

File No. 250213

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date March 26, 2025

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PRT Resolution No. 25-11 2/25/2025</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PRT Resolution Nos. 23-28 and 23-29 6/13/2023</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PRT Presentation 3/26/2025</u> |
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Completed by: Brent Jalipa Date March 20, 2025

Completed by: Brent Jalipa Date _____

1 [Real Property Lease - Everett & Jones BBQ SF International, LLC - 300 Jefferson Street -
2 Year 1 Monthly Base Rent 5% of Gross Revenues, No Less Than \$10,000]

3 **Resolution approving Port Commission Lease L-17180 with Everett & Jones BBQ SF**
4 **International, LLC, a California limited liability company, for approximately 4,363**
5 **square feet of a two-story restaurant space located at 300 Jefferson Street for a term of**
6 **10 years with two five-year options to renew, with a free rent period of lesser of 180**
7 **days or date site opens to the public, rent for the first year is 5% of gross revenues, no**
8 **less than \$10,000 per month, rent for the second year is \$13,000 per month, rent for the**
9 **third year is \$15,400 per month, with 3% increases thereafter, percentage rent is equal**
10 **to 5% of gross revenue in first year and 6% thereafter, to commence after the**
11 **restaurant opens; and to authorize the Port Executive Director to enter into**
12 **amendments or modifications to the Lease that do not materially increase the**
13 **obligations or liabilities to the City and are necessary to effectuate the purposes of the**
14 **Lease or this Resolution.**

15
16 WHEREAS, California Statutes of 1968, Chapter 1333 (as amended, the "Burton Act")
17 and Charter, Sections 4.114 and B3.581 empower the San Francisco Port Commission ("Port"
18 or "Port Commission") with the power and duty to use, conduct, operate, maintain, manage,
19 regulate and control the lands within Port Commission jurisdiction in the City and County of
20 San Francisco; and

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

1 WHEREAS, Port hired Maven Commercial in November 2023 to pursue a new tenant
2 for 300 Jefferson Street under a broker-assisted competitive bidding process; and

3 WHEREAS, The broker assisted competitive bidding process was completed in May
4 2024, and a Port constituted panel selected Everett & Jones BBQ SF International, LLC, a
5 California limited liability company (“Everett & Jones”) as the top prospect for 300 Jefferson
6 Street; and

7 WHEREAS, Everett & Jones is a proven BBQ purveyor in Oakland and has experience
8 with multi-site operations known for serving delicious smoked brisket, ribs, chicken and links
9 along with Southern sides like collard greens and baked beans; and

10 WHEREAS, The Everett & Jones location near Jack London Square in Oakland is well
11 known as a community gathering point that offers music in the evenings and their new offering
12 for Fisherman’s Wharf will draw locals and tourists; and

13 WHEREAS, At its February 25, 2025 meeting, the Port Commission authorized the
14 Executive Director of the Port, or the Executive Director’s designee, to enter into Lease No. L-
15 17180 with Everett & Jones for approximately 4,363 square feet of a two-story restaurant
16 space located at 300 Jefferson Street for a 10 year term, with two tenant options to extend the
17 term for five additional years each (“Lease No. L-17180”); and

18 WHEREAS, San Francisco Charter, Section 9.118, requires Board of Supervisors'
19 approval of non-maritime leases that either have a term in excess of 10 years or have
20 anticipated revenue to the City of \$1,000,000 or more; and

21 WHEREAS, The term of Lease No. L-17180 exceeds 10 years and Port anticipates
22 revenues to exceed \$1,000,000; now, therefore, be it

23 RESOLVED, That the Board of Supervisors hereby approves Port Commission Lease
24 No. L-17180 and authorizes the Executive Director of the Port, or the Executive Director’s
25 designee, to execute such Lease No. L-17180 in a form approved by the City Attorney and in

1 substantially the same form on file with the Clerk of the Board of Supervisors in File
2 No. 250213; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port Executive
4 Director to enter into any additions, amendments, or other modifications to Lease No. L-17180
5 that the Port Executive Director, in consultation with the City Attorney, determines, when
6 taken as a whole, to be in the best interest of the Port, do not materially increase the
7 obligations or liabilities of the City or the Port, and are necessary or advisable to complete the
8 transactions which this Resolution contemplates and effectuate the purpose and intent of this
9 Resolution, such determination to be conclusively evidenced by the execution and delivery by
10 the Port Executive Director of such documents; and, be it

11 FURTHER RESOLVED, That within thirty (30) days of Lease No. L-17180 being fully
12 executed by all parties, the Port shall provide a copy of the lease to the Clerk of the Board for
13 inclusion into the official file.

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**CITY AND COUNTY OF SAN FRANCISCO
DANIEL LURIE, MAYOR**

LEASE NO. L-17180

BY AND BETWEEN

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

AND

**EVERETT & JONES BBQ SF INTERNATIONAL, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY
300 JEFFERSON STREET**

**ELAINE FORBES
EXECUTIVE DIRECTOR**

_____ , 2025

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
GAIL GILMAN, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
STEPHEN ENGBLOM, COMMISSIONER
STEVEN LEE, COMMISSIONER**

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EXHIBITS AND SCHEDULES

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EXHIBIT C	WORK LETTER
EXHIBIT D	RESTAURANT RULES AND REGULATIONS
EXHIBIT E	LOCAL HIRE PLAN
EXHIBIT F	MONTHLY PERCENTAGE RENT STATEMENT
EXHIBIT G	ESTOPPEL CERTIFICATE

SCHEDULE 1	ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2	SUBSTRUCTURE REPORT(S)
SCHEDULE 3	FEMA DISCLOSURE NOTICE
SCHEDULE 4	HAZARDOUS MATERIALS DISCLOSURE

**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	_____, 2025
<i>Lease Number:</i>	L-17180
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Deputy Director, Real Estate and Development Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	EVERETT & JONES BBQ SF INTERNATIONAL, LLC , a California limited liability company
<i>Tenant's Main Contact Person and Mailing Address:</i>	Dorcia White Managing Member 126 Broadway Oakland, CA 94607 Telephone: (510) 663-2350 Cell: (510) 472-6896 Email: eandjbbq@gmail.com
<i>Tenant's Billing Contact and Address:</i>	Same as main contact
<i>Tenant's Emergency Contact and Address:</i>	Same as main contact
<i>Tenant's Insurance Contact and Address (not broker):</i>	Same as main contact
<i>Contact Information for Tenant's Agent for Service of Process (including address) :</i>	Jamilah Kenya Richardson Managing Member 4245 MacArthur Blvd. Oakland, CA 94619 Telephone: (510) 698-4340 Cell: (510) 677-5616 Email: kr.eandjbbq@gmail.com
<i>Premises:</i>	300 Jefferson Street, San Francisco, CA 94133

<i>Facility:</i>	SWL 302 San Francisco, CA 94133
<i>Premises Rentable Square Footage:</i>	Approximately 4,363 rentable square feet of as shown in Exhibit A .
<i>Outdoor Seating Area</i>	Subject to the terms and conditions contained in Section 3.1(b) , commencing as of the Commencement Date, Tenant shall have a non-exclusive license during the Lease Term to use that certain patio area adjacent to and accessible from the Premises as more particularly shown on Exhibit A-1 attached hereto (the “ Outdoor Seating Area ”). The Outdoor Seating Area is not be included in the rentable square footage of the Premises for purposes of this Lease. So long as there is no outstanding Tenant Event of Default, without limiting Port’s rights under Section 4.2 , Port will not enter into a separate license agreement granting another third-party non-exclusive use of the Outdoor Seating Area that would negatively impact Tenant’s operations at the Premises.
<i>Separate License Agreement for Waste Disposal Area:</i>	At least thirty (30) days prior to Tenant opening the Premises to the public, the Parties will enter into a separate non-exclusive license agreement (“ License Agreement ”) on Port’s form license agreement for the non-exclusive use of space mutually agreed on between the Parties that is near the Premises (“ License Area ”). Tenant must confirm with Recology that the License Area is a “pick-up” location for Recology and provide written evidence of such confirmation to Port. The License Area will be used solely for placement of a waste disposal container for Tenant’s operations at the Premises. Port will not charge Tenant a license fee for use of the License Area so long as Tenant complies with the terms and conditions of the License Agreement. The License Agreement will include a provision allowing Port to re-locate the License Area in its sole discretion. The License Agreement will automatically terminate upon termination of this Lease or at Port’s sole election, upon Tenant’s Event of Default under this Lease.
<i>Length of Term:</i>	Ten (10) years commencing on the Rent Commencement Date, which term may be extended in accordance with this Lease.
<i>Extension Options:</i>	Tenant has two (2) successive options to extend the Lease Term for five (5) years each (each an “ Extension Option ”), provided: (i) no Event of Default by Tenant then exists, and (ii) Tenant satisfies all other conditions for exercise and effectiveness of each Extension Option as further described in Section 4.3 . Tenant shall provide Port written notice to exercise an option at least nine (9) months and no more than twelve (12) months prior to the applicable Expiration Date. Base Rent for any option term will be established as the greater of Market Rate (as defined in the Lease) but not less than 103% over the prior year’s rent. Base Rent to increase by three percent (3%) every Anniversary Date thereafter.

<i>Commencement Date:</i>	The last date signed by the Parties following approval of this Lease by the Port Commission and the Board of Supervisors.			
<i>Rent Commencement Date:</i>	Rent will commence the earlier of (i) one hundred and eighty days (180) days from the date Tenant receives its building permit(s) to commence the Initial Tenant Work; or (ii) Tenant opening for business in the Premises.			
<i>Anniversary Date:</i>	[Insert Date--if not the first of the month, insert date which is the first day of the thirteenth (13th) month after the Rent Commencement Date.]			
<i>Expiration Date:</i>	[Insert the date immediately prior to the 10th Anniversary Date]			
	<i>Months</i>	<i>Sq. Ft.</i>	<i>Monthly Base Rate</i>	<i>Total Monthly Base Rent</i>
	Commencement Date through the day immediately prior to the Rent Commencement Date	4,363	\$0.00 so long as Tenant is diligently performing the Initial Tenant Work	\$0.00 so long as Tenant is diligently performing the Initial Tenant Work
	1st Lease Year (Rent Commencement Date-next 12 months)	4,363	Percentage Rent of 5.00% of Gross Revenue but no less than \$10,000/mo	\$10,000.00
	2nd Lease Year (1st Anniversary Date-Date—Date Immediately Prior to 2nd Anniversary Date)	4,363	\$13,000.00	\$13,000.00
	3rd Lease Year (2nd Anniversary Date-Date—Date Immediately Prior to 3rd Anniversary Date)	4,363	\$14,500.00	\$14,500.00
	4th Lease Year—Expiration Date	4,363	3% annual increases on the 4th Anniversary Date and each subsequent Anniversary Date.	
<i>Percentage Rent:</i>	<p>Percentage Rent is equal to five percent (5%) of Gross Revenues in Lease Year 1 and six percent (6%) thereafter.</p> <p>As further described in Section 5.2, in addition to the monthly Base Rent specified above, commencing on the 1st Anniversary Date, Tenant will pay monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.</p>			
<i>Minimum Gross Sales Threshold/Port Termination Right:</i>	Tenant acknowledges and agrees that the successful operation of the Premises is contingent upon Tenant achieving a minimum level of Gross Revenues from its operations at the Premises. The Parties agree that annual the “ Minimum Gross Revenue Threshold ” is equal to Two			

	<p>Million Nine Hundred Thousand Dollars (\$2,900,000). If Tenant fails to achieve the Minimum Gross Revenue Threshold by the end of the third (3rd) Lease Year, either Party has the right (but not the obligation) to terminate this Lease upon written notice to the other Party, which notice must be delivered, if at all, no later than ninety (90) days following the end of the third (3rd) Lease Year (“Termination Notice Period”). Either Party’s right to terminate this Lease if the Minimum Gross Revenue Threshold is not met by the end of the third (3rd) Lease Year will terminate if it is not exercised by the expiration of the Termination Notice Period.</p>
<p><i>Payment of First Month’s Rent and Security Deposit:</i></p>	<p><u>First Month’s Rent:</u> Prior to execution of this Lease, Tenant must pay in advance, the first month’s Base Rent equal to Ten Thousand Dollars (\$10,000.00).</p> <p><u>Security Deposit:</u> Twenty-Five Thousand Dollars (\$25,000.00).</p>
<p><i>Permitted Use:</i></p>	<p>Prior to the Completion Date, Tenant may not occupy the Premises except for performance of the Initial Tenant Work in accordance with the Work Letter and this Lease.</p> <p>After the Completion Date, the Premises shall be used solely for a full restaurant and bar and outdoor dining and for no other purpose.</p>
<p><i>Operating Covenant:</i></p>	<p>In addition to the requirements set forth in Section 8.2 (Tenant’s Operating Covenants), Tenant is required to open for business and operate throughout the Term, fully fixtured, stocked and staffed, ready to do business with the public.</p> <p>Minimum Hours are Monday – Sunday 12 PM to 8:00 PM but Tenant is not be required to open on Thanksgiving and Christmas.</p>
<p><i>Additional Prohibited Uses:</i></p>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.3, 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:</p> <ul style="list-style-type: none"> • Unless approved in advance in writing by Port in its sole discretion: use of the Premises for raves, or dances/events or other uses charging a cover charge or requiring a donation to gain entry to the Premises that are not included by Tenant as part of Gross Revenues; operation of a private club; or activities that are managed by an outside promoter; • Operation of a Formula Restaurant as defined in Section 2; • Use of garbage disposal or garbage grinder; • Disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drains leading to sewer laterals; • Storage of Hazardous Materials other than janitorial and office supplies in limited amounts customarily used for general office and restaurant purposes, handled in accordance with Section 16 or storage of hazardous waste; • Discharge of any material into Bay waters or storm drains;

	<ul style="list-style-type: none"> • Washing floor mats, kitchen equipment, or other items outdoors; • Pressure washing or hosing down the sidewalk for cleaning; and • Parking/storage of catering vehicles. <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>
<p><i>Additional Environmental Requirements:</i></p>	<p>Tenant shall:</p> <ul style="list-style-type: none"> • Comply with San Francisco’s Fats, Oils, Grease (FOG) Control Ordinance. • Comply with San Francisco’s Mandatory Recycling and Composting Ordinance. • Comply with the Port’s “Restaurant Rules and Regulations.” • Use a mop / brush and bucket for sidewalk cleaning. • Designate an indoor area to manage recyclable, compostable, and landfill waste. • Obtain a SF Department of Public Health, Hazardous Materials Unified Program Agency (HMUPA) Permit or file a Disclaimer Notice with the Agency. • 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. • Contact Bay Area Air Quality Management District (BAAQMD) to determine whether Tenant needs to permit or register operating equipment, such as charboilers and smokers, with BAAQMD. Tenant must provide Port with proof of permit application or registration submission as applicable and any permit-related correspondence between Tenant and BAAQMD. <p>WASTE DISPOSAL</p> <p>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.</p>
<p><i>Initial Tenant Work and TI Allowance:</i></p>	<p>Tenant must complete the Initial Tenant Work by the Outside Completion Date, all as further described in the Work Letter.</p> <p>Except for the Initial Tenant Work funded by the TI Allowance, all the Initial Tenant Work and any other Improvements to the Premises shall be constructed at Tenant’s sole cost and expense and in accordance with the Work Letter attached as Exhibit C (and the Scope of Work attached to the Work Letter) and Section 13.</p> <p>Port shall provide Tenant with up to Eight Hundred Thousand Dollars (\$800,000.00) (the “TI Allowance”) for costs related to Initial Tenant Work, in accordance with the process detailed in the Work Letter attached hereto as Exhibit C.</p> <p>Tenant understands and agrees that other than the TI Allowance, it will</p>

	<p>not receive or seek improvement allowances, rent credits or other compensation or consideration for construction of any Improvements and agrees that it will not seek additional term for the purpose of amortizing any Improvements it constructs.</p> <p>Tenant further understands and agrees that, except for the TI Allowance, it will not seek or receive rent credit or other compensation or consideration or additional term for any additional time it may take to obtain Regulatory Approvals, including those issued by Port.</p>
<i>Contractor's Bond:</i>	Tenant may be required to provide contractors' payment and performance bond(s) in an amount equal to One Hundred percent (100%) of the projected construction costs of the Initial Tenant Work in a form acceptable to Port as described in the Work Letter.
<i>Superstructure Report:</i>	See Schedule 2 attached hereto.
<i>Maintenance and Repair:</i>	<p>Except as set forth in the immediately following paragraph, Tenant is solely responsible for all maintenance and repair of the Premises, including without limitation all non-structural interior portions of the Premises and all Tenant Improvements, as further described in Section 11 below.</p> <p>Other than the repairs to the roof being performed by Tenant as part of the Initial Tenant Work, Tenant has no obligation to maintain and repair the roof, structural portions of exterior walls, and foundations of the Premises provided Tenant has not caused the need for repair by their acts or omissions, such as any repair necessitated by Alterations made by Tenant or any Tenant Party, or necessitated by any loss or damage, the repair of which is Tenant's responsibility under this Lease.</p>
<i>Utilities:</i>	Tenant's sole responsibility, as further described in Section 12 .
<i>Location of Asbestos in Facility:</i>	See Schedule 1 attached hereto.
<i>Hazardous Materials Disclosure:</i>	See Schedule 4 attached hereto.
<i>Rules & Regulations:</i>	See Exhibit D attached hereto.
<i>Development Project:</i>	<ul style="list-style-type: none"> • Waterfront Resiliency Program (Seawall Improvement Project) • Fisherman's Wharf Revitalized for Pier 45 and SWL 301. • New floating dock between Scoma's and Wharf J9.
<i>Port Share of Excess Sublease Rent:</i>	100% of Excess Sublease Rent.
<i>Port Participation in Sale Proceeds:</i>	Fifty Percent (50%) of Net Sale proceeds

<i>Signage:</i>	Tenant is permitted to install signage on the exterior of the Premises upon the prior approval of Port which shall not be unreasonably withheld. All signage must comply with Port's Sign Criteria and Tenant must obtain all required Regulatory Approvals.
<i>Parking:</i>	Tenant acknowledges that this Lease does not include parking rights or spaces. Tenant may enter into a separate agreement for parking spaces on the Port's approved form for any spaces offered to Tenant by the Port.
<i>Lease Prepared By:</i>	Don Kavanagh, Senior Property Manager.

DRAFT

Real Property Lease Everett & Jones BBQ, SF International, LLC

Board of Supervisors
Budget and Finance Committee
March 26, 2025

Presented by :
Scott Landsittel
Deputy Director of Real Estate, Port of San Francisco



Background

- Lou's Fish Shack shuttered with the onset of COVID-19 pandemic
- In 2024, Maven Commercial began extensive marketing campaign
 - Proactively contacted over 100 restaurateurs
 - Over 2,000 email solicitations
 - Provided over 35 tours of the facility
- Everett & Jones selected through competitive bidding process
- Proven BBQ purveyor in Oakland with multi-site operations
- BBQ concept is new offering for Fisherman's Wharf for locals and tourists
- Port Commission authorized lease on February 25, 2025



Essential Business Terms for Lease L-17180

Term

Ten (10) years with two five-year options to extend for this 4,363 square foot restaurant premises.

Rent

Free Rent Period: 180 days or date Everett & Jones opens (whichever is earlier)

Year 1 – 5% of Gross Revenues, but no less than \$10,000/mo

Year 2 - \$13,000/mo; \$35.76 psf/yr

Year 3 - \$14,500/mo; \$39.84 psf/yr

3% annual base rent increases

Percentage Rent

5% of Gross Revenues in Year 1 and 6% thereafter (which exceeds base rent)

Minimum Gross Sales Threshold

If Tenant fails to achieve \$2.9 million in Gross Revenues (\$665 psf) by the end of the 3rd lease year, either party has the right to terminate the lease.

Conclusion

Port staff respectively request approval of Port Commission Lease L-17180 with Everett & Jones BBQ for restaurant space located at 300 Jefferson.



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 incurred 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 by Tenant or its Agents.

“**Anniversary Date**” means the first and each subsequent anniversary of the Rent Commencement Date; provided, however, that if the Rent 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 Rent Commencement Date.

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

“**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 5.3 below.

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

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

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

“**Books and Records**” means all of Tenant’s books, records, and accounting reports or statements relating to its business, this Lease, the Initial Tenant Work and the operation and maintenance of the Premises, including without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents used in Tenant’s business operations for the Premises, whether maintained by Tenant or a third party contractor. Tenant shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the Premises and all exclusions therefrom.

“**business day**” means any week day 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.

“**CEQA**” is defined in Section 14.2.

“**Certified Construction Costs**” are Construction Costs that Port has approved through the procedures described in Section 21.4

“**Changes**” is defined in Section 10.2 below.

“**CHE Determination**” is defined in Section 14.2.

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

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

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

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

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

“**Concession**” is defined in Section 32.16 below.

“**Conduct Code**” is defined in Section 29.11 below.

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

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

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

“**Completion Date**” is defined in the Work Letter.

“**Core Benefits**” is defined in Section 29.1.

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

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

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

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

“**Encroachment Area**” is defined in Section 3.4 below.

“**Encroachment Area Charge**” is defined in Section 3.4 below.

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

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

“**Environmental Regulatory Agency**” means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional

Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

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

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

“Excess Sublease Rent” means Sublease rent and any other sums paid or payable to Tenant under a Sublease in excess of Tenant’s concurrent Rent obligation for the Sublease premises.

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

“Extension Option” is defined in Section 4.3(a).

“Extension Term” is defined in Section 4.3(a).

“Event of Default” is defined in Section 22 below.

“Facility” means the building or other structure in or on which the Premises is located.

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

“Final Construction Documents” is defined in the Work Letter.

“Financial Statements” mean a current balance sheet and profit and loss statements 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.

“Flood Protection Measures” is defined in Section 14.2.

“Force Majeure” means events which result in delays of performance of a party’s obligations hereunder due to causes beyond the party’s control and not caused by the acts or omissions of such party, including acts of nature or of the public enemy, war, invasion, insurrection, riots, any general moratorium in the issuance of governmental or regulatory permits applicable to the Premises or the Improvements, fires, floods, earthquakes, tidal waves, epidemics, quarantine, industry-wide strikes, freight embargoes, unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; industry-wide strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between a party and its contractors or work performed on behalf of such party). Force Majeure does not include (1) failure to obtain financing or failure to have adequate funds, (2) sea level rise; and (3) any event that does not cause an actual delay.

“Formula Restaurants” means a type of eating or drinking establishment that, along with eleven (11) or more other such establishments located in the United States, maintains two or

more of the following features: a standardized menu, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized business signage, a trademark or a service mark. The following definitions shall be used for the definition of “**Formula Restaurant**”.

(a) “**Business Signage**” means a sign that directs attention to a business, commodity, service, industry or other activity that is sold, offered, or conducted, other than incidentally, on the Premises upon which such sign is located, or to which it is affixed.

(b) “**Color Scheme**” means selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the façade.

(c) “**Décor**” means the style of interior finishing, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.

(d) “**Façade**” means the face or front of a building, including awnings, looking onto a street, passageway, or an open space.

(e) “**Menu**” means type, variety and price of food and beverages offered and sold on the premises.

(f) “**Service mark**” means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party those of others.

(g) “**Trademark**” means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.

(h) “**Uniform Apparel**” means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.

“**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 provide to Port separate records to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant’s Monthly Statements:

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

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

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

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

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

(vi) Intra and inter-company transfers of inventory and supplies between and among Tenant and Affiliates (as defined in Section 21.1); and

(vii) Bona fide promotional discounts to Tenant's customers for food, beverages and other sales, up to a maximum of three percent (3%) of Gross Revenues 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**").

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

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

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

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

"**Hazardous Material**" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything

designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

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

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

“HEPA” is defined in Section 13.3(g) below.

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

“Improvement Costs” is defined in Section 4.2 below.

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

“Indemnified Parties” is defined in Section 20.1 below.

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

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

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

“Investigate” or **“Investigation”** when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental

Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

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

“Late Charge” means a fee of fifty dollars (\$50.00) with respect to Base Rent and a fee equivalent to One Hundred Dollars (\$100.00) with respect to Percentage Rent and Monthly 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 Facility, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

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

“Lease Year” means the period commencing on the Rent Commencement Date and ending on the last day of the calendar month in which the first (1st) anniversary of the Rent Commencement Date occurs (unless the Rent Commencement Date is the first day of a calendar month, in which event the first (1st) Lease Year will end on the last day of the calendar month immediately preceding the Rent Commencement Date) and the second (and each succeeding) Lease Year will be the subsequent twelve (12) month period following the end of the first (1st) Lease Year.

“Market Rate” is defined in Section 4.3(b).

“Monthly Percentage Rent Statement” is defined in Section 5.2(b) below.

“Net Sale Proceeds” means Gross Sale Proceeds less Costs of Sale.

“Non-Affiliate” means a Person that is not an Affiliate.

“Notice of Removal” is defined in Section 13.5 below.

“Notice to Cease Prohibited Use” is defined in Section 8.4 below.

“Notice to Vacate” is defined in Section 3.4 below.

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

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

“Outside Agreement Date” is defined in Section 4.3(c)

“Outside Completion Date” is defined in the Work Letter.

“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 below.

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

“Port” means the San Francisco Port Commission.

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

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

“Port’s Extension Rent Notice” is defined in Section 4.3(c).

“Port’s Sale Participation” means the portion of Net Sale Proceeds that Tenant must pay to Port pursuant to Section 21.4 below.

“Port Work” is defined in Section 13.10 below.

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

“preservative-treated wood containing arsenic” is defined in Section 29.11.

“Prevailing party” is defined in Section 24.1 below.

“Prohibited Use(s)” is defined in Section 8.3 below.

“Qualified Broker” is defined in Section 4.3(c).

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

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

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

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

“Renewable Energy System” is defined in Section 12.3 below.

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

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

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

“**Rules and Regulations**” means the Rules and Regulations, if any, applicable to the Facility, set forth in *Exhibit D* attached hereto, as may be amended from time to time.

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

“**Sale Closing**” means the date that any Sale closes.

“**saltwater immersion**” is defined in Section 29.11.

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

“**Seawall**” is defined in Section 3.8.

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

“**SLR Guidance**” is defined in Section 14.1.

“**Sublease**” means the following events or proposed events: (a) a proposed or actual sublease or sub-license of all or any part of the Premises under a sublease, sub-sublease, license, sub-license or agreement of similar effect with a subtenant, vendor, concessionaire, food truck or food cart operator; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; or (c) any Subtenant or sub-licensee of Tenant sub-subleases or sub-sub-licenses any of its interest in its sublease or premises.

“**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 the Person with whom Tenant enters into a Sublease.

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

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

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

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

“**Tenant’s Extension Response Notice**” is defined in Section 4.3(c).

“**Tenant’s Property**” means all furniture, trade fixtures, 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.

“**Threat Determination**” is defined in Section 14.3.

“**Threat Determination Notice**” is defined in Section 14.3.

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

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

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

“**Transfer Date**” means the effective date of a Transfer.

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

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

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

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

“**Waiving Party**” is defined in Section 17.5 below.

“**Work**” when used in reference to construction is defined in Section 29.11 below.

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

3. PREMISES; AS-IS CONDITION.

3.1. Premises.

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

(b) Subject to Tenant obtaining all required approvals or permits, including any required permits from BCDC, Tenant will have a non-exclusive license to use the Outdoor Seating Area for the Permitted Use solely in connection with Tenant's business at the Premises. Other than Tenant's right to use the Outdoor Seating Area being subject to a non-exclusive license, all other terms and conditions of this Lease shall apply to the Outdoor Seating Area such that the use of the term "Premises" in this Lease will include the Outdoor Seating Area. By way of example, revenues generated from the Outdoor Seating Area will be included in the calculation of Percentage Rent.

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

3.2. Accessibility Inspection Disclosure.

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

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

3.3. San Francisco Disability Access Disclosures. Tenant is hereby advised that the Premises may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Tenant understands and agrees that Tenant may be subject to legal and financial liabilities if the Premises does not comply with applicable federal and state disability access Laws. As further set forth in Section 9 (Compliance with Laws), Tenant further understands and agrees that it is Tenant's obligation, at no cost to Port, to cause the Premises and Tenant's use thereof to be conducted in compliance with the ADA and any other federal or state disability access Laws. Tenant shall notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws.

