realm and contribute to the economic and cultural vitality of the waterfront.

SUMMARY OF EXISTING LEASE, SUBLEASE, AND NEW LEASE TERMS:

<u>Existing Lease Terms (Lease No. L-10388):</u>

- Monthly base rent: $16,172 (approximately $3.49 per square foot)
- Percentage rent: 6.75% of gross sales

<u>Moon Child Sublease Terms:</u>

- Monthly base rent: $12,000 (approximately $3.00 per square foot), with 3% annual increases

- Percentage rent: 5% of gross sales
- One year of free rent
- Tenant improvement allowance: $50 per square foot, totaling approximately $199,850
- Term: Ten years, with two five-year renewal options. If both options are exercised, the sublease would expire near the Existing Lease's expiration date of May 5, 2046

Proposed New Lease Terms (Lease No. L-17390):

- Monthly base rent: $5,000, with 15% increases every five years, including renewal periods. This monthly rent is to commence **retroactively** to February 1, 2026, due to delays in processing caused by limited staff resources.
- Percentage rent: 1% of gross sales (equivalent to 20% of the sublease's 5% percentage rent)
- Rent credit: Up to $1,568.26 per month for up to 120 months, not to exceed $188,192, based on approximately 50% of landlord base building and tenant improvement costs
    - Rent credit is terminated the year after annual gross sales are $5 million or more.

STAFF ANALYSIS

Market Conditions and Lease Considerations – 1300 Battery Street
The northern waterfront continues to face challenges, including high office vacancies (as of early 2026, vacancy is 31.3% and seeing positive net absorption[1]) and limited foot traffic. Nearby Port tenants, such as Pier 23 Café, report similar operational difficulties. However, there are signs of recovery, particularly with increased leasing activity from AI companies in the area.

It is critical that this space is occupied to support the continued growth of the district. While the proposed New Lease terms result in reduced revenue for the Port, entering the New Lease helps avoid the risks and costs associated with the Port recovering another vacant restaurant. These risks include extended downtime, landlord base building improvements, releasing expenses, including leasing commissions and legal fees, and uncertainty around future operating performance.

Port staff evaluated several alternatives:

- Decline the proposed terms and pursue JPPF for specific performance
    - This approach carries the same risks as above and could negatively impact Port's relationship with JPPF.
- Attempt to renegotiate more favorable lease terms
    - Port staff conducted lengthy negotiations and determined that further improvements to the terms are unlikely.

[1] Source: Avison Young and Transwestern market reports

The alternatives considered - enforcing specific performance, or renegotiating - pose higher risks and costs for the Port. The restructuring is the most viable option to maintain occupancy and economic activity.

PORT STAFF RECOMMENDATION

Port staff recommend entering the New Lease with JPPF to replace the Existing Lease on the terms described in this memorandum. The New Lease reflects revised economic terms that support continued restaurant operations at 1300 Battery Street while balancing Port interests.

In accordance with San Francisco Administrative Code Chapter 31, Port staff have determined that this action does not constitute a project under the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.).

A copy of the proposed New Lease is on file with the Port Commission Secretary.

RECOMMENDATION

Port staff recommend that the Port Commission approve the termination of the Existing Lease and entering into a New Lease with JPPF on terms described in this memorandum and approve the attached resolution authorizing the Acting Executive Director to forward the New Lease to the Board of Supervisors for their consideration and approval, and upon the effectiveness of such approval, authorize the Acting Executive Director or his designee to execute the New Lease.