3.4. No Right to Encroach.

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port excluding (x) ingress and egress across the Facility to and from the Premises, and/or (y) as otherwise may be permitted in this Lease (the “**Encroachment Area**”), then upon written notice from Port (“**Notice to Vacate**”), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the “**Encroachment Area Charge**”). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant’s obligation to Indemnify Port as set forth in Section 3.4(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 of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant’s failure to comply with the applicable Notice to Vacate and Port’s right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port’s rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 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.

3.5. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, constructed on the Premises or on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the

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

3.6. 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 Facility or by any vessels berthed near the Facility shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Base Rent or Additional Rent, or affect this Lease in any way or Tenant's obligations hereunder.

3.7. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (a) the Facility 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) there is a risk that sea level rise will increase the cost of Substructure repairs and/or prevent or limit the ability to make repairs to the Substructure; and/or (e) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for 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 (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 3** and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in **Schedule 2** attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and

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

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

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

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

4. TERM OF LEASE; TERMINATION BY PORT; EXTENSION TERM.

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 actual dates differ from the dates set forth in the Basic Lease Information, then the Parties will execute the Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as *Exhibit B*, subject to the provisions of *Section 4.3*.

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

4.2. Termination Rights.

(a) Port has the right to terminate this Lease under this Section during an Extension Term only, when the Premises is needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Section, upon 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 be no less than twelve (12) months' from the date such notice is delivered to Tenant.

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

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

(c) Within sixty (60) days after Tenant's surrender under this Section, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through any TI Allowance, rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements in any Port building permits for such work obtained by Tenant and which are

approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial Term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial Term of this Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

4.3. *Extension Term.*

(a) Option to Extend Term. Provided all the terms and conditions of the Basic Lease Information and this **Section 4.3** are satisfied by Tenant, Port grants to Tenant two (2) consecutive options (each, an “**Extension Option**”) as to the entire Premises only for an additional five (5) years each (each, an “**Extension Term**”) commencing upon the first day after the Expiration Date or the first Extension Term, as applicable. Tenant may exercise an Extension Option by giving Port no less than nine (9) months’ and no more than twelve (12) months’ prior written notice prior to the expiration date of the Term, or the Extension Term, as applicable, its intent to exercise an Extension Option, along with evidence of satisfaction of the conditions to exercise as described in the Basic Lease Information, if applicable. Any such notice by Tenant shall be irrevocable by Tenant. If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant’s exercise of an Extension Option or at any time prior to the first day of an Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then Port may elect by written notice to Tenant to reject Tenant’s exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Tenant never exercised the Extension Option. Tenant’s failure to exercise or Port’s rejection of the first Extension Option shall render the second Extension Option null and void.

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

(c) Determining Market Rate. For purposes of determining the Market Rate, the following procedure shall apply:

(i) If Tenant has timely given the applicable notice of the exercise of its Extension Option, Port shall within thirty (30) days thereafter deliver to Tenant a written notice of Port’s determination of what the Market Rate would be during the Extension Term (“**Port’s Extension Rent Notice**”). Within ten (10) business days after Tenant’s receipt of Port’s Extension Rent Notice, Tenant shall give Port a written notice (“**Tenant’s Extension Response Notice**”) electing either to (1) accept the Market Rate set forth in Port’s Extension

Rent Notice, in which case the Market Rate shall be the Market Rate set forth in Port's Extension Rent Notice, or (2) not accept Port's determination of the Market Rate, in which case Port and Tenant shall endeavor to agree upon the Market Rate on or before the date that is fifteen (15)-business days after Port's receipt of Tenant's Extension Response Notice (the "**Outside Agreement Date**"). If Tenant fails to deliver Tenant's Extension Response Notice within the ten (10) business day period following its receipt of Port's Extension Rent Notice, Tenant shall conclusively be deemed to have accepted Port's determination of the Market Rate as set forth in Port's Extension Rent Notice. If Port and Tenant are unable to agree upon the Market Rate by the Outside Agreement Date, then the Market Rate shall be determined pursuant to provisions below.

(ii) If Port and Tenant fail to agree upon the Market Rate by the Outside Agreement Date, then, within ten (10) days thereafter, Tenant shall submit to Port Tenant's determination of the Market Rate and if the higher of Landlord's and Tenant's Market Rate proposals is not more than one hundred twenty percent (120%) of the lower, then the Market Rate shall be the average of the two. If Tenant fails to submit its determination of the Market Rate within such ten (10)-day period, then Port's determination of the Market Rate as set forth in Port's Extension Rent Notice will be the Market Rate for the applicable Extension Term. If the parties are unable to determine the Market Rate in accordance with this section, then the Market Rate shall be determined in accordance with the following:

(1) Port and Tenant shall each appoint one real estate broker with at least ten (10) years of experience in leasing retail space in San Francisco for uses similar to the Permitted Uses ("**Qualified Broker**") and notify the other party of its selection of the Qualified Broker within fifteen (15) days after the Outside Agreement Date. If Tenant fails to appoint a Qualified Broker within such fifteen (15) day period, then Port's determination of the Market Rate as set forth in Port's Extension Rent Notice will be the Market Rate for the applicable Extension Term.

(2) The two Qualified Brokers selected by the parties shall within ten (10) days of the date of the appointment of the last appointed Qualified Broker agree upon and appoint a third Qualified Broker who shall not have been employed or engaged by Port or Tenant during the immediately preceding two (2) year period (the "**Final Broker**"). The Final Broker will determine the Market Rate by choosing whichever of the proposals submitted by Port and Tenant the Final Broker judges to be more accurate. The Final Broker will notify Landlord and Tenant of its decision, which shall be final and binding.

(3) Each party will be solely responsible for the cost of the Qualified Broker selected by each and the cost of the Final Broker will be paid by Port and Tenant equally.

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

5. RENT.

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

5.1. Base Rent. From and after the Rent Commencement Date, Tenant shall pay the monthly Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be based on a 30-day month. Under no circumstances shall the Rent Commencement Date be delayed due to failure to complete the Initial Tenant Work, Force Majeure, Port delays or other reasons.

5.2. *Percentage Rent.*

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

(b) Percentage Rent shall be determined and paid by Tenant for each calendar month by the twentieth day of the immediately following calendar month, except that in the event this Lease expires or terminates on a day other than the last day of a calendar month, Percentage Rent for such calendar month shall be determined and paid within twenty (20) days after such expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement (the “**Monthly Percentage Rent Statement**”) in the form attached hereto as *Exhibit F*. Each Monthly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar month or Lease Year, as applicable.

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

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

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

5.3. *Books and Records.* Tenant agrees that the business of Tenant upon the Premises shall be operated with a point of sale system reasonably acceptable to Port which shall be issued with each sale, whether for cash, credit or exchange. Furthermore, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises or other principal place of business in the San Francisco Bay Area at all times during the Term complete and accurate Books and

Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the “**Audit Period**”). Port agrees to maintain the confidentiality of any Books and Records of Tenant provided to Port pursuant to this Lease except (i) as may be required by Law and (ii) to Port’s Agents as may be reasonably necessary in connection with this Lease.

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

5.5. Audit.

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

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

5.6. Default Interest. Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause

the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant. Tenant shall also pay any costs, including reasonable attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

5.7. *Late Charges/Habitual Late Payer.* Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Tenant fails to pay Rent 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.

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

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

5.10. *Additional Charges.* Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections: 12.1 (Utilities), 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 shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event

Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.10 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.10 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section 5.10 and the reasonableness of the amount of the charges described in this Section 5.10.

6. TAXES AND ASSESSMENTS.

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

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

County Assessor will be a default under this Lease Tenant will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

7. SECURITY DEPOSIT.

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

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any Event of 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 an Event of 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; OPERATING COVENANTS; PROHIBITED USES .

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

8.2. *Tenant's Operating Covenants.*

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

(b) Continuous Operations. Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion. Notwithstanding the foregoing, the Port shall not unreasonably withhold its consent

to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become reasonably untenable 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) due to Force Majeure.

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

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use;
- (b) any activity, or the maintaining of any object, which will in any way cause a cancellation of any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- (c) any activity (other than the Permitted Use), or the maintaining of any object, which will in any way increase the existing rate of or affect any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- (d) any activity or object which will exceed load restrictions, if any, or cause damage to the Premises;
- (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) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;
- (g) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;
- (h) 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;
- (i) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;
- (j) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;
- (k) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids;
- (l) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;
- (m) the storage of any and all aggregate material, or bulk storage, such as wood (other than wood used in a permitted wood-burning oven in the ordinary course of business of the Restaurant); or of other loose materials reasonably related to the operating of the Restaurant as a restaurant business;
- (n) the washing of any vehicles or equipment; or
- (o) other Prohibited Uses identified in the Basic Lease Information, if any.

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

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

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

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

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

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

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

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

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

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

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

11. MAINTENANCE AND REPAIRS.

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

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

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

11.2. *Port's Right to Inspect.* Without limiting Section 25 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

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

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

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

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

11.4. Acts of Nature. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 18 in the event of any damage or destruction of the Premises.

12. UTILITIES AND SERVICES.

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

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

Tenant shall not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises using current in excess of 220 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises, including without limitation, electronic data processing machines. If Tenant requires electric current in excess of that usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the San Francisco Public Utilities Commission or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor

entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

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

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

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

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

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

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

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

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

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

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

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

13.2. Tenant's Obligation to Perform the Initial Tenant Work. Tenant shall perform the Initial Tenant Work in accordance with, and subject to all the terms, covenants, conditions and restrictions in the Work Letter. Any Subsequent Alteration shall be performed in accordance with this Section.

13.3. Construction Requirements. All Subsequent Alteration to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

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

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

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

enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

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

(e) Tenant expressly acknowledges that interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the Facility) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element

(f) 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.

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter (“HEPA”) local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port’s prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port’s prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.3(g), lead-based paint is “**disturbed or removed**” if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.4. Improvements Part of Realty. Except as set forth in Section 13.5 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by

Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 26 (Surrender).

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

13.6. Removal of Improvements. Prior to the Expiration Date or earlier termination of this Lease, Port may give written notice to Tenant (herein “**Notice of Removal**”) specifying the Alterations or Improvements that are designated as Tenant’s Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 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 five (5) business days after demand therefor.

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

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

13.9. Improvements on Roof. Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed for installation of equipment required for the Permitted Uses. If Port consents, then Tenant shall have a non-exclusive

revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas granted in accordance with this **Section 13.9** shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if such licensed areas are included in the Premises. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts to notify Port in advance of such entry.

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

14. FLOOD RISK AND SEA LEVEL RISE.

14.1. Sea Level Rise. On September 22, 2014, acting through its Capital Planning Committee, the City and County of San Francisco adopted "Guidance for Incorporating Sea Level Rise Into Capital Planning in San Francisco: Assessing Vulnerability and Risk to Support Adaptation" (the "**SLR Guidance**"), a copy of which can be accessed at <http://onesanfrancisco.org/staff-resources/sea-level-rise-guidance/>. The SLR Guidance quotes the findings of the 2012 National Research Council Report, Sea-Level Rise for the Coasts of California, Oregon and Washington: Past Present and Future, which projects sea level rise estimates for San Francisco Bay relative to the year 2000 of 11 inches (+/- 4 inches) by 2050 and 36 inches (+/- 10 inches) by 2100 as the most likely scenarios for sea level rise (the report quotes 66 inches of sea level rise by 2100 as a worst case scenario).

14.2. Flood Protection Measures. In addition to Tenant's obligations to comply with Laws under **Section 9** (Compliance with Laws) and to repair and maintain the Premises (including, but not limited to the structure and Substructure under **Section 11** (Maintenance and Repairs), if, at any time during the Term of this Lease, and subject to compliance with the California Environmental Quality Act ("**CEQA**"), the Chief Harbor Engineer determines in his or her regulatory capacity in accordance with applicable Laws that there is a need for temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with flooding ("**Flood Protection Measures**") at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety ("**CHE Determination**"), Tenant shall be responsible at no cost to Port for permitting, constructing and

implementing any such Flood Protection Measures in the manner described in this Section. Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Flood Protection Measures and agrees that it will not seek additional term for the purpose of amortizing the cost of any Flood Protection Measures. Port and Tenant agree that a CHE Determination under this **Section 14** shall not be a Condemnation for purposes of this Lease.

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

14.3. Termination. If, at any time during the Term, the CHE determines conditions at the Premises pose an ongoing threat to public health and safety due to flood risk and sea level rise conditions (even despite construction of the Pier Flood Protection Measures) ("**Threat Determination**"), this Lease will terminate within ninety (90) days of the CHE's written notice to Tenant of the Threat Determination ("**Threat Determination Notice**"), or the termination date set forth in the Threat Determination Notice, whichever is earlier, without cost or liability to Port.

14.4. Required Flood Protection Improvements for Other Port Property. If the CHE determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing in this **Section 14** shall imply any duty upon the part of Port to perform any work that under this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises.

14.5. Limitations; Waiver.

(a) No occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations under this **Section 14**, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in **Section 18** (Damage and Destruction) or **Section 19** (Eminent Domain). Without waiving the right to terminate as provided in **Section 18** (Damage and Destruction) or **Section 19** (Eminent Domain), Tenant waives any rights now or later conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws or on account of any such occurrence or situation.

(b) If the CHE determines that there is a need for Pier Flood Protection Measures or makes a Threat Determination as described in this Section, the rights and obligations of the Parties shall be as set forth in this **Section 14**. Accordingly, Port and Tenant each waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure as such sections may from time to time be amended, replaced, or restated. Notwithstanding the prior sentence, Port and Tenant do not intend to waive their rights under **Section 18** (Damage and Destruction) or **Section 19** (Eminent Domain).

14.6. Additional Improvements to Address Sea Level Rise. At any time during the Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option and at its cost that (i) are beyond the scope of the potential Flood Protection Measures contemplated in this Section; and (ii) are not otherwise Tenant's obligation under this

Lease (including under **Section 9** (Compliance with Laws) and **Section 11** (Maintenance and Repairs)). Tenant acknowledges that additional Regulatory Approvals will be required for such improvements.

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

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

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, any other part of the Facility, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office and restaurant purposes.

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, any other part of the Facility, or other Port property except as permitted under Section 16.1;
- (b) will not cause or permit any Hazardous Material Condition; and
- (c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

16.3. Tenant's Environmental Condition Notification Requirements.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 16.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or

its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility 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/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (iii) constitute or be construed as a constructive or other eviction of Tenant.

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

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

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

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 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, naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in **Schedule 4**, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 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 25359.7 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.

17. INSURANCE

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

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

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

(c) **Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance.** Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's

Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this **Section 17.1(c)**, it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with **Sections 8.3(i) and 8.3(j) above**, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

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

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

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

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

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

(f) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("**ISO**") form CP 10 30 06 95 ("**Causes of Loss – Special Form**", or its replacement), including earthquake,

subject to provisions of **Section 17.6(b)**, and flood, subject to the provisions of **Section 17.6(c)**, in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage).

(g) Builders Risk Insurance. At all times prior to Completion of the Initial Tenant Work and during any period of Subsequent Alteration, Tenant shall maintain, on a form reasonably approved by Port, builders' risk insurance in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards, water damage (including groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of **Section 17.6(c)**).

(h) Boiler and Machinery Insurance. Unless same is not included within Tenant's property insurance, Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

(i) Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to **Sections 17.1(d), 17.1(e) and 17.1(f)above**, with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

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

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

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

17.2. Claims-Made Policies. If any of the insurance required in **Section 17.1 above** is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

17.3. Annual Aggregate Limits. If any of the insurance required in **Section 17.1 above** is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

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

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

17.6. General Insurance Matters.

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

(b) As to earthquake insurance only, unless Port has approved Tenant’s request not to carry earthquake insurance in accordance with **Section 17.6(g)**, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the City’s Risk Manager, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

(c) As to flood insurance only, unless Port has approved Tenant’s request not to carry flood insurance in accordance with **Section 17.6(g)**, such insurance shall be in an amount at least equal to the amount available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized insurance carriers, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

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

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

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

(g) Exceptions for Earthquake and Flood Insurance. If Tenant determines that earthquake or flood insurance should not be carried on the Improvements because it is not available at commercially reasonable rates or, in Tenant's reasonable business judgment, is imprudent, then Tenant shall request in writing Port's consent to the absence of such coverages. Prior to execution of this Lease, Tenant has requested Port's approval not to carry earthquake or flood insurance coverages and Port has approved Tenant's request, provided that if Port later determines in its reasonable discretion 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 shall add such coverage to its policy as soon as reasonably practicable thereafter.

18. DAMAGE AND DESTRUCTION.

18.1. *Damage and Destruction.* If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 17 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

Port shall use its commercially reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and Port's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, Port shall have the option to notify Tenant of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event, subject to Tenant's rights hereunder, this Lease shall continue in full force and effect and the monthly Base Rent shall be reduced as provided herein; or (b) Port's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. If the damage or destruction occurs during the last two (2) years of the Term and such repairs cannot be made within the Repair Period and Port has not elected to terminate this Lease, then Tenant shall have the option to notify Port of Tenant's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Tenant. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

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

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

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

18.2. Waiver. Port and Tenant intend that the provisions of Section 18 govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

19. EMINENT DOMAIN.

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

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

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

19.4. Temporary Takings. Notwithstanding anything to the contrary contained in Section 19, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

19.5. Award; Waiver; Termination of Lease; Rent. Upon termination of this Lease in its entirety pursuant to Section 19.3, or pursuant to an election under Section 19.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to

Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 19 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

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, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 21, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

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) Tenant's Exacerbation of any Hazardous Material Condition.

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

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

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to

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 three (3) months after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Transfer on the grounds that the Transferee is not an Affiliate as defined in this Lease, if written notice is delivered to Tenant within three (3) months after Port's receipt of all required and requested information.

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

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 Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any City or Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; or (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port.

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

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

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

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

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

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

(e) Tenant agrees to reimburse Port for all costs, including attorneys' fees, that Port incurs to review, investigate, process, document, disapprove, or approve any Transfer request, not to exceed \$1,500.

21.3. Sublease. In addition to all requirements in Section 21.2, the following provisions apply to any Transfer in the form of a Sublease.

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

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

Term of Sublease:	5 years x 12 months = 60 months
Subletting Expenses:	\$15,000 + \$15,000 = \$30,000
Amortized Subletting Expenses:	\$30,000/60 months = \$500/month
Excess Sublease Rent:	\$5,000/month - \$3,000/month = \$2,000/month
Additional Rent:	(\$2,000/month - \$500/month) = \$1500/month

21.4. Sale . In addition to all requirements in Section 21.2, the following provisions apply to any Transfer in the form of a Sale.

(a) Tenant must pay to Port fifty percent (50%) of Tenant’s Net Sale Proceeds as Port’s Sale Participation, concurrently with and as a condition to the Sale Closing.

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

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

21.5. Notice to Port In addition to the obligations under **Section 6.2**, within thirty (30) days of entering into any agreement under which Tenant grants any person the right to occupy or use any portion of the Premises for any period of time, including without limitation, any assignment, sublease, license, permit, concession or vendor agreement or other agreement or renewal thereof, Tenant shall provide written notice to Port and Assessor and a copy of such agreement, regardless of whether Port consent is required under this Lease for such agreement. Tenant agrees to provide such further information as may be requested by City or Port to enable compliance with reporting obligations under state Law and San Francisco Administration Code Sections 23.38 and 23.39 (or any successor ordinance).

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

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

(b) The Indemnification clause and waiver of claims provisions in **Section 20** (Indemnity and Exculpation);

(c) Insurance provisions requiring that all of the Transferee’s liability and other insurance policies name “**The City and County of San Francisco, the San Francisco**

Port Commission, and their officers, commissioners, agents, employees, and representatives” as additional insureds and acknowledging Port’s right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee’s are conducted;

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

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

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

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

21.8. Payment of Port’s Fees for Review. Within ten (10) days after Port’s written request, Tenant will pay Port, as Additional Rent, Port’s reasonable costs, including reasonable attorneys’ fees and costs, consultant’s costs, and costs for Port staff time, incurred in connection with the review, investigation, processing, documentation, disapproval and/or approval of any proposed Transfer. Tenant will pay such costs regardless of whether or not Port consents to such proposal.

21.9. Acknowledgement. Tenant acknowledges and agrees that Port’s rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port’s actions under this Section 21.

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

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 Monthly Percentage Rent Statement or Annual Statement 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 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) Lease Year period of the first such understatement; or

(d) failure to comply with Tenant's covenants set forth in **Section 8.2** (Tenant's Operating Covenants), as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

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

(f) failure to pay Port at close of escrow of any Sale, Port's Participation in Net Sale Proceeds and such default continues for a period of three (3) days following written notice from Port.

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

(h) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by **Section 33.3** below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

(j) 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 three (3) business days following written notice from Port; or

(k) failure by Tenant to comply with the provisions of **Section 16** above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

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

(m) 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 ninety (90) 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

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

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

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

(q) without limiting the provisions of *Sections 22(f) or 22(k) above* or lengthening the cure periods under those subsections, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port.

23. PORT'S REMEDIES.

Upon Tenant's Event of Default, 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 period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that

portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 23.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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. 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, may, at Port's sole option, cure the default at Tenant's cost. If Port undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the

maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

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 twenty-four (24) hours’ prior notice (except without notice in the event of an emergency) during normal business hours of generally recognized business days, provided that Tenant or Tenant’s Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises is in good condition and whether Tenant is complying with its obligations under this Lease.

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

- (a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services which Port has the right or obligation to perform;
- (b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c) To post “For Sale” signs at any time during the Term; to post “For Lease” signs during the last six (6) months of the Term or during any period in which Tenant is in default;
- (d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;
- (e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to or use of 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 13.5**, 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 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 or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.

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

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.

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

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

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

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Labor and Employment Code Division II, Article 102 (formerly Administrative Code Chapter 21C): a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 102.3), a Show (as defined in Section 102.4), a Special Event (as defined in Section 102.8), Broadcast Services (as defined in Section 102.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 102.10), and Security Guard Services for Events (as defined in Section 102.11).

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

29.18. 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.

29.19. Consideration Of Criminal History In Hiring And Employment Decisions

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

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

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

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

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

(f) Tenant and subtenants shall post the notice prepared by OLSE, available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be

posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

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

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

29.20. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. 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 Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

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

29.22. 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.

29.23. *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.

29.24. *Tenant’s Compliance with City Business and Tax Regulations Code.* Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this Section 29.24 to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

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

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 liability company duly formed and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

(c) No Limitation on Ability to Perform. 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, except those payable to a broker authorized, retained or employed by Port. 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 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 DAMAGES.

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

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 G*. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

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: **EVERETT & JONES BBQ SF INTERNATIONAL, LLC**
a California limited liability company

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Grace H. Park
Deputy City Attorney

Approved per Port Commission resolutions XXX-XXX
Approved per BOS resolution XXX-XXX

Lease Prepared By: Don Kavanagh, Senior 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: _____

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EXHIBIT C

WORK LETTER

This Work Letter sets forth Tenant's obligation to perform the Initial Tenant Work and shall be deemed part of the Lease. The "Initial Tenant Work" is described in the Basic Lease Information, the Scope of Work attached to this Work Letter, and associated Port Building Permits and any amendments thereto, if any. Port's obligations in this Work Letter is 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 Port's Chief Harbor Engineer's regulatory authority or Tenant's obligations to obtain required Regulatory Approvals (including, but not limited to any building permits from the Port's Chief Harbor Engineer).

1. GENERAL TERMS

1.1. Definitions. Initially capitalized terms used in this Work Letter have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Work Letter shall have the same meanings as in the Lease.

1.2. Relationship between Work Letter and the Lease. This Work Letter governs Tenant's obligations to perform the Initial Tenant Work within the time frame set forth herein. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiry of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

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

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

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

2. PERFORMANCE OF THE INITIAL TENANT WORK

2.1. Tenant's Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to use commercially reasonable efforts to Complete performance of the Initial Tenant Work within one year of the issuance of the first permit allowing Tenant to commence the Initial Tenant Work ("Outside Completion Date"). Tenant shall Complete said work free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Work and if applicable, the Schematic Drawings; (iii) the Port

Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning Code; and (vii) the Lease including without limitation Section 17 thereof. All such requirements are sometimes referred to collectively as the “**Project Requirements.**”

(b) Scope of Work; Schedule of Performance. Tenant shall use commercially reasonable efforts to Complete or cause to be Completed the Initial Tenant Work on the Premises within the times and in the manner set forth in this Work Letter and the Scope of Work comprised of the Schedule of Performance and the preliminary plans and narrative description of the work (collectively, the “**Scope of Development**”) attached hereto as *Attachment 1*. All the Initial Tenant Work shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant, while performing any of the Initial Tenant Work, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining tenants, properties and improvements, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(c) Costs; Private Development. Other than disbursement of the TI Allowance to Tenant in accordance with Section 7.2 of this Work Letter, Tenant shall bear all of the cost of performing all the Initial Tenant Work. Without limiting the foregoing, Tenant shall be responsible for performing all Premises preparation work necessary for performance of the Initial Tenant Work. Such preparation of the Premises shall include, among other things, asbestos and lead abatement investigation required for use of the Premises for the Permitted Use, and if required in this Lease, all structure and substructure work, disabled access improvements and public access improvements and tenant improvements.

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

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

2.4. Insurance. At all times during the performance of the Initial Tenant Work, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant’s contractor to maintain (a) commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor’s protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering

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

2.5. Performance Bond. Port may require Tenant to obtain a corporate surety payment bond and a performance bond substantially in the form attached hereto as **Attachment 2** (the “**Bond**”) obtained by each of Tenant’s contractors performing the Initial Tenant Work prior to Tenant’s commencement of construction of the Initial Tenant Work. Tenant will provide Port the cost to obtain such Bond at least XXX days prior to the anticipated commencement of such work. If Port approves the cost of such Bond and desires that Tenant obtain such Bond, provided Tenant has complied with all the conditions to disbursement of the TI Allowance set forth in **Section 7.2** of this Work Letter, Port will disburse the cost of such Bond to Tenant and within three (3) business days of such disbursement, Tenant will procure such Bond and promptly provide Port evidence of such procurement. Each Bond shall be in an amount equal to one hundred percent (100%) of the estimated costs of the Initial Tenant Work, net of the TI Allowance. Each performance bond shall guarantee the contractor’s faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor’s payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics’ and materialmen’s liens, stop notices and to ensure completion of the applicable work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each Bond shall obligate the surety to Tenant and the City and County of San Francisco as co-obligees.

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

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

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

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

3. PREPARATION AND APPROVAL OF CONSTRUCTION DOCUMENTS

3.1. Definitions.

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

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

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

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

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

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

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

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

- appropriate scale.
- (2) All building plans and elevations at appropriate scale.
 - (3) Building sections showing all typical cross sections at appropriate scale.
 - (4) Floor plans.
 - (5) Preliminary interior improvement plans.
 - (6) Plans for proposed public access areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.
 - (7) Outline specifications for materials, finishes and methods of construction.
 - (8) Interior and Exterior Signage Plans.
 - (9) Exterior lighting plans.
 - (10) Material and color samples.
 - (11) Roof plans showing all mechanical and other equipment.

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

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

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

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

3.3. Construction Document Review Procedures.

TENANT AGREES AND ACKNOWLEDGES THAT PORT’S OBLIGATIONS IN THIS LEASE, INCLUDING IN THIS WORK LETTER, IS IN ITS PROPRIETARY CAPACITY AS LANDLORD, NOT IN ITS REGULATORY CAPACITY AS ISSUER OF

BUILDING PERMITS. ACCORDINGLY, THE TIME PERIODS TO REVIEW AS SET FORTH IN THIS SECTION BIND ONLY THE PORT'S REAL ESTATE STAFF AND HAS NO IMPACT ON PORT'S PERMITTING DIVISION IN ITS REVIEW AND ISSUANCE OF BUILDING PERMITS AND OTHER REGULATORY PERMITS.

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within thirty (30) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such thirty (30) day period, the applicable Construction Documents shall be deemed disapproved.

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

3.4. *Changes in Construction Documents.*

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

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

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

4. NO DELAY EXCEPT FORCE MAJEURE

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

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

4.3. Port's Remedy for Tenant's Failure to Timely Complete. At Port's election, in its sole discretion, in the event Tenant fails to Complete the Initial Tenant Work in a manner sufficient to cause Port to determine the Initial Tenant Work to be Completed by the Outside Completion Date, Tenant shall pay to Port an amount equaling Three Hundred Dollars (\$300.00) per day commencing on the Outside Completion Date and shall continue at such rate until the Completion Date in addition to the Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Force Majeure, Port delays or other reasons.

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

TENANT _____

PORT _____

5. COMPLETION

5.1. Completion.

(a) Issuance Process.

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

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

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

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

(c) **Definition of Completed.** For purposes of this Work, "Completed" means completion by Tenant of all aspects of the Initial Tenant Work as the case may be in accordance with the Project Requirements, and in compliance with all Regulatory Approvals needed for the occupancy and use of the Premises for the Permitted Use or provision of security satisfactory to Port for Deferred Items under Section 5.1(b), and Port's sign off on the Job Card or other

customary documentation of completion by the Port's Chief Harbor Engineer or his or her designee; provided, however, for portions of the Initial Tenant Work where sign off on the Job Card is not applicable (i.e. no building permit is required for such work), written approval from Port, in its proprietary capacity, that such portion of the Initial Tenant Work has been satisfactorily completed in Port's reasonable discretion. The "**Completion Date**" shall mean the date of Port's sign off on the Job Card or the date of the Port's Chief Harbor Engineer's or designee's written approval of completion of the Initial Tenant Improvements; provided, however, for portions of the Initial Tenant Work where sign off on the Job Card is not applicable (i.e. no building permit is required for such work), written approval from Port, in its proprietary capacity, that such portion of the Initial Tenant Work has been satisfactorily completed in Port's reasonable discretion.

6. TERMINATION OF LEASE

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

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

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

7. TENANT IMPROVEMENT ALLOWANCE

7.1. TI Allowance. Upon satisfaction of all the conditions for disbursement of the TI Allowance as set forth in this Tenant Work Letter, Tenant shall be entitled to a one-time TI Allowance in the amount set forth in the Basic Lease Information for the costs relating to performance of the Scope of Work (the "**Initial Tenant Work**"). In no event shall Port be obligated to make disbursements which, in the aggregate, exceeds the TI Allowance. Any unused portion of the TI Allowance remaining as of the date that is six (6) months following the Rent Commencement Date shall revert to Port and Tenant shall have no further right thereto.

7.2. Disbursement of TI Allowance.

(a) TI Allowance Items. The TI Allowance shall be disbursed by Port only for the items and costs described in the Scope of Work (collectively the "**TI Allowance**")

Items”) and upon satisfaction of all of the conditions to disbursement set forth in **Section 7.2** of this Work Letter.

(b) Conditions to Disbursement of TI Allowance. Tenant may request, but in no event more than once in any calendar month, that Port disburse unused TI Allowance for cost of the Initial Tenant Work. Tenant must comply with all of the following conditions in order for Port to authorize the release of funds from the then available TI Allowance for the benefit of Tenant:

(i) Tenant shall have complied with all of the City Controller’s requirements for Tenant to be deemed a City vendor, supplier, or other classification determined by the City Controller to enable Controller to issue Tenant a check for the applicable approved amount or disburse funds to Tenant electronically through systems used by Controller in Controller’s discretion;

(ii) Tenant shall have complied with any other requirements or conditions imposed by the Controller related to disbursement of the TI Allowance to Tenant;

(iii) If any portion of the TI Allowance is funded through federal or other government sources, Tenant will have complied or comply with all conditions and restrictions, if any, on uses of such funds;

(iv) There is no uncured Tenant Event of Default;

(v) Tenant has delivered to Port:

(1) a request for payment to Tenant, substantially in the form attached hereto as **Attachment 3**, showing the schedule, by trade, of percentage of completion of the Initial Tenant Work in the Premises, detailing the portion of the work completed and the portion not completed, and portion of work paid to date by Tenant and portion of TI Allowance received by Tenant from Port;

(2) an invoice from the applicable contractor(s) requesting payment for labor to be rendered and materials to be delivered to the Premises;

(3) evidence of payment to all the applicable contractor(s) where Port has previously disbursed portions of the TI Allowance to Tenant for payment to the applicable contractor(s), including executed mechanic’s lien releases which shall comply with the appropriate provisions, as reasonably determined by Port, of the California Civil Code; and

(4) all other information reasonably requested by Port

(c) City Vendor and Evidence of Payment. Without limiting Tenant’s obligations to satisfy all the conditions to disbursement of the TI Allowance set forth in **Section 7.2** of this Work Letter, Tenant agrees and acknowledges that (i) Port cannot disburse any portion of the TI Allowance to Tenant until Tenant is deemed a City vendor and after the first disbursement of the TI Allowance to Tenant, and (ii) Port will not disburse any further portion of the TI Allowance until Port has received evidence that all previously disbursed TI Allowance to Tenant has been promptly paid to the applicable contractors.

(d) Disbursement of Tenant Allowance. Tenant’s request for payment shall be deemed Tenant’s acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant’s payment request. Thereafter, Port shall deliver a check to Tenant made payable to Tenant in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this **Section 7.2**, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the “**Final Retention**”), and (B) the balance of any remaining available portion of the TI Allowance (not including the Final Retention), provided Tenant has complied with all the conditions to disbursement of the TI Allowance, Port does not dispute any request for payment based on non-compliance of any work with the Final Construction Documents as that term is defined in **Section 3.1** of this Work Letter, or due to any substandard

work, or for any other reason. Port's payment of such amounts shall not be deemed Port's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request. For avoidance of doubt, Tenant shall be solely responsible for further disbursing the TI Allowance and/or otherwise paying all invoices and sums owed to Tenant's Agents directly to such Tenant's Agents.

(e) Final Retention. Subject to the provisions of this Work Letter, a check for the Final Retention payable to Tenant shall be delivered by Port to Tenant following the completion of construction of the Premises, provided that (i) Tenant delivers to Port properly executed mechanic's lien releases in compliance with both California Civil Code Section 8134 and either Section 8136 or Section 8138, (ii) without imposing any duty or obligation to do so, at Port's sole option, Port may inspect to determine if there is substandard work that would adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Premises, the structure or exterior appearance of the Premises, or any other tenant's use of such other tenant's leased premises located in proximity to the Premises, (iii) if applicable, Tenant's architect delivers to Port a certificate, in a form reasonably acceptable to Port, certifying that the construction of the Initial Tenant Work in the Premises has been substantially completed in accordance with the Final Construction Drawings, (iv) if applicable, Tenant delivers to Port a "close-out package" in both paper and electronic forms (including, as-built drawings, and final record CADD files for the associated plans, warranties and guarantees from all contractors, subcontractors and material suppliers, and an independent air balance report), (v) if applicable, Tenant delivers to Port a certificate of occupancy for the Premises and (vi) Tenant has opened for business in the Premises.

(i) Other Terms. Port shall only be obligated to make disbursements from the TI Allowance to the extent funds are available, Tenant has been timely paying the contractors for the work for which the TI Allowance has been paid to Tenant. All TI Allowance Items for which the TI Allowance has been made available shall be deemed Port's property under the terms of this Lease.

ATTACHMENTS

ATTACHMENT 1	SCOPE OF WORK
ATTACHMENT 2	FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND
ATTACHMENT 3	TENANT REQUEST FOR DISBURSEMENT OF TENANT ALLOWANCE

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ATTACHMENT 1
SCOPE OF WORK
[TO BE ATTACHED]

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ATTACHMENT 2

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

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

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

Lease No. xxxxx (the “Contract”)

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

NOW, THEREFORE, we the Principal and

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

(PERFORMANCE BOND)

and

(PAYMENT BOND)

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

(PERFORMANCE BOND)

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

(PAYMENT BOND)

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

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

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

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

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

Approved as to form:
Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Principal

By: _____

Surety

By: _____

END OF DOCUMENT

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EXHIBIT D

RESTAURANT RULES AND REGULATIONS

Updated March 14, 2019

The following are the rules and regulations within which Tenant and all Subtenants of the Restaurant Space or any other Subtenant or operator operating a Restaurant within the Premises (collectively, "Restaurant Operator") shall comply with during the Term.

1. Noise. Sound levels emanating from indoor and/or outdoor activities on the Premises between 10:00 P.M. and 6:00 A.M. daily may not exceed the acceptable noise levels established by the San Francisco Noise Ordinance Police Code, Article 29, except as may be specifically authorized under any special event permit issued by the San Francisco Police Department. Restaurant Operator shall post signs inside the Restaurant Space at appropriate places requesting that patrons leaving the Premises after 10:00 P.M. depart in a quiet, peaceful and orderly fashion and not litter in the neighborhood. Restaurant Operator shall alert the San Francisco Police Department if exiting patrons cause any disturbance. Tenant shall not install an outdoor speaker system for music, announcements or any other purpose without the prior written consent of the Port, which shall be granted or withheld in its absolute discretion.
2. Waste Management. Tenant shall comply with the Mandatory Recycling and Composting Ordinance (Chapter 19 of the San Francisco Environment Code). All waste shall be separated into the following:
 - Compost
 - Recycling
 - Trash/Landfill

Tenant shall ensure that all employees are properly trained to separate compostables, recyclables, and trash. Restaurant Operator must provide source separated collection of compost, recycle, and trash to their employees, contractors and customers. Restaurant Operator must supply appropriate containers, placed in appropriate locations, to make source separation of recyclables, compostables, and trash convenient for the employees, contractors, and customers. Tenant shall provide adequate collection and hauling service of these materials.

The containers must:

- (1) Be of appropriate number and size in light of the recyclable, compostable, and trash quantities reasonably anticipated to be generated at the location;
- (2) Bear appropriate signage and be color coded to identify the type of refuse to be deposited—blue for recyclables, green for compostables, and black for trash and meet any additional design criteria established by regulation; and,
- (3) Be placed as close together as possible to provide equally convenient access to users.
- (4) Tenant shall not use the Port's containers, including Bigbelly containers, for the disposal of compost, recycle, or trash from the restaurant.

All compost, recycle, and trash containers shall be enclosed within an appropriate closet so that such containers are not visible from outside of the buildings, unless directed otherwise

by the Port. Such containers shall not be moved outside the building in advance of actual collection by a refuse or recycling company. Pickups for compost, recycling and landfill waste shall be arranged such that containers are removed directly from the enclosure, emptied, and replaced at the same time. No compost, recycling, or landfill pickups may occur after 8:00 A.M. or before 10:00 P.M.

Tenant shall ensure that all waste materials from their operations are properly managed, contained, and disposed to prevent pest activity. All trash bags shall be placed in waste containers, dumpsters, bins, or comparable. At no time shall Tenant place non-containerized trash bags on sidewalks, streets, in trash enclosures, or in other Common Areas.

Tenant shall adhere to the City's Integrated Pest Management (IPM) Ordinance which governs the way pests are managed on City properties. These requirements include using pesticides / rodenticides as a last resort. Tenant shall not place pesticides / rodenticides on Port property. If Port should so require, Tenant shall use, at Tenant's cost, a pest extermination contractor as directed by Port and at such intervals as Port may require.

Tenant shall pressure wash / steam clean the trash enclosure pavement and any area with debris and / or grease buildup from Tenant waste at Tenant's cost. Pressure washing / steam cleaning shall be performed by Tenant on an as-needed basis. Port may require additional cleaning, at Tenant's cost, to Port's satisfaction. Tenant shall collect all trash / debris prior to cleaning to prevent these materials from entering drain inlets. Only wash water is allowed in the drain. Under no circumstance shall Tenant allow wash water to flow into the Bay.

Tenant shall close and lock all waste containers when not in active use. Tenant shall close and lock fenced trash enclosures when not in active use.

For public health and safety, Tenant shall store all waste materials to prevent removal / scavenging by other persons at all times.

Tenant shall keep all waste bins, containers, dumpsters, and trash compactors clean and in good repair at all times.

Tenant shall be responsible for the separating of waste in compliance with all governmental ordinances including mandated recycling and composting. Tenant shall compost all organic waste materials from their operation.

Tenant shall not overload waste bins prior to transfer.

Tenant shall immediately pick up and properly dispose of any waste that is spilled during transfer.

Tenant shall not burn any trash or garbage in, on, or about the Premises or Common Areas.

3. Wastewater System / Fats, Oil, and Grease (FOG).

Tenant/Restaurant Operator shall not put any fats, oils or grease in trash collection containers or in the sewer system. It is the Tenant's sole responsibility to maintain plumbing system. Tenant shall comply with §140 of the San Francisco Public Works Code.

Restaurant Operator shall be prohibited from:

- installing or using a garbage disposal or garbage grinder.
- disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drain in the kitchen areas.

Tenant shall be required to:

- comply with all directives from the SF PUC regarding the FOG program including:
 - Use an Automatic Grease Removal Device (AGRD) on all sinks, as required.
 - Ensure that all grease removal devices are cleaned at least every 90 days by a grease hauler certified by the California Department of Food and Agriculture.
 - Maintain documentation of service and maintenance records.
 - Develop and implement a written maintenance program for the sewer lines.
4. Litter. Tenant shall be responsible for undertaking the following measures within the exterior portions of the Premises: (i) keep all hardscape areas and sidewalks around the Premises, between the Premises and The Embarcadero and between the Premises and all adjacent properties reasonably clean of debris and litter; (ii) once each day between thirty minutes after closing and 8:00 A.M. the following morning, collect and dispose of any discarded trash and litter; (iii) remove trash and litter from any landscaped areas within the Premises; and (iv) with the permission of adjacent Port tenants enter upon adjacent properties to remove litter thereon originating on the Premises.
 5. Landscaped and Hardscape Areas. Take reasonable precautions to minimize any damage to landscaping and hardscape, if any, from restaurant vendors, service people and patrons.
 6. Traffic. Coordinate all vehicular deliveries, pickups or passenger loading to occur at times and in a manner that will not unreasonably impede the flow of traffic on any City street servicing the Premises, The Embarcadero or interfere with the safe operation of SFMTA vehicles.
 7. Advertising/Signage. Restaurant Operator shall place no temporary or promotional advertising, banners or signs on the interior of the windows on the Premises intended to be seen from the adjacent streets or properties except as may be previously approved in writing by the Port. All exterior signage shall comply with the Port's sign guidelines and is subject to prior written approval of the Port. Tenant shall not install "A frame" or stand-alone signs outside the premises without the prior written approval of the Port.
 8. Compliance with Rules. Restaurant Operator shall take commercially reasonable efforts to cause all vendors, service persons and patrons to comply with the applicable Restaurant Rules and Regulations.
 9. Changes. The Port reserves the right at any time and from time to time to change or rescind any one or more of these rules and regulations or to make such other and further rules and regulations as the Port shall determine is in the best interest of the Common Area, the Tenants, their business, and Agents and Invitees. In the event of any conflict between these or any modified rules and regulations and the Lease, the terms and provisions of the Lease shall prevail.

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EXHIBIT E

LOCAL HIRE PLAN

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EXHIBIT F

MONTHLY PERCENTAGE RENT STATEMENT

[Attachment on following page]

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EXHIBIT G

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 the Lease is _____, 20__.
5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by Port under the terms of the Lease is \$_____ and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned’s 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:

SCHEDULE 1

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

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SCHEDULE 2

SUBSTRUCTURE REPORT(S)

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SCHEDULE 3

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

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

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

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. 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.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:
<https://sfport.com/flood-plain-management-program>

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

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SCHEDULE 4
HAZARDOUS MATERIAL DISCLOSURE

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MEMORANDUM

February 21, 2025

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of a proposed new lease with Everett & Jones BBQ SF International, LLC, a California limited liability company (“Everett & Jones”), for approximately 4,363 square feet of a two-story restaurant space located at 300 Jefferson Street for a term of 10 years with two five-year options to renew, subject to Board of Supervisor’s approval.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 25-11

EXECUTIVE SUMMARY

On July 12, 2022, the Port Commission adopted Resolution No. 22-37 approving the Interim Broker Policy (Policy), allowing Port staff to select a commercial retail broker to support the marketing and leasing of critical retail locations that had become vacant during the pandemic.

On June 13, 2023, the Port Commission adopted Resolution 23-29, authorizing Port staff to pursue new tenants for certain retail vacancies through a broker-assisted competitive bidding process. Following the process outlined in the Policy, staff selected Maven Commercial (“Maven”) to market the vacant 300 Jefferson Street restaurant space on behalf of the Port¹. The Agreement for Brokerage Services for 300 Jefferson

¹ Agreements for Broker Services for 490 Jefferson Street (vacant office), 2829 Taylor Street (former Alioto’s), and 340 Jefferson Street (former Pompeii’s) were also authorized. Marketing for all four properties commenced at the same time.

Street (“300 Jefferson”) was executed on November 21, 2023.

In early 2024, Maven undertook an extensive marketing campaign for 300 Jefferson and proactively reached out to more than one hundred restaurateurs and retailers through direct calls, sent out more than 2,000 email solicitations to the retail brokerage community, restaurateurs, retailers, bars, and cafes, and ultimately conducted over 35 tours of the property with some prospects making multiple visits.

After assessing interest and qualifications, Maven identified five viable proposals for 300 Jefferson to advance to a selection panel process. The concepts varied and included barbeque and live music, a fast-casual chicken concept, a bar and nightlife dinner theater, southern Cajun food, and a robot music/bar. The experience of the operators and financial capacity to perform varied significantly across the proposals. The financial metrics of the proposals were based on Maven’s input on market conditions and similar lease rate and structure transactions.

Port staff convened a selection panel to review and rank the proposals based on the formal criteria approved by the Port Commission described in Resolution 23-29 and in the Selection Process section of this staff report below, and unanimously selected Everett & Jones as the leading proposer for Port to enter into lease negotiations. Everett & Jones is a proven BBQ purveyor in Oakland and has experience with multi-site operations. The Everett & Jones location near Jack London Square is the “flagship” and well known as a community gathering point and offers music in the evenings. Their BBQ concept is a new offering for Fisherman’s Wharf which tends to focus on seafood.

Port staff believe Everett & Jones will be an excellent addition to Port’s restaurant community in terms of concept and experience. The lease will be an additional step towards economic recovery for Fisherman’s Wharf, generating an average of \$152,000 per year in base rent (estimated to be \$1.82 million over the term) to Port plus the possibility of percentage rent. When the restaurant opens, it will fill a void for a full-service restaurant on Jefferson Street in Fisherman’s Wharf, serving locals and visitors alike.

STRATEGIC PLAN ALIGNMENT

A new restaurant at 300 Jefferson will support Port’s following Strategic Objectives:

Economic Recovery:

The 300 Jefferson restaurant space has been vacant for approximately four years. Successful activation of this space by an experienced operator will generate new, stable income for the Port.

Economic Growth:

Port investment in tenant improvements at 300 Jefferson will improve the value of the property, increase the likelihood of success for the new operator, and catalyze increased investment in Port property.

Equity:

The new restaurant tenant at 300 Jefferson presents an opportunity to feature a well-known and successful African American-owned business expanding from Oakland to San Francisco, expose visitors to Fisherman’s Wharf to a more diverse offering of food, will introduce a live music opportunity for local artists, and will provide new employment opportunities in the district.

Engagement and Public Awareness:

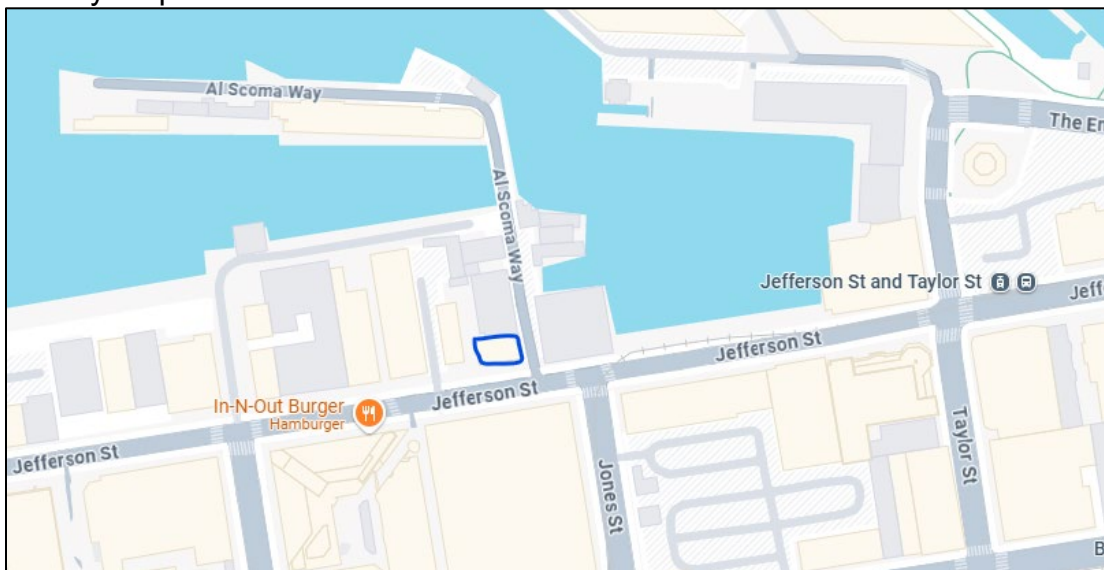
The reopening of 300 Jefferson with Everett & Jones will re-invigorate Jefferson Street and introduce a new food concept for Fisherman’s Wharf that should attract both locals and tourists. Their business plan includes live music, with a focus on blues, jazz, and R&B will create an inviting and lively atmosphere.

BACKGROUND

The restaurant space at 300 Jefferson was in operation for many years, most recently as “Lou’s Fish Shack”, but has been vacant since Lou’s ceased operations in March 2020 with the onset of the COVID pandemic.

This site fronts Jefferson Street between Al Scoma Way and 360 Jefferson Street, the major tourist thoroughfare between Pier 39 and Ghirardelli Square. This location is close to hotels, tourist attractions, various local businesses, and residential neighborhoods. The space has a full kitchen with two bars and dining on two floors. The upper floor has been used for live music in the past. The premises are approximately 4,363 sq. ft. See below vicinity map with the premises circled in blue.

Vicinity Map



On July 12, 2022, the Port Commission approved the Interim Broker Policy, allowing Port staff to select a commercial retail broker to support the marketing and leasing of critical retail locations that had become vacant during the pandemic. Staff selected Maven to market this location as well as 490 Jefferson St. and the spaces previously occupied by Alioto's and Pompeii Grotto.

Representative photo of Lou's Fish Shack before it closed in 2020:



Source: SFGATE

Maven's efforts for 300 Jefferson included:

- Listing the property on CoStar, Crexi (an online listing site), and others, along with the Maven website, including an Instagram advertisement for social media exposure.
- Direct calls to more than 100 people in the restaurant industry including owners, chefs, and tenant rep brokers.
- Contacting multiple local chambers and various parties who had previously indicated an interest in Port restaurant locations.
- Contacting approximately 2,000 people through emails, flyers, phone calls, and network outreach.
- Posting marketing flyers on the Maven and Port websites. An advertisement was also posted on Instagram, exposing the property on social media.
- Maven and Port public relations teams successfully launched a news story in the San Francisco Chronicle about this and other Fisherman's Wharf restaurants coming to market.

Maven's outreach process resulted in five letters of intent which were vetted by Maven and presented to a selection panel consisting of two Port staff not involved in the leasing process and one outside consultant.

SELECTION PROCESS

A date for submission of proposals was set for July 28, 2023, and five submissions were received. Maven summarized the business terms submitted by each proposer and provided a recommendation for consideration. The selection panel reviewed the proposals, conducted virtual interviews with the five candidates, and ranked them accordingly. Proposals were scored on a 100-point scale using the following evaluation criteria:

Proposed Concept – 20 points

- Quality and suitability of proposer's concept to meet Port objectives
- Proposed Operations Plan, including hours, menu and pricing, staffing, customer satisfaction
- Marketing plan to drive sales/revenues

Proposed Design – 20 points

- Conceptual layout of proposed use
- Overall appeal of interior and exterior design, signage, outdoor dining
- Requested TI allowance and use of funds (Landlord contribution)

Experience and Financial Strength – 20 points

- Experience owning and operating restaurants
- Annual Operating Statements and Balance Sheets 2019-2023 (as applicable)
- Capital investment plan, including proposer's source and availability of funds
- Credit Rating

Proposed Rent and Business Plan – 25 points

- Base rent, including growth
- Percentage rent, breakpoints
- Five-year financial pro forma

Local Business Participation & Diversity Equity Inclusion Program – 15 points

- Proposed plan to meet Port's LBE and Diversity Equity Inclusion goals

Most prospects did not address every listed element, so the panel based its selection on the information provided. Key factors included the concept and operations plan, designs and concepts, experience, base rent, business plan (including rent and tenant improvement allowance), and goals for LBE and Diversity, Equity, and Inclusion. All the prospects submitted letters of intent on a standardized basis allowing side-by-side comparisons of each proposal. The Panel found the information provided sufficient data to evaluate each proposal.

OUTCOME

The highest-scoring proposal was submitted by Everett & Jones, an iconic restaurant in Oakland, California. Everett & Jones scored 87 points².

Other prospects, not including names, were:

- Fast-casual chicken concept: 79 Points
- Live theater restaurant/bar: 64 Points
- Southern Cajun Cuisine: 58 Points
- 1920's Bar/Music Concept: 40 Points

Staff determined the Everett & Jones proposal exceeded the criteria set forth in Resolution 22-38. In addition to being a qualified proposer, Port staff believe the proposed concept, partnership, experience in successfully operating two restaurants in Oakland and one in Antioch, and commitment to developing a robust community engagement plan represents a viable and attractive addition to the Port.

EVERETT AND JONES BACKGROUND

Everett & Jones is known for its traditional Southern-style barbecue. It was founded in 1973 by Dorothy King, known as "Mama" Dorothy, along with her eight daughters and one son, in the Jack London Square neighborhood in Oakland, CA. The restaurant's offerings came from her family recipes and a passion for serving good food.

The family saw a need for a Southern barbecue in the Bay Area and worked to open the restaurant in Oakland. The family expanded their operations and opened additional locations in Oakland and Antioch. The first Oakland location, near Jack London Square, became well known for barbecue lovers and is a staple for the community.

Everett & Jones is identified by its smoked meats, including ribs, brisket, and chicken, along with classic Southern sides such as cornbread, mac and cheese, collard greens, and baked beans. Everett & Jones developed signature sauces, ranging from mild to extra hot, which are sold in stores and online.

The first Oakland restaurant hosts live music, with a focus on blues, jazz, and R&B leading to close ties to the Oakland community. The family has consistently been involved in charity work, fundraising for local schools, supporting local events, and maintaining a presence in the cultural and social fabric of Oakland.

The restaurant has received significant recognition over the years, both locally and nationally. It has been featured in food and culture publications and continues to be a highly rated destination for locals and tourists alike.

² This is based on the average of three panelists scores.

Port staff conclude Everett & Jones will be a good addition to Fisherman's Wharf by adding cuisine that has not been available in the neighborhood and has a good likelihood of success.

The San Francisco Office of Economic and Workforce Development "OEWD" has been supporting Everett & Jones through this process. OEWD is also assisting Everett & Jones through the process to become a "City Vendor" allowing direct payment from Port to Tenant for eligible tenant improvements. City Vendor status also makes Everett & Jones eligible to participate in CCSF catering opportunities.

LEASE TERMS

The proposed essential business terms for Lease No. L-17180 between Port and Everett & Jones for the 300 Jefferson space are as follows:

Term

Ten (10) years with two five-year options to extend

Base Rent

- Free Rent Period: Lesser of 180 days or date Everett & Jones opens to the public
- Year 1 - 5% of Gross Revenues, but no less than \$10,000/mo
- Year 2 - \$13,000 per month; \$2.98 psf/mo; \$35.76 psf/yr
- Year 3 - \$14,500 per month; \$3.32 psf/mo; \$39.84 psf/yr
- Three Percent (3%) increases thereafter

Percentage Rent

Five percent (5%) of Gross Revenues in Year 1 and six percent (6%) thereafter

Minimum Gross Sales Threshold

If Tenant fails to achieve \$2.9 million in gross sales (\$665 psf) by the end of the third lease year, either party has the right to terminate the lease.

Tenant Improvement Allowance

Port to provide \$800,000 (~\$183 psf) as a tenant improvement allowance funded by the Tenant Activation and Retention Fund ("TARF") allocation through the American Rescue Plan Act of 2021 ("ARPA") and other non-Harbor Fund sources. The allowance will be paid directly to Tenant for work to be performed by contractors after Port receives copies of invoices from contractors. Tenant is required to provide evidence of payment to applicable contractors as a condition for Port to make further payments from the tenant improvement allowance. Everett & Jones is required to register as a "City Vendor" to receive payment from Port through the City Controller's office.

A copy of the proposed Lease No. L-17180 is on file with the Port Commission Secretary.

RECOMMENDATION

Port staff recommend that the Port Commission accept Everett & Jones as the successful proposer for 300 Jefferson and approve the attached resolution authorizing the Executive Director to enter proposed Lease No. L-17180 between Port and Everett & Jones and authorize the Executive Director to forward the Lease to the Board of Supervisors for approval and upon the effectiveness of such approval, authorize the Executive Director or her designee to execute the Lease.

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

Through: Kimberley Beal, Assistant Deputy Director
Real Estate and Development

For: Scott Landsittel, Deputy Director
Real Estate and Development

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

RESOLUTION NO. 25-11

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate, and control the Port area of the City and County of San Francisco; and
- WHEREAS, The Port Commission adopted Resolution Nos. 23-28 and 23-29 on June 13, 2023, which authorized the payment of Broker Commissions under the Broker Payment Policy (“Policy”) and authorized Port staff to pursue tenants for certain space in a broker-assisted competitive bidding process respectively; and
- WHEREAS, Port hired Maven Commercial in November 2023 to pursue a new tenant for 300 Jefferson Street under a broker-assisted competitive bidding process; and
- WHEREAS, The broker assisted competitive bidding process was completed in May 2024 and a Port constituted panel selected Everett & Jones BBQ SF International, LLC a California limited liability company (“Everett & Jones”) as the top prospect for 300 Jefferson Street; and
- WHEREAS, Everett & Jones is a proven BBQ purveyor in Oakland and has experience with multi-site operations. The Everett & Jones location near Jack London Square is well known as a community gathering point and offers music in the evenings. Their BBQ concept is a new offering for Fisherman’s Wharf which should draw locals and tourists; and
- WHEREAS, The proposed terms for Lease No. L-17180 (“Lease”) at 300 Jefferson Street with Everett & Jones are described in the staff report accompanying this Resolution and set forth in the Lease, a copy of which is on file with the Port Commission Secretary; now, therefore it be it
- RESOLVED, The Port Commission hereby approves the terms of the Lease at 300 Jefferson Street with Everett & Jones as described in the staff report accompanying this Resolution and set forth in the Lease, a copy of which is on file with the Port Commission Secretary; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director or her designee to forward the 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 Lease; and be it further

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

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 25, 2025.

DocuSigned by:

Secretary
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MEMORANDUM

June 9, 2023

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

FROM: Elaine Forbes
Executive Director 

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

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

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

EXECUTIVE SUMMARY

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

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

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

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

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

STRATEGIC OBJECTIVE

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

BACKGROUND

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

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

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

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



*FY2019 and FY2021 total spans the months of July - February for comparison purposes.

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

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



Status of Locations Requiring New Tenant Solicitation

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

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

Port of San Francisco
5/3/23

STRATEGIES AND ACTIONS TO DATE

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

1. **Base rent relief.** Offered base rent relief between March 2020 and April 2021 to tenants who opened for business.
2. **Tenant workouts.** Port staff in constant communication with tenants, asking for plans to reopen and negotiating mutual termination agreements (four since 2021).
3. **Legal notifications and action.** As required, Port staff have sent notices of default and 3-day notices when necessary and are pursuing possession of the property and rent through court action.
4. **Two broker-managed solicitations** underway began marketing in January 2023.
 - a. Pier 33 ½: Broker developed and sent marketing materials to a variety of industry organizations¹ and nearly 1,000 restaurant operators and has conducted 9 tours of the site.
 - b. Ferry Plaza East Building: Broker developed and sent marketing materials to 1,030 recipients including San Francisco brokers, restaurants, and restaurant/hospitality groups, has taken 6 groups on tours of the site, and will host an open house on site in June.

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

5. **Tenant improvement budget.** As part of federal stimulus funds, the Port has approximately \$8 million in funds that must be spent on tenant improvements for an economic return to the Port by 2026. The Port may also seek to draw upon other economic recovery funds currently on budget reserve.
6. **Clarity on exemption on Chapter 6 public contracting rules for tenant-led projects.** This exemption for tenant-led projects approved by the Port Commission in February 2023 was approved by the full Board of Supervisors on May 2, 2023.

CHALLENGE AHEAD

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

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

APPROACH

The competitive landscape for F&B and retail/attraction leasing is challenging. The City has approximately 3.1 million square feet of F&B and retail/attraction space available² and private landlords are offering substantial leasing incentives (turnkey spaces, free rental periods, generous tenant allowance budgets, and percentage rent-only periods, among others). Port staff is taking strategic steps to position Port sites and be nimble to market dynamics. Specifically, the staff is supervising the two broker-managed solicitations and developing a Fisherman's Wharf Retail Strategy with a consultant team. The solicitation strategy, described below, reduces barriers to new businesses for these vacancies, is open-ended and opportunistic, and relies on the assistance of retail and F&B specialists.

Port Staff Ongoing Work

Learn from Ongoing Broker-Managed Solicitation Process

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

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

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

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

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

Specific to Fisherman's Wharf, Port staff are taking the time to make strategic moves, with an appropriate level of urgency as several spaces have been shuttered since the pandemic. Port staff began work in May with a consultant team on an intensive, two-month scope to enhance our understanding of the visitor experience (attractions, activities, public realm) and business attraction opportunities for the Wharf. The strategies will consider the current offering for visitors and recommend complementary offerings and new experiences. The work will include interviews, case studies, and property analysis and will result in near-, mid-, and long-term strategies for the Wharf. Port staff will connect this work to the proposed near-term investment in activation and clean and safe work described in the Fisherman's Wharf Community Benefit District grant staff report.

Solicitation Strategy for Multiple Vacant Locations

Based upon the work to date, the state of the market for F&B and retail/attraction leasing, and the Port's previous experiences with traditional Requests for Proposals, Port staff recommend the following solicitation strategy for multiple vacant locations:

1. ***Seek short-term activations.*** Port staff will market vacant sites for short-term licenses or leases to attempt to reactivate shuttered sites while marketing the sites for new tenants. Adoption of the attached resolution will allow Port staff to seek proposals for activations by issuing a request for proposals for short-term activations up to 2 years including indoor areas of vacant F&B and retail/attraction locations. Pursuant to the resolution, Port staff will offer proposers with minimum qualifications (duly organized entities, with experience successfully managing an activation like the one proposed) a short-term license (or lease) on Port's form document. The resolution provides for rental rates equal to no less than 6% participation in gross sales, with abatement periods allowed that are equal to significant start-up costs. "Significant start-up costs" include building system repairs (i.e., plumbing, lighting, HVAC, etc.), infrastructure improvements, life safety improvements, and improvements needed to obtain a certificate of occupancy. Bidders will be encouraged to include in their proposals a plan to meet Port's LBE and Diversity, Equity, and Inclusion goals. Possible examples are through the ownership structure, a commitment to LBE vendors, or with a program or menu which caters to local communities.
2. ***Reduce barriers for businesses to open at the Port.*** Provide clear and informative marketing materials so businesses are aware of the benefits of the Port's property (e.g., foot traffic & vibrancy, views, and access to low-cost and streamlined ABC permits); market broadly and deliberately reach out to associations representing local and small businesses; revamp the RFP process with specialized consultants or brokers that businesses are accustomed to relying upon; and offer tenant improvement allowances from stimulus source, so long as there is an acceptable return on the investment. Port staff anticipates these marketing efforts will provide opportunities to bring minority businesses to the Waterfront, advancing the Port's Diversity, Equity, and Inclusion goals.

3. ***Use specialized, professional support including brokers.*** Expand broker usage beyond the two current locations (Piers 33 ½ and Ferry Plaza East). Port staff may also use hourly consultant assistance to prepare marketing materials, track and respond to prospects, tour the facilities, analyze potential tenant entities and concepts for financial feasibility and financial capacity, and complete facility assessments, among other tasks. Using this professional expertise is critical both from a competitive lens (as the method by which nearly all landlords find tenants and tenants identify leasing opportunities) and from a staff capacity viewpoint (existing staff resources cannot manage multiple competitive processes).
4. ***Provide clear guidance on desired outcomes via criteria. Attachment 1*** contains an amended version of the criteria approved by the Port Commission for Piers 33 ½ and Ferry Plaza East (including additional points for the plan to advance Diversity, Equity, and Inclusion goals and fewer for project design). These approved criteria effectively represent the Port's mission and values in tenant selection and Port staff recommend them, with tailored language for each site's physical conditions, for other vacant sites.
5. ***Integrate flexibility into process.*** Consulting with outside professionals, flexibly assess and respond to how the market receives each site. For example, if a site is oversubscribed with interest, call for tenant offers and move to score against criteria. Alternatively, if a site receives little interest, delay any planned request for proposals, but be prepared to start again with a revised outreach plan and marketing materials.
6. ***Feedback loop with Port Commission.*** Provide updates to Port Commission as Port staff sign short-term activation licenses or leases and, as part of any recommended new lease, including in the staff report a summary of requests for proposals, proposals received scores for proposals and proposed lease/license terms.

CONCLUSION

The Port is challenged with vacancies since Covid-19. This staff report summarizes the staff's ongoing and proposed actions to meet these challenges with near- and mid-term solutions for attracting and retaining new tenants. **Attachment 2** illustrates how these steps may occur over time.

REQUESTED ACTION

Port staff seek Port Commission approval of the attached resolutions to facilitate solicitations that reduces barriers for new tenants, are open-ended and opportunistic, and rely on the assistance of retail/attraction and F&B specialists, as other landlords do. The attached resolutions include:

1. Resolution 23-28, Broker Fees and Commissions: Allows the payment of broker fees and commissions for vacant F&B and retail/attraction spaces under the Broker Policy attached to the resolution. Note, this Broker Policy is similar to the one adopted in July 2023 (Resolution 22-37, for Piers 33½ and Ferry Plaza Building East).³
2. Resolution 23-29.
 - a. Authorizes Port staff to either directly or jointly with a broker or a consultant issue multiple solicitations, subject to the criteria for new tenants for vacant retail/attraction and F&B spaces (see **Attachment 1**). Potential tenants identified through this method will be brought to the Port Commission for consideration and Port staff will provide updates on the solicitation process through the monthly leasing report Port Commissioners receive from the Port's Real Estate & Development Division. Under the resolution, Port staff are authorized to solicit for a new tenant through this process for the sites listed in this staff report and for other F&B and retail sites (such as Kneass Building and the former deli and dry cleaner sites at 10 Lombard and 50 Lombard respectively or other restaurant sites that are vacated in the future).
 - b. Authorizes Port staff to enter short-term licenses or leases (for up to two years) for activations of F&B and retail/attraction properties, subject to the following process and conditions:
 - i. Issuance of a request for proposals, similar to the Pop Up Request for Qualifications issued in 2019, but specifically for indoor vacant F&B and retail/attraction locations.
 - ii. Similar to the Pop Up RFQ, Port staff will review responses for minimum qualifications (i.e., duly organized entity with experience successfully managing an activation similar in nature to the one proposed).
 - iii. Port staff will enter into standard form license (or lease) agreements, with the following financial terms: (1) Not less than 6% participation in gross sales from activation and (2) Abatement of such participation for a period commensurate with licensee or tenant's "significant start up" costs for the activation.
 1. "Significant start up" costs for the activations that warrant participation rent or fee abatement include building system repairs, (i.e. plumbing, lighting, HVAC, etc.), infrastructure improvements, life safety improvements, or improvements needed to obtain a certificate of occupancy. Port staff anticipate activating buildings that have been vacant for several years may have significant start-up costs.

Prepared by:

Jennifer Gee, Senior Property Manager

³ Changes to the policy include: (i) edits to tenant registration process wherein brokers provide Port information about tenant prospects; (ii) clarification of responsibility for commission payments for current tenants or potential tenants identified by the Port.

Don Kavanagh, Senior Property Manager
Sandra Oberle, Senior Property Manager
Real Estate & Development

For: Kimberley Beal, Acting Deputy Director
Real Estate & Development

Attachments: Attachment 1 - Criteria
Attachment 2 - Potential Process for Short-Term Activation and
New Lease Solicitations
Attachment 3 - Prior RFP Processes & Result

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

RESOLUTION NO. 23-28

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

WHEREAS, Between December 1993 and April 2007, the Port Commission allowed payment of brokers' commissions pursuant to Resolutions 93-151, 95-80, and 97-98. In April 2007, the Port Commission rescinded the ability to pay brokers' commissions based on the low property vacancy rates at the time and overall market conditions under Resolution 07-29. In July 2022, the Port Commission adopted Resolution 22-37, rescinding Resolution 07-29's prohibition on payment of brokers' commissions and adopting a broker commissions policy for Piers 33½ and Ferry Plaza East Building; and

WHEREAS, The COVID-19 pandemic has impacted the San Francisco commercial real estate market in many aspects, including significant declines in office commuters and leisure, business convention, and tourist populations, which has led to increased retail and restaurant vacancies and reduced gross sales for such businesses, particularly in visitor-serving districts, as described in the staff report accompanying this resolution; and

WHEREAS, The Port has a large number of vacant restaurants and retail sites, limited staff capacity, and must compete with landlords offering an array of incentives to lease space and would benefit from specialized retail and restaurant professional services including from brokers to assist in marketing, vetting, and negotiating with new tenants; and

WHEREAS, Based on continued weak market conditions, vacancies to lease relative to Port's staff capacity, and the advantages of broker assistance to the Port by way of increases in marketing, analysis of tenant proposals, and access to relevant market data among other benefits, Port staff recommend allowing the payment of broker commissions and fees for any retail or restaurant site at the Port, subject to the conditions and limitations set forth in Attachment A to this Resolution (the "Broker Policy"); now, therefore, be it

RESOLVED, That the Broker Policy attached to this Resolution as Attachment A is hereby adopted.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 13, 2023.

DocuSigned by:

Secretary
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ATTACHMENT A Broker Policy

In order that the Port may compete more effectively in the commercial leasing market, the Port Commission desires to establish a Broker Policy to fill vacancies at restaurant and retail/attraction properties and for payment of brokers' commissions and fees to licensed brokers hired directly by the Port or hired indirectly through other departments or divisions of the City, for services in procurement of tenants to lease Port properties as set forth below.

1. **Valid Contract Required.** A fully executed City-Broker contract is required. Submission of a letter of interest from a prospective tenant or any other expression of interest by a prospective tenant to lease or license Port property does not qualify for payment of broker's commission or fee. Any obligation by Port to pay the broker's commission arises only when a lease or license is signed, any applicable deposit is made, and sufficient rent is clearly achievable to cover a substantive portion of the brokerage commission as negotiated.
2. **Sole Determination of Port to Lease.** The determination of when and if a property of the Port should be leased or licensed, and the terms thereof, are decisions to be made solely and exclusively by the Port and no obligation is imposed upon the Port to pay any commission because a broker presents to the Port a proposal for the lease or license of Port property. The Port's decision to enter into a lease may be based on the proposed use, the financial offer, the creditworthiness of the prospective tenant, and any other factors deemed relevant in the Port's sole discretion.
3. **Prerequisite of Valid Broker Contract.** There must be a valid City Attorney-approved broker contract either (a) between the Port and the broker or brokerage firm or (b) between the City and broker or brokerage firm, should the Port elect to participate in that department's contract with the approval of that department.
4. **Prerequisite requiring submittal of written confirmation of brokerage signed by both Broker and Prospective Tenant.** At the time a broker presents a prospective tenant to the Port, both the broker and prospective tenant must submit to the Port written confirmation stating that the broker is the prospective tenant's sole and exclusive agent concerning the subject property. If the prospective tenant leases or licenses property when the Port does not call for bids or proposals, a commission computed in accordance with Sections 6 and 7 below shall be paid to the broker if otherwise allowed pursuant to this policy. A broker is entitled to a commission for the lease or license of Port property only if both the broker and the prospective tenant have previously submitted the confirmation required by this Section 4 and a fully executed broker contract is in place.
5. **Broker Commission Payment Structure:** Broker commissions will be paid up to and through the initial term of the lease only, excluding any lease renewals or option terms, and will be established at competitive market rates, as affirmed by

the City's Real Estate Division. Broker commission rates are expected to be between approximately 4% to 7% of the total base rent due for the initial term of the lease or license.

6. **Manner of Payment and Payment Sources.** Broker commissions are intended to be paid from rents the Port collects under the applicable lease the broker helped procure and/or any other funds the Port authorizes to pay Broker commissions and fees. Port may pay broker commissions monthly or quarterly basis or as negotiated.
7. **Limitations on the Payment of Commissions.**
 - (a) No commission shall be payable for leases or licenses awarded pursuant to a Port Commission request for bids or proposals for long-term tenancies.
 - (b) No commission shall be payable in any case where a prospective tenant of Port property is identified in the broker contract as a party previously identified by the Port as a prospective tenant.
 - (c) No commissions shall be payable for renewals or extensions of leases, licenses, or other new lease or license agreements with current Port tenants.
 - (d) No commission shall be payable in any case where the broker has a direct or indirect proprietary interest in the prospective tenant, as determined by Port.
 - (e) If a lease or license is granted by the Port to a prospective tenant represented by a third-party broker not affiliated with the Port, and the lease or license grants to the tenant:
 - (1) An option to expand the premises, the commission shall be calculated only on the rentals for which the tenant has an absolute obligation and shall not include rentals that may become due if the tenant exercises its option; or
 - (2) An option to extend its term, the commission shall be calculated only on the term prior to the time when such term may be extended; or
 - (3) A right to cancel or terminate the lease or license at the tenant's discretion at some time during its term, the commission shall be calculated only on the term prior to the time when the lease or license may be canceled or terminated.
 - (f) If a prospective tenant has previously contacted the Port regarding the lease or license of the property in question, the right is reserved and retained by the Port, in the Port's sole discretion, to identify the party in the broker contract and decline to pay a commission to a broker allegedly representing such party.

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

RESOLUTION NO. 23-29

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate, and control the Port area of the City and County of San Francisco; and
- WHEREAS, The Port has several vacant retail and food and beverage properties today and anticipates more in the near future and wants to offer properties for lease through a competitive solicitation process in recognition of the recent market changes brought on by the COVID-19 pandemic; and
- WHEREAS, The Port Commission rescinded Resolution 07-29 (prohibiting payment of brokers' commissions) and adopted a new broker policy allowing payment of brokers' commissions and fees (the interim "Broker Policy") as detailed Resolution No. 22-37 and on June 13, 2023, the Port Commission adopted Resolution No. 23-28, a Broker Policy allowing payment of broker fees and commissions to find tenants to fill vacancies at food and beverage, restaurant, and retail locations; and
- WHEREAS, Under City and Port policy, retail leasing opportunities must be publicly bid, including for the sites listed in the staff report accompanying this resolution; and
- WHEREAS, Port staff wishes to request bids to lease or license on a short-term basis, the sites listed in the staff report accompanying this resolution through a broker-assisted, competitive solicitation process using the criteria described in the staff report; and
- WHEREAS, Prospective tenants or bidders will be encouraged to include in their proposals a plan to meet the Port's LBE and Diversity Equity and Inclusion goals; and
- WHEREAS, The proposed offerings and the submission of proposals to lease any Port property do not commit the Port Commission to approve a lease;
- WHEREAS, Port Commission approval of any lease or license of Port property will require the completion of applicable environmental review in compliance with the California Environmental Quality Act; and
- WHEREAS, Ongoing concerns due to vandalism and maintenance costs for untenanted properties, combined with the economic costs that vacant properties exact on neighboring businesses, the Port would benefit from reactivation of sites as quickly as feasible, and

WHEREAS, The Port wishes to encourage the near-term activation of vacant food and beverage and retail sites by issuing a request for proposals for short-term activations up to two years; now, therefore, be it

RESOLVED, That the Port Commission has reviewed the criteria in the accompanying staff report to this resolution and authorizes Port staff to issue and/or pursue new tenants using a broker-assisted, competitive solicitation process in accordance with the Broker Policy in order to lease the subject properties as described herein and in the staff report accompanying this Resolution, and be it further

RESOLVED, That the Port Commission authorizes Port staff to issue a request for proposals for short-term activations up to two years, to review proposals, and to offer those proposers meeting minimum qualifications standard form license (or lease) agreements, with the following financial terms: (1) Not less than 6% participation in gross sales from activation and (2) Abatement of such participation for a period commensurate with the licensee or tenant's "significant start-up" costs for the activation; and now be it further

RESOLVED, That the Port Commission authorizes Port staff to take further actions in connection with the offering as necessary to achieve the purposes described in this Resolution, and be it further

RESOLVED, That Port staff is directed to return to the Port Commission to report on the progress of these offerings as described in the staff report accompanying this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of June 13, 2023.

DocuSigned by:

Jenica Liu

Secretary

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Attachment 1 – Criteria

Port staff recommends the following criteria for evaluating the proposals:

Proposed Concept – 20 points

- Overall appeal of proposer’s concept to meet Port objectives
- Proposer’s plan for marketing to increase patronage and drive sales/revenues
- Proposed operations plan, including hours of operation, menu, pricing, staffing, sourcing of products and services, and how to maintain customer satisfaction

Proposed Design –10 points

- Overall appeal, interior design, exterior design if applicable, signage, floor plan, front elevation, and images depicting interior and exterior

Experience and Financial Strength – 25 points

- Documented experience operating the type of operation proposed
- Annual gross revenue for calendar years 2018 through 2022 of operation, as applicable
- Balance Sheet and Credit Rating
- Capital investment plan, including sources of capital funding

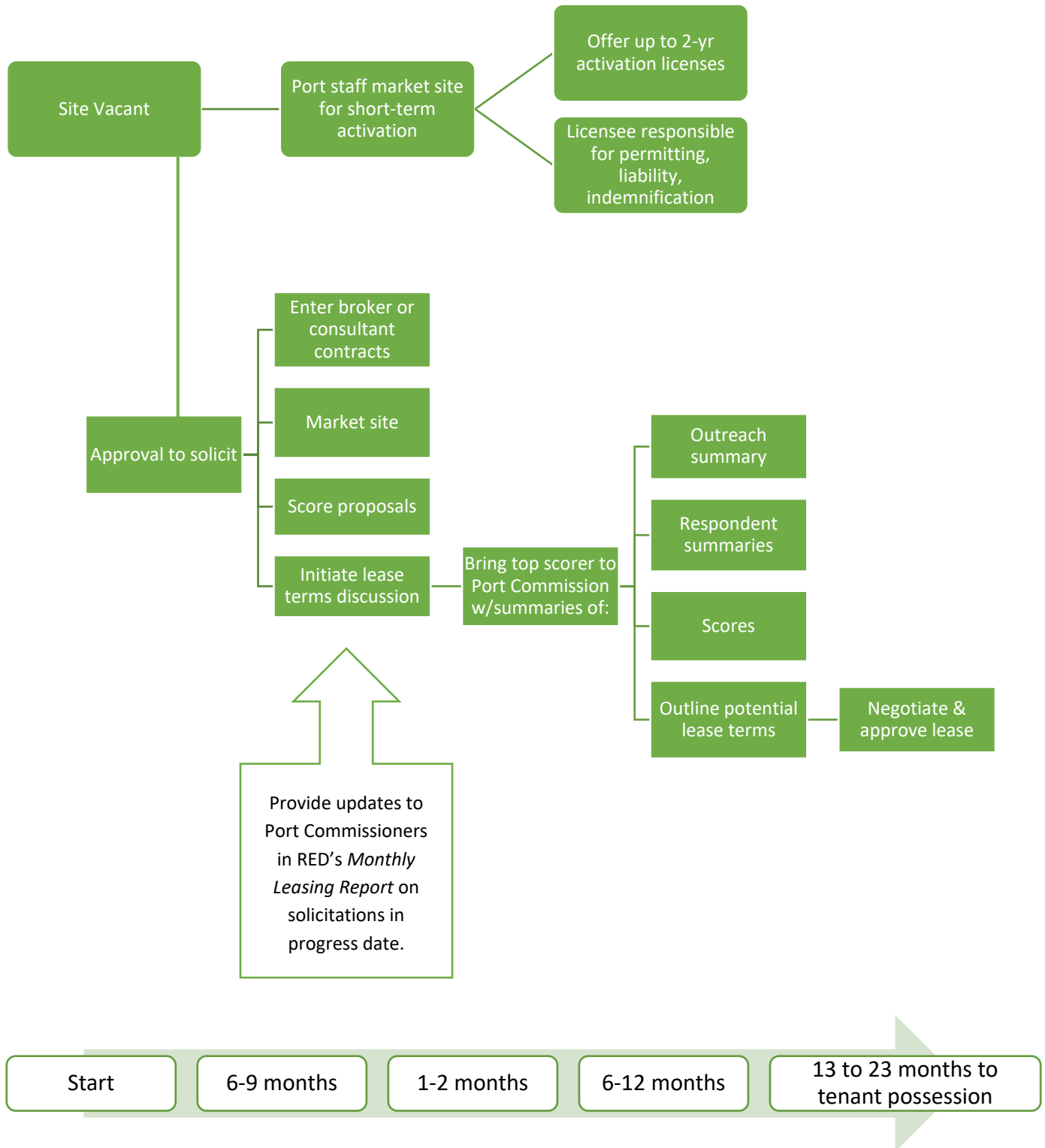
Proposed Rent and Business Plan – 25 points

- Proposed base rent
- Proposed percentage rent
- Five-year financial pro forma with projected sales, revenue to the Port, expenses, and net income, with a demonstrated ability to fund continuing operations from the cash flow generated by the operation

Local Business Participation & Diversity Equity Inclusion Program –20 points

- Proposed plan to meet Port’s LBE and Diversity Equity Inclusion goals

Attachment 2 – Potential Process for Short-Term Activation and New Lease Solicitations



Attachment 3 – Prior F&B and Retail RFP Processes & Result

Year Issued	Site	Result
2021	Building 49	Lease approved by Port Commission
2021	Kneass Building	No respondent selected
2017	Pier 33 ½ (former Butterfly space)	Respondent selected, no lease
2017	Pier 40 restaurant (former Carmen's space)	No respondent selected
2016	Pier 29 Bulkhead	Respondent selected, no lease
2012	295 Terry Francois Blvd	Respondent selected, failed to come to terms; Negotiations successful with the second bidder, lease approved and in operation as Atwater Tavern



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
 Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 250213

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4
 (S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
 A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Don Kavanagh	(415)274-0501
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PRT Port of San Francisco	don.kavanagh@sfport.com

5. CONTRACTOR	
NAME OF CONTRACTOR Everett & Jones BBQ	TELEPHONE NUMBER (510)663-2350
STREET ADDRESS (including City, State and Zip Code) 300 Jefferson Street, San Francisco, CA 94133	EMAIL eandjbbq@gmail.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 250213
DESCRIPTION OF AMOUNT OF CONTRACT \$1,820,000		
NATURE OF THE CONTRACT (Please describe) New lease with Everett & Jones BBQ SF International, LLC, a California limited liability company ("Everett & Jones"), for approximately 4,363 square feet of a two-story restaurant space located at 300 Jefferson Street for a term of 10 years with two five-year options to renew. Estimated to produce \$1.85 million in revenue over the 10-year term. Port/OEWD is contributing \$800,000 for improvements to the premises.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	white	Dorcia	Other Principal Officer
2	Richardson	Jamilah Kenya	Other Principal Officer
3	Moore	Nina	Shareholder
4	Moore	Dottie	Shareholder
5			
6			
7			
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
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OFFICE OF THE MAYOR
SAN FRANCISCO



DANIEL LURIE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Adam Thongsavat, Liaison to the Board of Supervisors
RE: [Real Property Lease – Everett & Jones – 300 Jefferson Street]
DATE: March 4, 2025

Resolution approving Port Commission Lease L-17180 with Everett & Jones BBQ SF International, LLC, a California limited liability company, for approximately 4,363 square feet of a two-story restaurant space located at 300 Jefferson Street for a term of 10 years with two five-year options to renew, effective upon approval of this Resolution.

Should you have any questions, please contact Adam Thongsavat at adam.thongsavat@sfgov.org