Prepared by:
Don Kavanagh, Senior Property Manager
Real Estate and Development

For:
Scott Landsittel, Deputy Director
Real Estate and Development

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 26-27

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, JPPF 1300 Battery Street, L.P. ("JPPF") is a Port tenant in good standing under Lease No. L-10388 ("Existing Lease") at 1300 Battery Street in the City and County of San Francisco; and

WHEREAS, JPPF acquired the Existing Lease in 2019, with subtenant Fog City Diner, which closed May 31, 2025, and JPPF has continued to pay Port the required rent under the Existing Lease; and

WHEREAS, JPPF and Port staff have negotiated terms for new Lease No. L-17390 (the "New Lease") that restructures the rent under the Existing Lease to be consistent with the proposed terms of a new sublease with Moon Child Restaurant LLC, as further described in the memorandum accompanying this Resolution; and

WHEREAS, A copy of the draft New Lease is on file with the Port Commission Secretary; now, therefore be it

RESOLVED, That the Port Commission hereby approves the terms of the New Lease as described in the memorandum accompanying this Resolution and as set forth in the New Lease, a copy of which is on file with the Port Commission Secretary; and be it further

RESOLVED, That the Port Commission authorizes the Acting Executive Director or his designee to forward the New Lease to the Board of Supervisors ("Board") for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the New Lease in substantially the same form on file with the Port Commission Secretary; and be it further

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

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting on May 12, 2026.

DocuSigned by:

Jenica Liu

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Secretary

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

Filing Information

Record Number	SFEC126F0001556	**Status**	BOS Legislative Clerk Acceptance
SFEC126f Form Type	126f4 BOS	**File Number (BOS)**	260742
Type of Filing	Original		

Contractor Information

Contractor Name	JPPF 1300 Battery, L.P.	**Contractor Email**	alex.schwiebert@jamestownlp.com
Contractor Phone #	(415) 813-4945	**International Address?**	No
Contractor Address (US)	1105 Battery Street	**Contractor City and State**	San Francisco - CA
Contractor Zip Code	94111	**Country**	United States of America

Contract Information

Contract Amount	$1,498,012.50
Bid/RFP#	L-17390
Description of Amount of Contract	Leasehold that includes 20-years of base rent
Contract Description	Lease L-17390 replaces Lease L-10388 because the former subtenant, Fog City, has closed for business and a new subtenant, Moon Child, has been secured. The primary changes from Lease L-10388 reflect the terms of the new sublease with Moon Child, including a reduction in the Port's base rent and percentage rent share. The City Attorney's Office advised that Lease L-10388 is too old to amend, so a new lease, L-17390, was prepared to document these changes.

City Agency - Departmental Contact Information

Departmental Contact	Don Kavanagh	**Departmental Contact Phone #**	+14152740501
Full Department Name	PRT - Port Commission		

Contract Approval

Mayoral Approval Not Required	false

Affiliates and subcontractors

Entity Type	First Name	Last Name	Entity or Sub/Contractor Name
Shareholder			JPPF Battery Holdings, L.P.
Shareholder	Christopher	Kopecky	JPPF 1300B GP, LLC
Other Principal Officer	Alex	Schwiebert	JPPF 1300 Battery, L.P.
COO	Mark	Witschorik	Jamestown LP
CFO	Christopher	Kopecky	Jamestown LP
CEO	Matt	Bronfman	Jamestown LP

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- [ ] 2. Request for next printed agenda (For Adoption Without Committee Reference) *(Routine, non-controversial and/or commendatory matters only)*
- [ ] 3. Request for Hearing on a subject matter at Committee
- [ ] 4. Request for Letter beginning with "Supervisor ______ inquires…"
- [ ] 5. City Attorney Request
- [ ] 6. Call File No. ______ from Committee.
- [ ] 7. Budget and Legislative Analyst Request (attached written Motion)
- [ ] 8. Substitute Legislation File No. ______
- [ ] 9. Reactivate File No. ______
- [ ] 10. Topic submitted for Mayoral Appearance before the Board on ______

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Sauter

Subject:

Real Property Lease - 1300 Battery

Long Title or text listed:

Resolution approving Port Commission Lease No. L-17390 with JPPF 1300 Battery, L.P., a limited partnership, for approximately 4,635 square feet of a single-story restaurant space and 2,992 square feet of outdoor dining area located at 1300 Battery Street for a term expiring on May 5, 2046; and authorizing the Acting Executive Director of the Port to enter into any additions, amendments or other modifications to the Lease that do not materially increase the obligations or liabilities of the City or the Port and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution.

Signature of Sponsoring Supervisor: