

DDA Exhibit B10



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

[MASTER LEASE FORM]

LEASE NO. L-[_____]

BETWEEN THE

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

AS LANDLORD

AND

[NAME OF TENANT]

AS TENANT

DATED AS OF _____, 201[____]

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

DDA Exhibit B10

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Schedule XX	Disclosure Summary Sheet

BASIC LEASE INFORMATION

<u>Lease Date:</u>	_____, 201[XX]
<u>Lease Number:</u>	_____
<u>Landlord or Port:</u>	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<u>Landlord's Address:</u>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<u>Tenant:</u>	FC Pier 70, LLC, a Delaware limited liability company
<u>Tenant's Contact Person:</u>	
<u>Tenant's Address:</u>	
<u>Tenant's Billing Address:</u>	
<u>Premises:</u>	As of the Commencement Date, the Premises consists of: A portion of that certain real property known as Pier 70, consisting of approximately 28 acres bounded by Illinois Street on the west, 22 nd Street on the south, and San Francisco Bay on the north and east in the City and County of San Francisco, State of California, together with any and all Improvements and Subsequent Construction thereto, but excluding (1) the building commonly known as the Noonan Building, along with certain areas adjacent to the Noonan Building, as further depicted on <i>Exhibit XX</i> attached hereto (the "Noonan Site"), (2) the area currently leased by Port to Affordable Self Storage, Inc. ("Affordable Self Storage") pursuant to that certain Lease No. L-XX between Port and Affordable Self Storage, as further depicted on <i>Exhibit XX</i> attached hereto ("Affordable Self Storage Site"), (3) the building commonly known as Building 21, along with certain areas adjacent to Building 21, as further depicted on <i>Exhibit XX</i> attached hereto ("Building 21 Site"), and (4) the area currently used by PG&E, as further depicted on <i>Exhibit XX</i> attached hereto ("PG&E Remediation Site"). The initial Premises is more particularly depicted in <i>Exhibit A</i> attached hereto and made a part hereof.

	The Premises are subject to adjustment as provided in Section 1.1(b) of this Lease.
<u>Length of Term:</u>	Twenty-five (25) years
<u>Commencement Date:</u>	
<u>Expiration Date:</u>	[Insert date immediately prior to the 25 th anniversary of the Commencement Date.]
<u>Permitted Use:</u>	<p>The Premises will be used solely for the Primary Permitted Use and Ancillary Permitted Uses described below:</p> <p>Tenant will primarily use the Premises for the following three (3) uses (collectively, the “Primary Permitted Uses”):</p> <ul style="list-style-type: none"> (i) development of the Horizontal Improvements (ii) construction of temporary streets for the benefit of the Horizontal Improvements, Vertical Improvements and Annexation Sites; and (iii) one or more surface parking lots in accordance with Section 10.4. <p>So long as the Primary Permitted Uses are not materially and adversely affected, the Premises may also be used for the following ancillary uses (collectively, the “Ancillary Permitted Uses”):</p> <ul style="list-style-type: none"> (i) construction staging in connection with the development of Horizontal Improvements or Vertical Improvements, subject to Section 4.3; (ii) subject to Port’s right to terminate Tenant’s ability to hold Special Events, as further described in Section 24.1, Special Events, subject to the procedures attached hereto as Exhibit [XX]; (iii) model units and sales/leasing offices relating to Vertical Improvements; and (iv) any other uses authorized by the Port in writing, which authorization may be withheld in Port’s sole discretion.
<u>Base Rent:</u>	\$1.00/year.
<u>Other Rent:</u>	As further described in Exhibit D attached hereto, Tenant will pay to Port from and after the Commencement Date and throughout the Term, participation rent on a monthly basis equal to one hundred percent (100%) of Net Income generated at or from the Premises (“ Percentage Rent ”). Port will apply one hundred percent (100%) of the Percentage Rent as “ Land Proceeds ” as provided under

	Section 1.6 of the Financing Plan.
<u>Security Deposit and Bonds:</u>	<p>Twenty-Five Thousand Dollars (\$25,000.00) on or before the Commencement Date.</p> <p>Before commencing any site grading, Tenant will deliver to Port a (i) payment Bond, in a principal amount no less than fifty percent (50%) of the cost to grade the Premises, and (ii) performance Bond, in a principal amount no less than one hundred percent (100%) of the cost to grade the Premises.</p> <p>Tenant will deliver the Bonds required in the DDA within the time period described therein.</p> <p>Promptly following issuance of an SOP Compliance Determination (as defined in the DDA) for any Horizontal Improvements, if and only if as of such date CFD Proceeds (as defined in the DDA) are not accessible for purposes of maintenance thereof. Tenant will also deliver a Bond in an amount equal to [5%] of the Phase Improvements as additional security for the maintenance and repair of the Horizontal Improvements (“Maintenance and Repair Bond”). [Note: Further discussion regarding the mechanics.]</p> <p>“Bond” means either a payment bond or performance bond issued by a responsible surety company licensed to do business in the State of California and in form acceptable to Port naming Port as co-obligee.</p>

MASTER LEASE

THIS MASTER LEASE (this “**Lease**” or “**Master Lease**”) dated for reference purposes as of the Lease Date set forth in the Basic Lease Information, is by and between **THE CITY AND COUNTY OF SAN FRANCISCO** (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), as landlord, and **FC PIER 70, LLC**, a Delaware limited liability company (“**Tenant**”). The Basic Lease Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this Lease and will be construed as a single instrument and referred to herein as this “**Lease.**” In the event of any conflict or inconsistency between the Basic Lease Information and the Lease provisions, the Basic Lease Information will control. All initially capitalized terms used herein are defined in **Article 44** or have the meanings given them when first defined.

THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City’s Charter. The Waterfront Plan is Port’s adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.

B. Port and **[Forest City Development California, Inc., a Delaware corporation]** (“**Master Developer**”), are parties to that certain Disposition and Development Agreement dated as of _____, 201_ (the “**DDA**”) that governs the mixed-use development of an approximately 28-acre site (the “**28-Acre Site**”), as more particularly described in the DDA (the “**Project**”). The 28-Acre Site is located within an area commonly known as “**Pier 70.**” Following certification of the Final Environmental Impact Report for the Pier 70 Mixed-Use Project (Case No. 2014-001272ENV) in compliance with the California Environmental Quality Act (“**CEQA**”), the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code by Motion No. 19976 on August 24, 2017, Port and the City took a number of actions approving the Project, including the following:

[insert list of material entitlements] (collectively, the “**Project Approvals**”)

C. The DDA sets forth a parcel disposition process under which Port will deliver quitclaim deeds or enter into ground leases for each of the Development Parcels within the 28-Acre Site with a Vertical Developer. The Vertical Developer may be Master Developer, on behalf of itself or through its Affiliates, or, if Master Developer fails to exercise its option to acquire or lease such Development Parcel, to third parties selected in accordance with the requirements of the DDA.

D. Master Developer has an obligation under the DDA to construct new and upgraded Horizontal Improvements on the Premises in accordance with the Project Approvals, and to create Development Parcels that will be served by the necessary infrastructure for their intended use. In order to provide Master Developer with access to and possession of the 28-Acre Site through the completion of the Horizontal Improvements, the Parties wish to enter into this Master Lease, setting for the terms and conditions under which Master Developer will lease the Premises. As provided hereunder, upon conveyance of a Development Parcel (either by fee transfer or ground lease), the description of the Premises hereunder will be adjusted to remove the applicable Development Parcel from this Master Lease. As further provided hereunder, the description of the Premises hereunder will be adjusted to include the Noonan Site and the Affordable Site upon satisfaction of certain conditions.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. PREMISES; DEMISE.

1.1. Premises.

(a) **Lease of Premises; Description.** For the Rent and subject to the terms and conditions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the “Premises” described in the Basic Lease Information as of the Commencement Date hereof.

(b) **Adjustment of Premises for Development.** From time to time during the Term, the legal description of the Premises will be modified in accordance with this *Section 1.1(b)*, and the term “Premises” refers to the property that is subject to this Lease at the time.

(i) *Development Parcels.*

(1) As provided under each Vertical DDA, Port will convey a Development Parcel to the Vertical Developer. Prior to conveyance of a Development Parcel to a Vertical Developer, Port and Tenant must execute, acknowledge, and record a Partial Release of Master Lease in the form attached hereto as *Exhibit [XX]* (“**Partial Release of Master Lease**”) for such Development Parcel.

(2) Port will provide Tenant at least ten (10) business days’ prior notice of the anticipated conveyance date for each Development Parcel (“**Anticipated Conveyance Date**”) and where Tenant should deposit the executed and acknowledged Partial Release of Master Lease. Tenant will deposit into escrow the executed and acknowledged Partial Release of Master Lease at least five (5) business days before the Anticipated Conveyance Date. Tenant’s failure to timely execute, acknowledge and deliver the Partial Release of Master Lease into escrow will be a major default under this Lease and the DDA.

(3) Once the Partial Release of Master Lease for the applicable Development Parcel is recorded in the Official Records, then Tenant’s leasehold interest in such applicable Development Parcel will be terminated and other than the obligations that survive the expiration or termination of this Lease, this Lease will be terminated as it applies to such Development Parcel.

(ii) *Horizontal Improvement Parcels.* [**Note: Release procedures and mechanism to be revised to reflect final DDA and ICA.**] Upon Acceptance by the City of each work of Horizontal Improvement constructed in accordance with the DDA, Port and Master Developer will execute a Partial Release of Master Lease for the parcels where the Horizontal Improvements are Accepted (each a “**Horizontal Improvement Parcel**”). Once the Partial Release of Master Lease for the applicable Horizontal Improvement Parcel is recorded in the Official Records, then Tenant’s leasehold interest in such applicable Horizontal Improvement Parcel will be terminated and other than the obligations that survive the expiration or termination of the Master Lease, this Master Lease will be terminated as it applies to such applicable Horizontal Improvement Parcel.

(iii) *Noonan Site, Affordable Storage Site, Building 21 Site, and PG&E Remediation Site.* The Noonan Site, the Affordable Storage Site, the Building 21 Site and the PG&E Remediation Site (each, an “**Annexation Site**”) are each initially excluded from the “Premises” given that Annexation Sites are needed by Master Developer during the Project’s earlier construction phases but each is needed by Master Developer during the Project’s later construction phases. The Port will notify Tenant in writing thirty (30) days prior to the estimated date upon which (1) in the case of the Noonan Site, all artists and other users will have permanently vacated the Noonan Site, (ii) in the case of the Affordable Storage Site, Affordable Storage will have permanently vacated the Affordable Storage Site, (iii) in the case of the Building 21 Site, SFPUC and other users will have permanently vacated the Building 21 Site, and (iv) in the case of the PG&E Remediation Site, PG&E will have received written confirmation from each Regulatory Agency that Remediation of the PG&E Remediation Site is

complete and PG&E will have vacated the PG&E Remediation Site. Following the occurrence of the applicable foregoing events with respect to an applicable Annexation Site, Port will notify Tenant of the occurrence of such event and that such Annexation Site is ready to be added to the Premises (an “**Annexation Notice**”). The applicable Annexation Site will be added to the Premises effective on the date that is three (3) business day after receipt of the Annexation Notice or earlier if agreed to by both Parties. Within a reasonable time following the addition of the Annexation Site, the Parties will revise **Exhibit XX** so that it reflects the inclusion of the Annexation Site into the Premises, provided, that the Parties’ failure to do so will not impact the inclusion of the same into the Premises. **[Note: May need to revise for portions of the Orton Site]**

(c) **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 will 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 will 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.”

(d) **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 **Article 8** (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 Disabled Access Laws and any other federal or state disability access Laws. Tenant will 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.

(e) **No Right to Encroach.**

(i) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the “**Encroachment Area**”), then upon written notice from Port (“**Notice to Vacate**”), Tenant will immediately vacate such Encroachment Area and if such Encroachment Area is controlled by Port, 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 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 will be prorated based on a thirty (30) day month. In no event will 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.

(ii) In addition, Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00), which amount will be increased by One Hundred Dollars (\$100.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, 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 will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars (\$400.00), which amount will be increased by One Hundred Dollars (\$100.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, 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 will be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. **[NOTE: Amounts to increase by \$50 every 5 years after DDA execution]**

(iii) In addition to Port's rights and remedies under this *Section 1.1(e)*, the terms and conditions of the Indemnity and waiver provision set forth in *Article 19* (Indemnification of Port) will 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 will 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.

(iv) All amounts set forth in this *Section 1.1(e)* will 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 1.1(e)* and the reasonableness of the amount of the charges described in this *Section 1.1(e)*.

1.2. *Limitations.*

(a) **Permitted Encumbrances.** The interests granted by Port to Tenant pursuant to *Section 1.1(a)* are subject to (i) the matters reflected in *Exhibit XX* (the "**Permitted Title Exceptions**"), (ii) [the Master Association and TMA; (iii) CFD and Assessment Matters], and (iv) such other matters as Tenant will cause or suffer to arise subject to the terms and conditions of this Lease (collectively, the "**Permitted Encumbrances**").

(b) **Subsurface Mineral Rights.** Under the terms and conditions of Article 2 of the Burton Act, the State has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises, provided that such right will not be exercised so as to disturb or otherwise interfere with the Leasehold Estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by *Article 15*. Port will have no liability under this Lease arising out of any exercise

by the State of such mineral rights (unless the State has succeeded to Port's interest under this Lease, in which case such successor owner may have such liability).

(c) **“AS IS WITH ALL FAULTS”**. TENANT AGREES THAT PORT IS LEASING THE PREMISES TO TENANT, AND THE PREMISES ARE HEREBY ACCEPTED BY TENANT, IN THEIR EXISTING STATE AND CONDITION, **“AS IS, WITH ALL FAULTS,”** SUBJECT TO THE TERMS OF THIS LEASE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF THE OTHER INDEMNIFIED PARTIES HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, ABOVE, OR ABOUT THE PREMISES, TITLE TO THE PREMISES, THE SUITABILITY OR FITNESS OF THE PREMISES OR ANY APPURTENANCES THERETO FOR THE DEVELOPMENT, USE, OR OPERATION OF THE IMPROVEMENTS, THE COMPLIANCE OF THE PREMISES WITH ANY LAWS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PREMISES, OR ANY OTHER MATTER PERTAINING TO THE PREMISES, ANY APPURTENANCES THERETO OR THE IMPROVEMENTS, AND AS FURTHER DESCRIBED HEREIN.

Tenant further acknowledges and agrees that it has been afforded a full opportunity to inspect Port's records relating to conditions in, on, around, under, and pertaining to the Premises. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this **Section 1.2(c)**. Tenant represents and warrants to Port that Tenant has performed a diligent and thorough inspection and investigation in, on, around, under, and pertaining to the Premises, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition in, on, around, under, and pertaining to the Premises including the structural elements, foundation, and all other physical and functional aspects in, on, around, under, and pertaining to the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition in, on, around, under, and pertaining to the Premises, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability in, on, around, under, and pertaining to the Premises for the Improvements and Tenant's planned use of the Premises; (iv) title matters, the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction in, on, around, under, and pertaining to on the Premises; and (v) all other matters of material significance affecting in, on, around, under, and pertaining to the Premises and its development and use under this Agreement.

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, the City, and their respective Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, (ii) the suitability of the Premises for the development of the Improvements, the Permitted Uses, value, occupancy or enjoyment of the Premises, title matters, (iii) any Laws applicable thereto, including Environmental Laws or any other matter pertaining to the Premises, any appurtenances thereto or the Improvements; provided, however, the foregoing waiver will not apply to Losses arising from or relating to (a) the sole negligence or willful misconduct of the Indemnified Parties, or (b) arising from Pre-Existing Hazardous Materials so long such Pre-existing Hazardous Materials are not Released or Exacerbated.

In connection with the foregoing release, Tenant acknowledges that it is familiar with California Civil Code Section 1542, which provides as follows:

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

Tenant agrees that the release contemplated by this *Section 1.2(c)* includes unknown claims pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the release contained in this *Section 1.2(c)*.

Tenant Initials: _____

(d) **Title Defect.** Port will have no liability to Tenant in the event any defect exists in Port's title to the Premises as of the Commencement Date and no such defect will be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect will be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

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

(f) **Unique Nature of Premises.** Tenant acknowledges that: (a) 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; (b) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and (c) there is a risk that sea level rise will increase the cost of operations, maintenance, and repair of the Premises.

1.3. Memorandum of Technical Corrections. The Parties reserve the right, upon mutual agreement of Port's Executive Director and Tenant, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises, and upon full execution thereof, such memoranda will be deemed to become a part of this Lease.

2. TERM.

The effectiveness of this Lease will commence on the Commencement Date as shown in the Basic Lease Information. The Lease will expire at 11:59 p.m. on the Expiration Date set forth in the Basic Lease Information, unless earlier terminated or extended in accordance with the terms of this Lease. The period from the Commencement Date until the final expiration of the Lease is referred to as the "Term."

3. RENT

During the Term, Tenant will pay Rent for the Premises to Port at the times and in the manner provided in *Exhibit D* attached hereto and incorporated herein by this reference.

4. USES.

4.1. Uses within Premises. The Premises will be used and occupied only for the Permitted Uses specified in the Basic Lease Information and for no other purpose.

4.2. Advertising and Signs. Subject to the prohibition on tobacco and alcohol advertising provided in *Article 42*, Tenant has the right to install signs on the Premises in accordance with this *Section 4.2*. All signs must comply with all Laws relating thereto and the requirements of the SUD and Design for Development. Tenant must obtain all Regulatory

Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain required Regulatory Approval. All rents, fees, or other charges from all signs will be included as part of Gross Income and applied in accordance with **Exhibit D**. Tenant, at its sole cost and expense, must remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease. So long as Tenant may enter into agreements with other parties for purposes of placing Promotional Signage, and provided that such use complies with all the terms and conditions of this Lease, such use will not be considered a Transfer for purposes of this Lease, but any and all rent, fees, or other charges from Promotional Signage will be included as part of Gross Income.

4.3. *Construction Staging.*

(a) **Construction Staging for Horizontal Development.** Tenant has the right to use (and to allow its Agents and Invitees to use) portions of the Premises for construction staging, including, without limitation, storage of soil stockpiles, construction materials and equipment, fencing, temporary construction offices as may be reasonably necessary or convenient in connection with the development of Horizontal Improvements. It is expressly acknowledged and agreed that no Base Rent will be payable on account of construction staging activities in connection with the development of Horizontal Improvements, and that the provisions of **Exhibit D**, which require payment of Percentage Rent in conjunction with the lease or license of construction staging areas to Vertical Developers, are not applicable to construction staging activities in connection with the development of Horizontal Improvements.

(b) **Construction Staging for Vertical Development.** Subject to the provisions of **Exhibit D** regarding payment of Percentage Rent, Tenant has the right to Sublease to Vertical Developers (so long as the Primary Permitted Uses are not adversely impacted by the applicable Sublease), portions of the Premises for construction staging, including, without limitation, storage of soil stockpiles, construction materials and equipment, fencing, and temporary construction offices in connection with the development of the applicable Vertical Improvements.

(c) **Comply with Laws.** All construction staging must be performed in accordance with applicable Laws, including any operations plan approved by Port and applicable provisions of the MMRP.

4.4. *Limitations on Uses by Tenant.*

(a) **Prohibited Activities.** Tenant will not conduct or permit on the Premises any of the following activities (in each instance, a "Prohibited Use" and collectively, "Prohibited Uses"):

(i) any activity, or maintaining of any object, which is not within the Permitted Use or not previously approved by Port in writing, in its sole discretion;

(ii) any activity which constitutes waste or nuisance to owners or occupants of adjacent properties, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any unusually objectionable odors, noises or lights onto adjacent properties, the use of light apparatus which can be seen outside the Premises, or the use of loudspeakers or sound apparatus which can be heard outside the Premises in violation of applicable Law, provided, that the Construction Impacts reasonably expected for the construction of the Horizontal Improvements will not be considered or deemed a nuisance;

(iii) prior to annexation of the Noonan Building or the Affordable Storage into the Premises, any activity which will in any way injure, obstruct or interfere with the rights of ingress and egress of the artists in the Noonan Building or Affordable Storage, as applicable;

(iv) any activity which will in any way injure, obstruct or interfere with the rights of ingress and egress of other owners, tenants, or occupants of adjacent properties;

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

(vi) the placement of any Sign on or near the Premises related to 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;

(vii) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids provided, however, the foregoing prohibition does not apply to standard equipment maintenance for pay stations used for collecting parking fees or to the charging of electric vehicles and equipment, all located within the portion of the Premises used for parking operations;

(viii) except in connection with the construction of the Horizontal Improvements and the Vertical Improvements, the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes;

(ix) except in connection with the construction of the Horizontal Improvements and the Vertical Improvements, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials; or

(x) the washing of any vehicles or equipment (unless such use is reasonably required on a temporary basis to comply with the Pier 70 Mitigation Monitoring and Reporting Program or the Pier 70 Risk Management Plan during construction of the Horizontal Improvements).

(b) **Restrictions on Encumbering Port’s Reversionary Interest.** Tenant may not enter into agreements granting licenses, easements or access rights over the Premises (collectively, “Access Rights”) if the same would be binding on Port’s reversionary interest in the Premises without Port’s prior written consent, which consent may be withheld in Port’s sole discretion. Notwithstanding the foregoing, the Parties acknowledge that Master Developer’s obligations to deliver the Horizontal Improvements under the DDA (including the Infrastructure Plan), and the requirements of the Master Utilities Plan, Master Tentative Map and associated conditions of approval will require the dedication or granting of certain Access Rights that may be binding on Port’s reversionary interest in the Premises. Port will not withhold its consent to any Access Rights that are consistent with matters previously approved by Port (including the DDA, Infrastructure Plan and Master Tentative Map) or in the Master Utilities Plan; and will not unreasonably withhold its consent to Access Rights to private parties that are reasonably required for the functioning of the Horizontal Improvements or Vertical Improvements (e.g., private gas easements and private telecommunications easements).

4.5. Liquidated Damages for Repeat Prohibited Uses. In addition to the other remedies available to Port under this Lease for an Event of Default under **Section 23.1(g)**, if Tenant uses the Premises for the same type of Prohibited Use more than two (2) times within any twenty-four (24) month period, then Tenant will pay Port an amount equal to Twenty-Five Thousand Dollars (\$25,000.00) (as adjusted periodically, the “Prohibited Use Charge”) for the third such Prohibited Use and for each such Prohibited Use thereafter as liquidated damages, which Twenty-Five Thousand Dollars (\$25,000.00) will be increased by fifteen percent (15%) on the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter. [**Note: \$25K will increase annually by 3% from and after the date of DDA execution until execution of this Lease.**]

THE PARTIES HAVE AGREED THAT PORT’S ACTUAL DAMAGES, IN THE EVENT TENANT USES THE PREMISES FOR THE SAME TYPE OF PROHIBITED USE MORE THAN TWO (2) TIMES WITHIN A TWENTY-FOUR (24) MONTH PERIOD,

WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS LEASE, THE AMOUNT OF THE PROHIBITED USE CHARGE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT PORT WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Port Initials: _____	Tenant Initials: _____
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5. DEVELOPMENT PROJECTS.

5.1. Generally. Tenant acknowledges that during the Term, other development projects will be developed or constructed in the immediate vicinity of the Premises (as generally described in *Section 5.2*), and other development projects on or near Port property [(such as the development projects at Seawall Lot 337, Pier 48, Pier 80, SFPUC’s Bay Corridor Transmission & Distribution project along Illinois Street from 16th St to 23rd St, and the proposed development of over 5 million square feet on the 29-acre Central Waterfront site at or around 1201 Illinois Street (bounded by Illinois, the Bay, 22nd and 23rd Streets), and [redacted] also may be constructed in the vicinity of the Premises (collectively, “**Development Projects**”). Tenant is aware that construction of the Development Projects and other construction projects of Port tenants, licensees or occupants or projects of third parties in the vicinity of the Premises and the activities associated with such construction may generate adverse impacts on construction of the Horizontal Improvements, use and/or operation of the Premises after construction, or may result in inconvenience to or disturbance of Tenant and its Agents and Invitees. Said impacts may include increased vehicle and truck traffic, closure of traffic lanes, re-routing of traffic, traffic delays, loss of street and public parking, dust, dirt, construction noise, and visual obstructions (collectively, “**Construction Impacts**”).

Tenant hereby waives any and all Losses against the Indemnified Parties arising out of any inconvenience or disturbance to Tenant, its Agents or Invitees, from Construction Impacts. The Parties will each use reasonable efforts to coordinate its construction efforts with each other and with others engaged in construction on such other projects in a manner that will seek, to the extent reasonably possible, to reduce construction conflicts.

5.2. Pier 70.

(a) Generally. Tenant acknowledges that the Port Commission endorsed the vision, goals, objectives, and design criteria of the Pier 70 Master Plan. A brief description of the some of the existing and planned development in Pier 70 is as follows, all of which will create Construction Impacts:

(i) Pier 70 “Cove” and “Hill” sites. The Pier 70 Master Plan identifies development opportunities at the “Cove” and “Hill” sites located at the south west corner of 20th Street and Illinois Street. [Development of these sites may impede views from the Premises.]

(ii) New 21st Street and Michigan Street. Changes to streets [adjacent] to the Premises (including construction of new streets). Additionally, Michigan Street is currently an approximately eighty (80) foot right of way. Port is exploring alternate permanent configurations, redesign, or path of travel, of or on Michigan Street, including narrowing the width of Michigan Street to no less than sixty-eight (68) feet and the City’s potential vacation all or a portion of Michigan Street. Tenant has no objections to narrowing the width of Michigan

Street to no less than sixty-eight (68) feet nor does Tenant object to the City's vacation of all or any portion of Michigan Street.

(iii) New 19th Street. Proposed extension of 19th Street east from Illinois Street that will accommodate heavy truck traffic for the ship repair facility and connect to the reopened Georgia Street.

(iv) Crane Cove Park. North of [the planned 19th Street extension], Port anticipates commencing and completing construction of Crane Cove Park during the Term.

(v) Louisiana Street and Georgia Street. At any time during the Term, Port will explore alternate permanent configurations, redesign, or path of travel, of or on Georgia Street along the east side of Building 104 and Louisiana Street, including a one way southbound twenty (20) foot path of travel along Louisiana Street, and may construct an alternate permanent configuration, redesign, or path of travel, of or on Louisiana and Georgia Streets.

(vi) Waterfront Site. Construction of new public open space and parks, construction of new buildings, and historic rehabilitation, which construction will take place throughout the Term.

(vii) Historic Core. Port and Historic Pier 70, LLC entered into a Lease Disposition and Development Agreement dated September 16, 2014 and Lease No. L-15814 dated as of July 29, 2015 for the area referred to as the "**Historic Core**" in the Pier 70 Master Plan, located along 20th Street, East of Illinois Street, which among other things, will result in the rehabilitation and sublease of the buildings within the Historic Core (the "**Historic Core Project**").

(viii) Parcel K. [insert description]

(ix) Hoe Down Yard. [insert description.]

(x) Areas Adjacent to the Historic Core. North of 20th Street and [near] the Shipyard. [Note: Additional information to be included.]

(xi) Shipyard. The Pier 70 Master Plan calls for "maintaining approximately 17 acres of [Pier 70] for ship repair." The Shipyard is located north of 20th Street and east of Illinois Street and is adjacent to portions of the Historic Core along 20th Street. Port anticipates that the Shipyard will remain active and operational throughout the Term (including potentially expanding or increasing its operations).

(b) **Cooperation**. Tenant acknowledges and agrees that it will reasonably cooperate with Port, the tenant or operator of the Shipyard, Historic Pier 70 LLC, and any future tenants or occupants of Pier 70 (collectively, the "**Pier 70 Parties**") in the implementation of the Pier 70 Master Plan, which includes the development and/or rehabilitation of the Historic Core, Waterfront Site and Crane Cove Park, and continued operation of the Shipyard; provided, however, that such cooperation will be at no material out-of-pocket cost to Tenant.

6. TAXES AND ASSESSMENTS.

6.1. *Payment of Taxes and Other Impositions.*

(a) **Payment of Taxes**. Tenant will pay or cause to be paid to the proper authority prior to delinquency, all Impositions assessed, levied, confirmed or imposed on the Premises or any of the Improvements or Personal Property (excluding the personal property of any Subtenant whose interest is separately assessed) located on the Premises or on its Leasehold Estate (but excluding any such taxes separately assessed, levied or imposed on any Subtenant), or on any use or occupancy of the Premises hereunder, to the full extent of installments or amounts payable or arising during the Term, whether in effect at the Commencement Date or which become effective thereafter. Tenant further recognizes and agrees that the Leasehold Estate 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 will not permit any such Impositions to become a defaulted lien on the Premises or the Improvements thereon. All such taxes must be paid directly to the City's Office of the Treasurer & Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Subject to **Section 6.2**, Tenant will have the right to contest the validity, applicability or amount of any taxes in accordance with **Article 7**. In the event of any dispute, Tenant will Indemnify and hold the Indemnified Parties harmless from and against all Losses, including Attorneys' Fees and Costs, resulting therefrom.

(i) **Acknowledgment of Possessory Interest**. Tenant specifically recognizes and agrees that this Lease creates a possessory interest that is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Office of Assessor-Recorder. Tenant further acknowledges that any Sublease, Transfer or any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) **Reporting Requirements**. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successive or replacement ordinance) requires that Port report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the City's Office of Assessor-Recorder within sixty (60) days after any such transaction. Within thirty (30) days of request by Port following the date of any transaction that is subject to such reporting requirements, Tenant will provide such information as may reasonably be requested by Port to enable Port to comply with such requirements.

(b) **Other Impositions**. Without limiting the provisions of **Section 6.1(a)**, and except as otherwise provided in this **Section 6.1(b)**, Tenant will pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term, which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Horizontal Improvements or other Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the Leasehold Estate, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other Person may have acquired pursuant to this Lease (but excluding any such Impositions separately assessed, levied or imposed on any Subtenant). Subject to the provisions of **Article 7**, Tenant will pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant will pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition. As used herein, "Impositions" means all taxes (including possessory interest, real, personal and special taxes), assessments, liens, levies, fees, charges, or expenses of every description, levied, assessed, confirmed, or imposed by a governmental or quasi-governmental entity on the Premises, any of the Horizontal Improvements, Improvements or Personal Property located on the Premises, the Leasehold Estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions includes all such taxes, assessments, liens, levies, fees charged or expenses of every description, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, including, without limitation, special taxes under the CFD. The foregoing or subsequent provisions notwithstanding, Tenant will not be responsible for any Impositions arising from or related to, Port's fee ownership interest in the Premises, Port's interest as landlord under this Lease, or any transfer thereof, including but not limited to,

Impositions relating to the fee, transfer taxes associated with the conveyance of the fee, or business or gross rental taxes attributable to Port's fee interest or transfer thereof.

(c) **Proof of Compliance.** Within a reasonable time following Port's written request, which Port may give at any time, Tenant will deliver to Port copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to Port, evidencing the timely payment of such Impositions.

6.2. Acknowledgements and Covenants Regarding Community Facilities Districts and Assessment Matters. **[Note: Conform/update with DDA and Financing Plan.]**

(a) **Section 53341.5 Acknowledgment.** Prior to Tenant's execution and delivery of this Lease, Tenant delivered to Port an acknowledgment (the "Notice of Special Tax") confirming that Tenant has been advised of the terms and conditions of the CFD, including that the Premises is subject to the Applicable Special Taxes (as defined in *Exhibit XX*). A copy of the executed Notice of Special Tax is attached hereto as *Exhibit XX*.

(b) **Facilities and Maintenance CFD.** As material consideration for the Port entering into this Lease, Tenant will comply with all of the covenants and acknowledgements set forth in *Exhibit XX* (CFD and Assessment Matters) attached hereto, which covenants and acknowledgements will be recorded against title to the Premises and survive the expiration or earlier termination of this Lease. ("Agreement to Comply with CFD and Assessment Matters").

6.3. Port's Right to Pay. Unless Tenant is exercising its right to contest in accordance with the provisions of *Article 7*, Tenant fails to pay and discharge any Imposition (including fines, penalties and interest) prior to delinquency, Port, at its sole option, may (but is not obligated to) pay or discharge the same; provided that prior to paying any such delinquent Imposition, Port will give Tenant written notice specifying a date that is at least ten (10) days following the date such notice is given after which Port intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition, then Port may thereafter pay such Imposition, and the amount so paid by Port (including any interest and penalties thereon paid by Port), together with interest at the Default Rate computed from the date Port makes such payment, will be payable by Tenant as Additional Rent.

7. CONTESTS.

Subject to *Section 6.2*, Tenant has the right to contest the amount, validity or applicability, in whole or in part, of any Impositions, mechanics' lien or encumbrance (including any arising from work performed or materials provided to Tenant or any Subtenant to improve all or a portion of the Premises) by appropriate proceedings conducted in good faith and with due diligence, at no cost to Port, provided that, prior to commencement of such contest, Tenant notifies Port of such contest. Tenant must notify Port of the final determination of such contest within fifteen (15) days after such determination. Subject to *Section 6.2*, nothing in this Lease requires Tenant to pay any Impositions, mechanics' lien, or encumbrance so long as Tenant contests the validity, applicability or amount of such Impositions, mechanics' lien or encumbrance in good faith, and so long as it does not allow the portion of the Premises affected by such Impositions, mechanics' lien or encumbrance to be forfeited to the entity levying such Impositions, mechanics' lien or encumbrance as a result of its nonpayment. If any Law requires as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant must comply with such condition as a condition to its right to contest. Tenant is responsible for the payment of any interest, penalties or other charges that may accrue as a result of any contest, and Tenant must provide a statutory lien release bond or other security reasonably satisfactory to Port in any instance where Port's interest in the Premises may be subjected to such lien or claim. Tenant is not required to pay any Impositions, mechanics' lien or encumbrance being so contested during the pendency of any such proceedings unless payment is required by the court or agency conducting such proceedings. Port, at its own

expense and at its sole option, may elect to join in any such proceeding whether or not any Law requires that such proceedings be brought by or in the name of Port or any owner of the Premises. Port will not be subjected to any liability for the payment of any fines or penalties, and except as provided in the precedent sentence, costs, expenses, or fees, including Attorneys' Fees and Costs, in connection with any such proceeding. Without limiting **Article 28**, Tenant will Indemnify the Indemnified Parties for all Losses resulting from Tenant's contest of any Imposition, mechanics' lien or encumbrance.

8. COMPLIANCE WITH LAWS.

(a) **Tenant's Obligation to Comply.** Subject to **Section 8(b)** hereof, during the Term, Tenant will comply with, at no cost to Port, (i) all applicable Laws (taking into account any variances or other deviations properly approved), (ii) the Pier 70 Risk Management Plan, (iii) the DDA, (iv) the Mitigation Monitoring and Reporting Program, (v) the Transportation Demand Management Plan [, and (vi).....] **[Note: add others as necessary]**. The foregoing sentence will not be deemed to limit Port's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses do not limit Tenant's responsibility to obtain Regulatory Approvals for such Permitted Uses, nor do such Permitted Uses limit Port's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws. It is understood and agreed that Tenant's obligation to comply with Laws includes the obligation to make, at no cost to Port, all additions to, modifications of, and installations on the Premises that may be required by any Laws relating to or affecting the Premises.

(b) **Unforeseen Requirements.** The Parties acknowledge and agree that Tenant's obligation under this **Section 8(b)** to comply with all Laws and the other requirements set forth in **Section 8(a)** is a material part of the bargained-for consideration under this Lease. Notwithstanding the foregoing, the Parties acknowledge that the primary purpose of this Lease is for the implementation of the Project under the DDA, including construction of Horizontal Improvements, not for the occupancy, use, repair or maintenance of buildings existing as of the Commencement Date, except as expressly required under the DDA or required or permitted hereunder. Therefore, except as set forth in this **Section 8(b)**, no occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease or the DDA, or gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease; provided, however, until the time Master Developer is required under the DDA to rehabilitate existing buildings in the Premises, Tenant will have no obligation to comply with Laws and the other requirements set forth in **Section 8(a)** that might require substantial improvements to buildings or facilities existing within the Premises as of the Commencement Date if, as an alternative, Tenant can take reasonable measures to obviate the applicability of such Laws or cease use of the affected area for purposes other than preparation for or construction of the Horizontal Improvements. For example, Tenant will have no obligation to undertake any improvements to the buildings existing on the Premises as of the Commencement Date that would otherwise be required by applicable Laws for occupancy (e.g. disability access or seismic upgrades) if the applicable buildings are vacated and secured from occupancy.

9. REGULATORY APPROVALS.

(a) **Port Acting as Owner of Property.** Tenant understands and agrees that Port is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises and not as a Regulatory Agency 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. Tenant acknowledges and agrees that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Horizontal Improvements or other Improvements can be obtained. Tenant further acknowledges and agrees that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or development of the Horizontal Improvements or other Improvements will be issued by the appropriate Regulatory Agency, and Tenant understands and agrees that neither entry by Port into this Lease nor any approvals given by Port under this Lease will be deemed to imply that Tenant will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Horizontal Improvements, other Improvements and/or the Premises, including Port itself in its regulatory capacity. Port's status as an agency of the City in no way limits the obligation of Tenant, at Tenant's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Horizontal Improvements or other Improvements. By entering into this Lease, Port is in no way modifying or limiting Tenant's obligations to cause the Premises to be developed, Restored, used and occupied in accordance with all Laws. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease applies only to Port in its proprietary capacity, not in its regulatory capacity. Without limiting the foregoing, Tenant understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Horizontal Improvements or other Improvements or other matters related to this Lease, and any such advocacy, promotion or lobbying will be done by Tenant at Tenant's sole cost and expense. Tenant hereby waives any claims against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Horizontal Improvements or other Improvements.

(b) Regulatory Approval; Conditions. The provisions of this *Section 9(b)* do not apply to Regulatory Approvals required for development of the Horizontal Improvements pursuant to the DDA, which is governed by the DDA. Tenant understands that Tenant's use and operations on the Premises for the Ancillary Permitted Uses may require Regulatory Approvals from Regulatory Agencies, which may include the City, Port, the RWQCB, SFPUC, and other Regulatory Agencies. Tenant is solely responsible for obtaining any such Regulatory Approvals, as further provided in this Section.

Port, at no cost to Port, will cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with applicable Laws and to further terms and conditions of this Lease, including without limitation, being a co-permittee with respect to any such Regulatory Approvals. However, if Port is required to be a co-permittee under any such permit, then Port will not be subject to any conditions and/or restrictions under such permit that could (i) encumber, restrict or adversely change the use of any Port property other than the Premises, unless in each instance Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions and Tenant has assumed all obligations and liabilities related to such conditions and/or restrictions; or (ii) restrict or change the use of the Premises in a manner not otherwise permitted under this Lease or subject Port to unreimbursed costs or fees, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions and Tenant has assumed all obligations and liabilities related to such conditions, restrictions, and/or Port's unreimbursed costs or fees.

Port will provide Tenant with its approval or disapproval thereof in writing to Tenant within ten (10) business days after receipt of Tenant's written request, or if Port's Executive Director reasonably determines that Port Commission or Board action is required under applicable Laws, at the first Port and subsequent Board hearings after receipt of Tenant's written request subject to notice requirements and reasonable staff preparation time, not to exceed forty-five (45) days for Port Commission action alone and seventy-five (75) days if both Port Commission and Board action is required, provided such period may be extended to account for any recess or cancellation of board or commission meetings. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above in this section. Tenant further acknowledges and agrees that any time limitations on Port review or approval within this Lease applies only to Port in its proprietary capacity, not in its regulatory capacity.

Tenant will bear all costs associated with (1) applying for and obtaining any necessary Regulatory Approval, and (2) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-Premises or require off-Premises improvements, removal, or other measures. Tenant in its sole discretion has the right to appeal or contest any condition in any manner permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Tenant will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Tenant will pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval. No Port approval will limit Tenant's obligation to pay all the costs of complying with any conditions or restrictions.

Without limiting any other Indemnification provisions of this Lease, Tenant will Indemnify the Indemnified Parties from and against any and all Losses which may arise in connection with Tenant's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval which will be necessary to operate the Premises in accordance with the terms hereof except to the extent that such Losses arise from the gross negligence or willful acts or omissions of an Indemnified Party acting in its proprietary (and not its regulatory) capacity.

10. TENANT'S MANAGEMENT AND OPERATING COVENANTS.

10.1. Construction of the Horizontal Improvements. Tenant will construct the Horizontal Improvements in accordance with the DDA.

10.2. Mitigation Monitoring and Reporting Program. In order to mitigate any potential significant environmental impacts of the Project and operation of the Premises, Tenant agrees that the development and operation of the Project will be in accordance with mitigation measures set forth in the Mitigation Monitoring and Reporting Program attached as *Exhibit XX*. As appropriate, Tenant will incorporate the Mitigation Monitoring and Reporting Program into any contract for the development of the Horizontal Improvements and/or operation of the Horizontal Improvements and the Premises.

10.3. Special Events. All Special Events must be conducted in accordance with all the conditions set forth in *Exhibit XX*.

10.4. Parking Operations. So long as the Primary Permitted Use is not materially and adversely affected, Tenant will operate in accordance with this *Section 10.4*, a surface parking lot containing [XX] parking spaces within the Premises to service the artist tenants at the Noonan

Building. Tenant will also have the right, but not the obligation, to operate additional surface parking spaces and lots within the Premises until no more surface areas within the Premises are available for surface parking use due to the need for such areas for the construction of the Horizontal Improvements, including staging for the same.

(a) **Generally.** Subject to *Section XX*, all surface parking spaces will be available to the artist tenants of the Noonan Building and otherwise to the general public on a non-exclusive basis only and offered at fair market rates on either a daily basis or a monthly basis (provided Tenant will not offer discounted rates for monthly parking, as more particularly set forth in the Transportation Demand Management Plan) and available at least 8 consecutive hours daily.

(b) **Parking Revenues.** All parking revenues will be applied in accordance with *Exhibit D*.

(c) **Prevailing Rate of Wages and Displaced Work Protection Required for Workers.** Tenant will comply fully and be bound by all the requirements of Sections 21C.3 and 21C.7 of the City's Administrative Code. In general, the ordinance requires operators of public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by Port to pay employees working in such facilities not less than the Prevailing Rate of Wages, as defined by ordinance, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work. The ordinance also requires the operator of such facilities to retain for a 90-day transition employment period, the Employees, as defined by the ordinance, who have worked at least 15 hours per week and have been employed by the immediately preceding operator or its subcontractors, if any, for the preceding twelve months or longer at the facility or facilities covered by the agreement with the Port, provided that just cause does not exist to terminate any Employee. The predecessor operator's Employees who worked at least 15 hours per week will be employed in order of their seniority with the predecessor.

(d) **Revenue Control Equipment.** Tenant will comply with Article 22 of the San Francisco Business and Tax Regulations Code, including, without limitation the requirement to install, maintain and use Revenue Control Equipment at the Premises. Tenant will immediately notify Port in writing of any audit, inspection, alleged violation, violation or penalty action taken under such Article by any Enforcing Agency, as defined by Article 22. In addition to any other requirements under this Lease, upon Port's request, Tenant will provide Port a copy of all information submitted to the Tax Collector and any other City department or official to demonstrate Tenant's compliance with Article 22.

10.5. Transportation Demand Management Plan. Tenant will comply with the Transportation Demand Management Plan throughout the Term.

10.6. Pier 70 Risk Management Plan. Tenant will comply, and will cause its Agents to comply, with all applicable provisions of the Pier 70 Risk Management Plan, a copy of which has been provided to Tenant, including requirements to notify all site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually. Any and all Subleases will require Subtenants (including its Agents) to comply with all applicable provisions of the Pier 70 Risk Management Plan.

11. REPAIR AND MAINTENANCE.

11.1. Covenants to Repair and Maintain the Premises.

(a) Except as set forth in *Sections 11.1(b) and 11.1(c)*, Tenant is obligated at its sole cost and expense (but without limitation on Master Developer's right to reimbursement under the DDA or Acquisition Agreement) to maintain, repair and replace the Historic Buildings in the condition existing as of the Effective Date and any Improvements constructed or rehabilitated by Tenant on the Premises, reasonable wear and tear excepted and subject further to all Regulatory Approvals.

(b) Tenant is obligated at its sole cost and expense (but without limitation on Master Developer's right to reimbursement under the DDA or Acquisition Agreement) to maintain, repair and replace the Horizontal Improvements to a condition required by the DDA for the City's Acceptance of the same until the applicable Horizontal Improvements are Accepted by the City and the applicable Horizontal Improvement Parcel is released from the Premises in accordance with **Section 1.1(b)(ii)**. Tenant will make such repairs and replacements with materials and quality of workmanship at least equivalent in quality, appearance, public safety, and durability to and in all respects consistent with the Horizontal Improvements installed at the time of issuance of the final certificate of occupancy for the applicable Horizontal Improvements.

(c) Tenant is obligated at its sole cost and expense (but without limitation on Master Developer's right to reimbursement under the DDA or Acquisition Agreement), to repair and replace any damage caused by Tenant, its Subtenants, Agents or Invitees to the utilities serving the Noonan Building tenants and artists. If Port determines that the utilities serving the Noonan Building tenants and artists require maintenance, repair or replacement for any other reason, then Tenant will grant Port a right of access to the Noonan Building Site and such other areas as reasonably necessary to perform such maintenance, repair or replacement, provided Port does not unreasonably interfere with the construction of the Horizontal Improvements.

(d) For purposes of this Lease, the term "**reasonable wear and tear**" will not include any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related directly or indirectly to Tenant's failure to comply with the terms and conditions of this Lease. Port is not obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Horizontal Improvements, other Improvements or Subsequent Construction. 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.

11.2. Port's Right to Inspect. Port or the City may make periodic inspections of the Premises to inspect the construction and development of the Horizontal Improvements or as otherwise required or reasonably necessary to determine Tenant's compliance with this Lease, in all cases upon reasonable prior notice to Tenant during regular business hours. During an inspection, Port will comply with Master Developer's onsite safety measures and act reasonably to minimize any interference with Master Developer's construction activities. Port will provide a copy of any inspection reports prepared by Port or its Agents promptly following Master Developer's request, subject to Port's right to withhold documents otherwise privileged or confidential. Port disclaims any warranties, representations, and statements made in any reports, will have no liability or responsibility with respect to any warranties, representations, and statements, and will not be estopped from taking any action (including later claiming that the construction of the Horizontal Improvements is defective, unauthorized, or incomplete) or be required to take any action as a result of any inspection.

11.3. Right to Repair. In the event Tenant fails to maintain, repair, and replace the Premises, the Historic Buildings, Horizontal Improvements, damages to utilities serving the Noonan Building tenants and artists or the other Improvements, as applicable, in accordance with **Section 11.1** and such failure is likely to cause imminent physical harm to any Person or constitutes a violation of applicable Law, or with respect to Historic Buildings only, such failure is likely to result in deterioration to or damage of the Historic Buildings below the condition existing on the Commencement Date, Port or the City may repair the same at Tenant's cost and expense and Tenant will reimburse Port or the City, as applicable, as provided in this **Section 11.3**; provided, however, with respect to Tenant's failure to maintain and repair the Horizontal Improvements only, Port may call on the Maintenance and Repair Bond, if any, in lieu of expending its own funds for such repairs. Except in the event of an emergency, Port or the City, as applicable, will first provide no less than fifteen (15) days prior notice to Tenant before commencing any maintenance to or repair of any of the foregoing. If Tenant does not

commence maintenance or repair of the affected Horizontal Improvements or provide assurances reasonably satisfactory to Port or the City, as applicable, that Tenant will commence maintenance or repair of the same within such fifteen (15) day period, then Port or the City, as applicable, may proceed to take the required action. If Port or the City, as applicable, elects to proceed with such repair or maintenance, then promptly following completion of any work taken by Port or the City, as applicable, pursuant to this **Section 11.3**, Port or the City, as applicable, will deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. Tenant also will pay to Port or the City, as applicable, an administrative fee equal to ten percent (10%) of the total “hard costs” of the work. “Hard costs” include the cost of materials and installation, but exclude any costs associated with design, such as architectural fees. Tenant will pay to Port or the City, as applicable, the amount set forth in the invoice within thirty (30) days after delivery of the invoice.

In the event Port notifies Tenant of a failure to maintain and repair in accordance with **Section 11.1** (“Maintenance Notice”), Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300), which amount will be increased by one hundred dollars on the tenth (10th) Anniversary Date and every ten (10) years thereafter, upon delivery of the Maintenance Notice. In the event Port determines during subsequent inspection(s) that Tenant has failed to so maintain the Premises in accordance with this Article 10, then Tenant will pay to Port, as Additional Rent, an amount equaling Four Hundred Dollars (\$400), which amount will be increased by One Hundred Dollars (\$100.00) on the tenth (10th) Anniversary Date and every ten (10) years thereafter, for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. The Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port’s inspection of the Premises and issuance of each Maintenance Notice. Tenant’s failure to comply with the applicable Maintenance Notice and Port’s right to impose the foregoing charges is in addition to and not in lieu of any and all other rights and remedies of Port under this Lease. The amounts set forth in this **Section 11.3** are due within five (5) days following delivery of the applicable Maintenance Notice.

Tenant’s Initials: _____

12. HORIZONTAL IMPROVEMENTS.

12.1. Tenant’s Obligation to Construct the Horizontal Improvements. Tenant is obligated to construct, [or cause the Master Developer to construct,] the Horizontal Improvements during the Term in accordance with the DDA, including [Articles 13-17] thereof. Tenant’s and Master Developer’s construction of the Horizontal Improvements in accordance with the DDA is a material part of the bargained for consideration under this Lease and failure to do so in accordance with this Lease and the DDA may result in, among other things, termination of this Lease. Port has no obligation to construct any of the Horizontal Improvements.

12.2. Tenant’s Obligation to Make Horizontal Improvements Available for Use Prior to Acceptance. Before Acceptance of the applicable Horizontal Improvements by the City, subject to the immediately following sentence, Tenant will have the right, but not the obligation, to make the Horizontal Improvements that (a) will be operated by the SFPUC, available for SFPUC’s use without charge or any fee, and (b) would generally be available for the public’s use, such as streets, sidewalks, parks and open space, available for use by all parties, including Vertical Developers, the general public, the City and Port, without charge or any fee. Notwithstanding the foregoing, Tenant will make available for use without charge, all Horizontal Improvements necessary for any [Vertical Improvements] to obtain a temporary certificate of occupancy.

12.3. Title to Improvements. Tenant will own all Horizontal Improvements until they are Accepted by the City. Tenant will own during the Term all Subsequent Construction located

on the Premises and all appurtenant fixtures, machinery and equipment installed therein (except for subtenant improvements to the extent owned by any subtenant pursuant to such sublease, trade fixtures and other personal property of Subtenants). Upon release of the applicable Horizontal Improvement Parcels that contain parks and open space that are Accepted by Port, title to the Improvements related to such parks and open space, including appurtenant fixtures (but excluding trade fixtures and other personal property of Tenant and its Subtenants), will vest in Port without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove Personal Property from the Premises; provided, however, that if the removal of Personal Property causes damage to the Premises, Tenant will promptly cause the repair of such damage at no cost to Port.

13. SUBSEQUENT CONSTRUCTION.

13.1. *Port Approval.*

(a) **Generally.** Tenant will have the right, from time to time during the Term, to construct Subsequent Construction in accordance with the provisions of this *Article 13*.

(b) **Subsequent Construction Requiring Port's Approval in Port's Sole Discretion.** Tenant has the right during the Term to perform Subsequent Construction in accordance with the provisions of this *Article 13*, provided that Tenant cannot do any of the following without Port's prior approval, which approval may be withheld by Port in its sole discretion:

(i) Construct additional buildings or other additional above ground structures on Development Parcels or Dedicated Parcels prior to the applicable parcel's release from the Premises, other than temporary buildings, and structures necessary to advance the Permitted Uses that are Demolished and Removed by Tenant prior to the earlier of (A) five (5) years from completion of such temporary buildings or structures, or (B) the applicable parcel's release from the Premises;

(ii) Decrease the bulk or height of the exterior of any Historic Building beyond the bulk or height existing as of the Commencement Date;

(iii) Materially alter the Historic Fabric of any Historic Building unless pursuant to the requirements of an approved Regulatory Approval or the DDA;

(iv) Perform Subsequent Construction on any Historic Building that would cause a decertification of all or a portion of the Historic Building for Historic Preservation Tax Credits, or that does not comply with the Secretary's Standards; or

(v) Perform Subsequent Construction to the Public Access Areas that would adversely affect (other than temporarily during the period of such Subsequent Construction) the public access to, or the use or appearance of such Public Access Areas.

13.2. *Construction Schedule.*

(a) **Performance.** Once commenced, Tenant will prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

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

13.3. *Construction.*

(a) **Commencement of Construction.** Tenant will not commence any Subsequent Construction until Tenant has obtained all building permits, other Regulatory Approvals and Port approvals to the extent required.

(b) **Construction Standards.** All Subsequent Construction must be performed by duly licensed and bonded contractors or mechanics and must be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws, and, in the case of Subsequent Construction on Historic Buildings only, will be consistent with the Secretary's Standards and the historic register status of the Premises.

(c) **Reports and Information.** During periods of Construction, Tenant will submit to Port written progress reports or other reports for the benefit of or requested by the County Assessor when and as reasonably requested by the County Assessor.

(d) **Costs of Construction.** Port will have no responsibility for costs of any Construction and Tenant will pay (or cause to be paid) all such costs.

(e) **Construction Rights of Access.** During any period of Subsequent Construction, Port and its Agents have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work; provided, however, that Port and its Agents will conduct their activities in such a way to minimize interference with Tenant and its operations to the extent feasible. Nothing in this Lease, however, will be interpreted to impose an obligation upon Port to conduct such inspections or any liability in connection therewith.

(f) **Prevailing Wages.** Any construction, alteration, demolition, installation, maintenance, repair, or laying of carpet at, or hauling of refuse from, the Premises comprise a public work if paid for in whole or part out of public funds. The terms "**public work**" and "**paid for in whole or part out of public funds**" as used in this Section are defined in California Labor Code Section 1720 et seq., as amended. Tenant agrees that any person performing labor for Tenant on any public work at the Premises will be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco County. Tenant will include in any contract for such labor a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant will require any contractor to provide, and will deliver to City upon request, certified payroll reports with respect to all persons performing such labor at the Premises.

(g) **Compliance with Workforce Development Plan.** Tenant agrees that it will comply with the Workforce Development Plan attached hereto as ***Exhibit XX***.

13.4. Safety Matters. Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises, the Horizontal Improvements, and Improvements and the surrounding property, or the risk of injury to persons or members of the public, caused by or resulting from the performance of its Work. Tenant will erect appropriate construction barricades to enclose the areas of such construction and maintain them until the Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

13.5. Record Drawings.

(a) With respect to any Subsequent Construction requiring a building permit (but excluding temporary structures), Tenant will furnish to Port one set of design/permit drawings in their finalized form and Record Drawings with respect to such Subsequent Construction within ninety (90) days following completion of the applicable Subsequent Construction and Port's written notice to Tenant requesting same. Record Drawings must be in the form of full-size, hard paper copies and converted into electronic format as (1) full-size

scanned TIF files, and (2) AutoCad files of the completed and updated Final Construction Documents, as further described below, and in such format as is reasonably required by Port's building department at the time of submittal. As used in this Section "**Record Drawings**" means drawings, plans and surveys showing the Subsequent Construction as built on the Premises and prepared during the course of construction (including all requests for information, responses, field orders, change orders, and other corrections to the documents made during the course of construction). If Tenant fails to provide such Record Drawings to Port within the time period specified herein, and such failure continues for an additional ninety (90) days following an additional written request from Port, Port will thereafter have the right to cause an architect or surveyor selected by Port to prepare Record Drawings showing such Subsequent Construction, and the actual, third-party cost of preparing such Record Drawings must be reimbursed by Tenant to Port as Additional Rent. Nothing in this Section limits Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by Port in its regulatory capacity. Tenant is permitted to disclaim any representations or warranties with respect to the design/permit drawings, Record Drawings or other plans and specifications provided hereunder, and, at Tenant's request, Port will provide Tenant with a release from liability for future use of the applicable materials, in a form acceptable to Tenant and Port.

(b) **Record Drawing Requirements.** Record Drawings must be no less than (24" x 36"), with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing will have a Port-assigned number placed onto the title block prior to scanning. An index of drawings must be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings will be scanned as a test, prior to execution of this requirement in full.

(c) **AutoCad Requirements.** The AutoCad files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s) or DVD(s), as requested by Port. All X-REF, block and other referenced files must be coherently addressed within the environment of the compact disc or DVD, at Port's election. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) **Changes in Technology.** Port reserves the right to revise the format of the required submittals set forth in this *Section 13.5* as technology changes and new engineering/architectural software is developed.

14. UTILITY SERVICES.

14.1. *Utility Services.* Tenant acknowledges and agrees that Port, in its proprietary capacity as owner of the Premises and landlord under this Lease, will not provide any utility services to the Premises or any portion of the Premises. Additionally, Tenant's construction of the various utilities infrastructure as part of the Horizontal Improvements required under the DDA is a material bargained for consideration of this Lease. Tenant, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to construct, operate and use the Horizontal Improvements, all of the buildings and any other portion of the Premises for their intended use, (ii) be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which all of the Improvements and the Premises are put, and (iii) maintain and repair all utilities serving the Premises to the point provided by the respective utility service provider (whether on or off the Premises). Tenant also must coordinate with the respective utility service provider with respect to the installation of utilities, including providing advance notice to appropriate parties of trenching requirements.

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

14.2. Electricity. Tenant will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the San Francisco Public Utilities Commission. If the San Francisco Public Utilities Commission determines that it cannot feasibly provide service to Tenant, Tenant may seek another provider. Nothing herein limits any remedy Tenant may have at law or in equity to recover damages for the City utility's failure to deliver utility services hereunder. **[Note: May be revised based on final DA.]**

14.3. Energy Consumption. Tenant acknowledges and agrees that Port has delivered a Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Premises no less than 24 hours prior to Tenant's execution of this Lease. The Disclosure Summary Sheet is attached as **Schedule [XX]**.

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

15. DAMAGE OR DESTRUCTION.

15.1. Damage or Destruction.

(a) **Tenant to Give Notice.** If at any time during the Term, any damage or destruction occurs to all or any portion of the Premises from fire or other casualty (each a "Casualty"), Tenant will promptly give telephonic or written notice (including via electronic mail) thereof to Port generally describing the nature and extent of such Casualty.

(b) **No Effect on Lease.** This Lease will not terminate or be forfeited or be affected in any manner by reason of Casualty, and Tenant, notwithstanding any law or statute present or future (including without limitation, California Civil Code Sections 1932(2) and 1933(4)), waives any and all rights to quit or surrender the Premises or any part thereof, Tenant acknowledging and agreeing that the provisions of this **Article 15** will govern the rights and remedies of the parties in the event of a Casualty. Tenant expressly agrees that its obligations hereunder, including the payment of any and all Rent and any other sums due hereunder, will continue as though said Premises, the Horizontal Improvements, and/or other Improvements had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind; provided, however, Tenant's obligations to construct, or cause Master Developer to construct, the Horizontal Improvements within any specified period may be revised in accordance with **[Section 9.2 of the DDA]**.

(c) **Tenant's Restoration.** In the event of a Casualty, Tenant has no obligation to Restore the Historic Buildings until such Historic Buildings are required to be Rehabilitated in accordance with the procedures set forth in the DDA relating to construction and must be at Tenant's or Master Developer's sole expense; provided, however Tenant will promptly alleviate any conditions caused by such Casualty that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including any demolition or hauling of rubble or debris. , Tenant must Restore or cause to be Restored, all Horizontal Improvements damages or affected by the Casualty. All work Tenant is required to perform under this Section must be performed without regard to the amount or availability of insurance proceeds.

16. CONDEMNATION.

16.1. *General; Notice; Waiver.*

(a) **General.** If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties will be determined pursuant to this *Article 16*.

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

(c) **Waiver.** Except as otherwise provided in this *Article 16*, the Parties intend that the provisions of this Lease will govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this *Article 16*, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under California Code of Civil Procedure Sections 1265.120 and 1265.130, as such section may from time to time be amended, replaced or restated.

16.2. Total Condemnation. If there is a Condemnation of the entire Premises or the Leasehold Interest (a "**Total Condemnation**"), this Lease will terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties will be released without further obligations to the other Party as of the Condemnation Date, subject to the payment to Port of accrued and unpaid Rent, up to the Condemnation Date and the provisions that expressly survive the expiration or earlier termination of this Lease. Port and Tenant will execute and deliver a termination of Lease or such other document as is reasonably necessary to evidence such termination.

16.3. Substantial Condemnation, Partial Condemnation. If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties will be as follows:

(a) **Substantial Condemnation.** If there is a Substantial Condemnation of a portion of the Premises or the Leasehold Estate, this Lease will terminate, at Tenant's option, (which will be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port). "**Substantial Condemnation**" means where Tenant reasonably determines that, because of the Condemnation, it will be infeasible for Master Developer under the DDA to develop all or any remaining Phase (as defined in the DDA) of the Project substantially in conformance with the Project Approvals, due to either economic or physical construction reasons unless Port and Master Developer amend the DDA, each in their sole discretion.

(b) **Partial Condemnation.** If there is a Condemnation of any portion of the Premises or the Leasehold Estate which does not result in a termination of this Lease under **Section 16.2** or **Section 16.3(a)** (a “**Partial Condemnation**”), this Lease will terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease will remain in full force and effect as to the portion of the Premises (or of the Leasehold Estate) remaining immediately after such Condemnation. Port and Tenant will execute and deliver a partial termination of Lease or such other document as is reasonably necessary to evidence such termination.

16.4. Awards. Except as provided in **Sections 16.5** and **16.6**, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including, without limitation, reasonable Attorneys’ Fees and Costs) incurred in the collection thereof (“**Net Awards and Payments**”) will be allocated between Port and Tenant as follows:

- (a) First, to the payment of all unpaid Rent.
- (b) Second, in the event of a Partial Condemnation, to pay costs of Restoration incurred by Tenant, in which case, the portion of the Net Awards and Payments allocable to Restoration will be payable to Tenant, a Mortgagee, or trustee in accordance with the requirements governing payment of insurance proceeds set forth in **Section 16.4(c)**;
- (c) Third, to Port for the value of the condemned land only, subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and without reference to, or inclusion of, Port’s reversionary interest in the value of the Improvements;
- (d) Fourth, to any non-affiliate Mortgagee pursuant to a non-affiliate Mortgage as and to the extent provided therein, for payment of all sums secured by its Mortgage that remain outstanding, together with its reasonable out of pocket expenses and charges in collecting the Net Award and Payment, including without limitation, its reasonable attorneys’ fees incurred in the Condemnation;
- (e) Fifth, to Tenant to the extent that the Net Awards and Payments are attributable to Tenant’s Leasehold Estate not including the value of the Improvements for the remaining unexpired portion of the Term to the original scheduled Expiration Date;
- (f) Sixth, the balance of the Net Awards and Payment will be divided proportionately between Port, for the value of Port’s reversionary interest in the land and Improvements (based on the date the Term would have expired but for the event of Condemnation) and Tenant, for the value of the Horizontal Improvements constructed by Tenant for the remaining unexpired portion of the Term to the original scheduled Expiration Date. Any Net Awards and Payment paid to Tenant in accordance with this Section will be applied as “**Land Proceeds**” that Port can contribute as an “**Advance of Land Proceeds**” under **[Section 7 of the DDA.]**
- (g) Notwithstanding anything to the contrary set forth above, any portion of the Net Awards and Payments which has been specifically designated by the condemning authority or in the judgment of any court to be payable to Port or Tenant on account of any interest in the Premises or the Improvements separate and apart from the value of Port’s reversionary interest in the land and Improvements, the Leasehold Estate, or the value of the Improvements on the Premises for the remaining unexpired portion of the Term of this Lease, will be paid to Port or Tenant, as applicable, as so designated by the condemning authority or judgment. If less than all of the Premises is condemned, and this Lease is terminated, the fair market value of the remaining Premises and Improvements thereon which become the property of Port upon such termination shall be treated for purposes of this Section as received by Port on account of its share of the Award and the cash payment payable to Port shall be reduced by a like amount and instead paid to Tenant.

16.5. Temporary Condemnation. If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease will remain in full force and effect, and the entire Award will be payable to Tenant.

16.6. Personal Property. Notwithstanding *Section 16.4*, Port will not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants.

17. LIENS.

17.1. Liens. Tenant will not create or permit the attachment of, and will promptly discharge at no cost to Port, any lien, security interest, or encumbrance on the Premises or the Leasehold Estate, other than (i) this Lease, permitted Subleases, and Permitted Title Exceptions, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants or are being contested in accordance with *Article 7*), and (iii) Mortgages in accordance with *Article 37*.

17.2. Mechanics' Liens. Tenant will keep the Premises and the Leasehold Estate free from any liens arising out of any work performed, materials or services furnished, or obligations incurred by Tenant or any of its Agents. Tenant will provide thirty (30) days' advance written notice to Port of any Construction to allow Port to post a notice of non-responsibility on the Premises. If Tenant does not, within sixty (60) days following the imposition of any such Lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, it will constitute a Tenant Event of Default, and Port will 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 deems proper, including payment of the claim giving rise to such lien. All sums paid by Port (including interest at the Default Rate computed from the date of payment) for such purpose and all expenses incurred by Port in connection therewith must be reimbursed to Port by Tenant within ten (10) days following demand by Port. Port will include with its demand, supporting documentation.

18. ASSIGNMENT AND SUBLETTING.

18.1. Transfers. Tenant will have the right to Transfer without obtaining Port's consent its entire interest in this Lease to the proposed Transferee in connection with a Transfer of the Master Developer's rights under the DDA pursuant to *Article 6* of the DDA. Except in connection with a Transfer under the DDA, no other Transfer of Tenant's interest is permitted.

18.2. No Release of Tenant's Existing Liability or Waiver by Virtue of Consent. The effectiveness of a Transfer hereunder is not in any way to be construed to relieve Tenant of any liability arising out of or with regard to the performance of any covenants or obligations to be performed by Tenant hereunder before the date of such Transfer.

18.3. Sublease. Tenant has the right to Sublease portions of the Premises for the Permitted Ancillary Uses without Port's prior consent so long all of the following conditions are satisfied (each a "Pre-Approved Sublease"):

(a) The Sublease will not adversely and materially impact construction of the Horizontal Improvements or the Vertical Improvements; and

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

(c) The term of the Sublease does not extend beyond the Term of this Lease;

(d) The Sublease contains an Indemnification and waiver of claims provision benefitting Port that is substantially and materially the same as *Article 19* except that the term “Tenant” in such provision means “Subtenant;” and

(e) The Sublease requires that under all liability and other insurance policies, “THE CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES” are additional insureds by written endorsement and acknowledging Port’s rights to demand increased coverage to normal amounts consistent with the Subtenant’s business activities on the Premises; and

(f) Subject to the rights of any Mortgagee, the Sublease requires Subtenant to pay the Sublease rent and other sums due under the Sublease directly to Port upon receiving written notice from Port that a Tenant Event of Default has occurred; and

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

(h) The Sublease contains a provision similar to *Article 36* (Right to Enter) requiring Subtenant to permit Port to enter its Subleased space for the purposes specified in *Article 36*; and

(i) The Sublease contains a provision similar to *Section 30.1* (Tenant Estoppel)) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as *Exhibit XX*; and

(j) The Sublease requires Subtenant to comply with the Special Provisions set forth in *Article 42*; and

(k) The Sublease contains a provision that if for any reason whatsoever this Lease is terminated, the Sublease will be automatically terminated; and

(l) As more particularly described in *Exhibit D*, Port will apply one hundred percent (100%) of Percentage Rent, which amount will be is applied as “Land Proceeds” as provided under Section 1.6 of the Financing Plan.

18.4. Acknowledgements. 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 *Article 18*.

18.5. Mortgaging of Leasehold. Notwithstanding anything herein to the contrary, at any time during the Term, Tenant has the right, without Port’s consent, to sell, assign, encumber, or transfer its interest in this Lease to a Mortgagee in connection with the exercise of remedies under the provisions of a Mortgage subject to the limitations, rights and conditions set forth in *Article 37*, and, in the event so assigned, the Lease may be further assigned with notice to, but without the consent of, Port.

18.6. Assignment of Rents. Tenant hereby assigns to Port all rents and other payments of any kind, due or to become due from any or present or future Subtenant as security for Tenant’s obligations hereunder prior to actual receipt thereof by Tenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under *Article 37* until such time as Port has terminated this Lease (subject to the Port’s agreement to enter into a new lease with Mortgagee and all other provisions of this Lease protecting Mortgagee’s interests in this Lease), at which time the rights of Port in all rents and other payments assigned pursuant to this *Section 18.6* will become prior and superior in right; provided, further, any rents collected by any Mortgagee from any Subtenants pursuant to any assignment of rents or subleases made in its favor will promptly remit to Port the rents so collected (less the actual cost of collection) to the extent necessary to pay Port any Rent, including any and all Additional Rent, through the date of termination of this Lease.

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

19. INDEMNIFICATION OF PORT.

19.1. General Indemnification of the Indemnified Parties. Subject to *Section 19.4*, Tenant agrees to and will Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Parties in connection with the occurrence or existence of any of the following:

(a) any accident, injury to or death of Persons, or loss or destruction of or damage to property occurring in, on, under, around, or about the Premises or any part thereof and which may be directly or indirectly caused by any acts done in, on, under, or about the Premises, or any acts or omissions of Tenant, its Agents, Subtenants, or Invitees, or their respective Agents and Invitees;

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

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

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

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

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

(g) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use or occupancy.

19.2. Hazardous Materials Indemnification.

(a) In addition to its obligations under *Section 19.1* (General Indemnity) and subject to *Section 19.4*, Tenant, for itself and on behalf of its Subtenants, Agents, or any of their respective Agents (individually "**Related Third Party**" and collectively "**Related Third Parties**") or their respective Invitees agrees to Indemnify the Indemnified Parties and the State Lands Indemnified Parties from any and all Losses and Hazardous Materials Claims that arise as a result of any of the following:

(i) any Hazardous Material Condition;

(ii) any Handling or Release of Hazardous Materials in, on, under, around or about the Premises;

(iii) any Exacerbation of any Hazardous Material Condition; or

(iv) failure by Tenant or any Related Third Party or their respective Invitees to comply with the Pier 70 Risk Management Plan; or

(v) claims by Tenant or any Related Third Party for exposure from and after the Commencement Date to Pre-Existing Hazardous Materials or New Hazardous Materials in, on, under, around, or about the 28-Acre Site.

(b) Tenant's obligations under *Section 19.2(a)* includes: (i) actual 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) actual damages for diminution in the value of the Premises or the Facility; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) sums actually paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) Attorneys' Fees and Costs, consultant fees, expert fees, court costs, and all other actual litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port actually incurs any damage and/or 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 of demand until paid, within five (5) business days after receipt of Port's payment demand and reasonable supporting evidence of the cost or damage actually incurred.

(c) Tenant understands and agrees that its liability to the Indemnified Parties and the State Lands Indemnified Parties under this *Section 19.2*, subject to *Section 19.4*, arises upon the earlier to occur of:

(i) discovery of any such Hazardous Materials (other than Pre-Existing Hazardous Materials) in, on, under, around, or about the Premises;

(ii) the Handling or Release of Hazardous Materials in, on, under, around or about the Premises [or the 28-Acre Site];

(iii) the Exacerbation of any Hazardous Material Condition; or

(iv) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

19.3. Scope of Indemnities; Obligation to Defend. Except as otherwise provided in *Section 19.4*, Tenant's Indemnification obligations under this Lease are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any Loss that actually or potentially falls within the Indemnification obligations of Tenant, even if such allegations are or may be groundless, false, or fraudulent, which arises at the time such claim is tendered to Tenant and continues at all times thereafter until finally resolved. Tenant's Indemnification obligations under this Lease are in addition to, and in no way will be construed to limit or replace, any other obligations or liabilities which Tenant may have to Port in this Lease, at common law or otherwise. All Losses incurred by the Indemnified Parties subject to Indemnification by Tenant constitute Additional Rent owing from Tenant to Port hereunder and are due and payable from time to time immediately upon Port's request, as incurred.

19.4. Exclusions from Indemnifications, Waivers and Releases.

(a) Nothing in this *Article 19* (Indemnities) relieves the Indemnified Parties or the State Lands Indemnified Parties from liability, nor will the Indemnities set forth in *Sections 19.1 (General Indemnification of Indemnified Parties)*, *19.2 (Hazardous Materials Indemnification)*, or the defense obligations set forth in *Sections 19.3 (Scope of Indemnities) and 19.6 (Defense)* extend to Losses:

(i) to the extent caused by the gross negligence or willful misconduct of the Indemnified Parties, or

(ii) from third parties' claims for exposure to Hazardous Materials prior to the earlier of the (1) commencement of the License, if any, executed under the Horizontal DDA for access to the Premises prior to the effective date of this Lease where Tenant had exclusive control of the Premises; or (2) effective date of this Lease; or

(iii) without limiting Tenant's Indemnification obligations under *Sections 19.2(a)(ii), 19.2(a)(iv), or 19.2(a)(v)*, and to the extent the applicable Loss was not caused by the failure of Tenant or a Related Third Party or their respective Invitees to comply with the Pier 70 Risk Management Plan, claims from third parties (who are not Related Third Parties) arising from exposure to Pre-Existing Hazardous Materials on, about or under the Horizontal Improvement Parcels after the Acceptance Date for such parcel (or exposure after the Acceptance Date to a New Hazardous Material discovered after the Acceptance Date, the presence of which is limited to the Deferred Infrastructure Area and is not also present in, on or around the Premises); provided, however, the foregoing limitation on Tenant's Indemnification obligations does not extend to claims arising from the Handling, Release or Exacerbation of Pre-Existing Hazardous Materials by the acts or omissions of Tenant or any of its Related Third Parties.

(b) If it is reasonable for an Indemnified Party or a State Lands Indemnified Party to assert that a claim for Indemnification under this *Section 19.4* is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party or State Lands Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under this *Section 19.4*. Notwithstanding the foregoing, if an Indemnified Party or State Lands Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under this *Section 19.4* will not be effective unless such Indemnified Party or State Lands Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party or State Lands Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant.

19.5. Survival. Tenant's Indemnification obligations under this Lease and the provisions of this *Article 19* survive the expiration or earlier termination of this Lease (or, the partial termination of this Lease with respect to any portion of the Premises released in accordance with *Section 1.1(b)*).

19.6. Defense. Tenant will, at its option but subject to reasonable approval by Port, be entitled to control the defense, compromise or settlement of any such matter through counsel of Tenant's choice; provided, that in all cases Port will be entitled to participate in such defense, compromise or settlement at its own expense. If Tenant fails, however, in Port's reasonable judgment, within a reasonable time following notice from Port alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Port will have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole cost, to carry out such defense, compromise or settlement which expense is due and payable to the Port within fifteen (15) days after receipt by Tenant of a detailed invoice for such expense.

19.7. Waiver. As a material part of the consideration of this Lease, Tenant hereby assumes the risk of, and waives, discharges, and releases any and all claims against the Indemnified Parties from any Losses, including (i) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, (ii) goodwill, (iii) business opportunities, (iv) any act or omission of persons occupying adjoining premises, (v) theft, (vi) explosion, fire, steam, oil, electricity, water, gas, rain, pollution, or contamination, (vii) Building defects, (viii) inability to use all or any portion of the Premises due to sea level rise or flooding or seismic events, and (ix) any other acts, omissions or causes arising at any time and from any cause, in, on, under, or about the Premises or the 28-Acre Site, including all claims

arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties. The foregoing waiver, discharge and release does not include Losses arising from the Indemnified Parties' willful misconduct or gross negligence.

Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of the Indemnified Parties for any consequential, incidental or punitive damages. Port would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of the Indemnified Parties, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Tenant or other waivers or releases contained in this Lease and as a material part of the consideration of this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue, or to pay the Attorneys' Fees and Costs of any party to sue for such damages, the Indemnified Parties arising out of this Lease or the uses authorized hereunder, including, any interference with uses conducted by Tenant pursuant to this Lease regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Tenant's Initials: _____

Tenant acknowledges that the waivers and releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims for consequential, incidental or punitive damages. Tenant realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect.

20. INSURANCE.

20.1. Required Insurance Coverage. Tenant, at its sole cost and expense, and Tenant's Subtenants or Agents that conduct any Special Event, or, as relevant, install or maintain any Promotional Signage 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 Twenty Million Dollars (\$20,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, liquor 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 Subsequent Construction 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 Five Million Dollars (\$5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) **Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance.** Worker's Compensation in statutory amounts, with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury, or illness. In the event Tenant is self-insured for the insurance required pursuant to this *Section 20.1(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. In addition, Tenant will be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively as applicable with Employer's Liability limit not less than Five Million Dollars (\$5,000,000.00) for each accident, injury or illness, on employees eligible for each.

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

(e) **Flood Insurance.**

(i) During construction of the improvements, for any parcel located within a flood zone on the City's flood maps, flood insurance will be in an amount equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates.

(ii) During construction of the improvements, for any parcel not located within a flood zone on the City's flood maps, flood insurance will be in an amount to the extent available at commercially reasonable rates from recognized insurance carriers or through the NFIP equal to the maximum amount of full replacement cost of the improvements with a deductible not to exceed ten percent (10%) except that a greater deductible will be permitted to the extent that flood coverage is not available from recognized carriers or through the NFIP at commercially reasonable rates

(f) **Pollution Legal Liability.** Tenant, at its sole cost and expense, will procure Pollution Legal Liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per claim, for a period of not less than ten (10) years. Each of the State Lands Indemnified Parties will be named as additional insureds under the terms of any such policy. If Tenant procures any such policy for a period that is longer than ten (10) years, Tenant will ensure that each of THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN

FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE STATE LANDS INDEMNIFIED PARTIES are named as additional insureds for such longer period of time.

(g) **Construction Activities.** Insurance required in connection with construction of Horizontal Improvements is as set forth below:

(i) **Contractor Requirements.** Tenant must require its contractors and subcontractors to maintain the following coverages:

(1) Commercial general liability insurance with limits of not less than \$5 million each occurrence on a policy form that is at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 00 01);

(2) Comprehensive automobile liability insurance with a policy limit of not less than \$5 million each occurrence on a policy form that is at least as broad as ISO Form Number CA 0001 covering automobile liability, Code 1 (any auto);

(3) Worker's compensation insurance with statutory limits and employer's liability insurance with limits of not less than \$1 million each accident, injury, or illness;

(4) Watercraft liability insurance (if operating watercraft) protection and indemnity insurance with limits not less than \$1 million each occurrence, or with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost, wreck removal, and damages "In Rem" (the vessel); and

(5) Marine general liability (MGL) (if operating watercraft) with limits not less than \$10 million each occurrence and aggregate basis;

(6) Vessel pollution liability insurance (if operating watercraft with engines or fuel usage) with limits not less than \$5 million per occurrence and \$5 million in the aggregate with a deductible not to exceed \$50,000 with Port approval, lesser limits and deductible as are readily available in the insurance market at a commercially reasonable cost; insurance should cover liability imposed under laws for any loss, damage, cost, liability or expense arising out of the sudden, accidental, and unintentional discharge, spillage, leakage, emission, or release of any substance of any kind into or on the navigable waters of the United States or the adjoining shorelines.

(7) Contractor's pollution liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per claim.

(ii) **Builder's Risk Requirements.** In addition, Tenant or General Contractor must carry "Builder's All Risk" insurance on a "Special Form" ("All Risk") Builder's Risk meeting the following requirements.

(1) The amount of coverage must be equal to the full replacement cost of any existing structures affected by the work and full replacement cost of all new construction, including all materials and equipment intended to become part of the permanent structures. The policy must provide coverage for "soft costs," such as design and engineering fees, code updates, permits, bonds, insurance, and inspection costs caused by an insured peril. The Builder's Risk insurance may have a deductible clause not to exceed \$100,000.

(2) The Builder's Risk policy must identify the City and County of San Francisco and the San Francisco Port Commission as loss payees, subordinate to any lender requirements.

(3) The Builder's Risk policy must include the following coverages: (A) all damages of loss to the work and to appurtenances, to materials and equipment

to be incorporated into the project while the same are in transit, stored on or off the site, to construction plant and temporary structures; (B) the costs of debris removal, including demolition as may be made reasonably necessary by covered perils, resulting damage, and any applicable law; and (C) start up and testing and machinery breakdown including electrical arcing.

(iii) Professional Services Requirements. Tenant must require all providers of engineering and geotechnical professional services under contract with Tenant to provide professional liability coverage with limits not less than Five Million Dollars (\$5,000,000.00) each claim. With respect to all other professional services provided to Tenant for the Horizontal Improvements, Tenant must require all providers of such professional services under contract with Tenant to provide professional liability coverage with limits not less than Two Million Dollars (\$2,000,000.00) each claim. Such insurance will provide coverage during the period when such professional services are performed and for a period of 3 years after issuance of a Certificate of Occupancy for the Horizontal Improvements. This requirement may be met by the use of an extended reporting period.

(h) Other Coverage. Such other insurance or different coverage amounts may change from time to time as required by the City's Risk Manager, if in the reasonable judgement of the City's Risk Manager it is the general commercial practice in San Francisco to carry such insurance and/or in the requested insurance limits for the subject activities taking into consideration the risks associated with such uses of the Premises, so long as any insurance required is available from recognized carriers at commercially reasonable rates. If Tenant determines that such other insurance or coverage amount should not be required because it is not available from recognized carriers at commercially reasonable rates, then Tenant will provide to Port evidence supporting Tenant's determination of commercial unreasonableness as to the applicable coverage. Such evidence may include quotes, declinations, and notices of cancellation or non-renewal from leading insurance companies for the required coverage, percentage of overall operating expenses attributable thereto, and then current industry practice for comparable mixed-use/retail/office projects in San Francisco.

(i) Substitution. Notwithstanding the foregoing, Tenant shall have the right, upon the prior approval of Port, not to be unreasonably withheld, to substitute any of the insurance coverage required in this *Article 20* with insurance coverage maintained by one or more of Tenant's Agents, Invitees or transferees as long as the insurance policies, certificates and endorsements for such insurance coverage comply in all respects with the requirements of this *Section 20.1(c)*, as determined by Port.

20.2. *General Requirements.*

(a) Insurance provided for pursuant to this Section:

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

(ii) As to property insurance required hereunder, such insurance shall name the Tenant as the first named insured. As to liability insurance Tenant shall ensure that Port and the City of San Francisco are named as additional insureds under all general liability, automobile liability, vessel pollution, pollution, Public Boat Dock liability coverages. Any umbrella and/or excess liability insurance will include an endorsement through a blanket additional endorsement or equivalent naming as additional insureds the following: **"THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS."**

(iii) As to Commercial General Liability and automobile liability insurance, shall provide that it constitutes primary insurance with respect to claims insured by

such policy, and, except with respect to limits, that insurance applies separately to each insured against whom claim is made or suit is brought;

(iv) Will provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by *Sections 20.1(a)*, *20.1(b)*, *20.1(c)*, and *20.1(f)*;

(v) Will be subject to the reasonable approval of Port, which approval shall not be unreasonably withheld.

(b) Certificates of Insurance; Right of Port to Maintain Insurance.

Tenant shall furnish Port certificates with respect to the policies required under this Section within thirty (30) days after the Commencement Date and, with respect to renewal policies, within thirty (30) days after the policy renewal date of each such policy, and, within sixty (60) days after Port's request, shall also provide Port with copies of each such policy, or shall otherwise make such policy available to Port for its review. If at any time Tenant fails to maintain the insurance required pursuant to *Section 20.1*, or fails to deliver certificates as required pursuant to this Section, then, upon thirty (30) business days' written notice to Tenant, Port may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Port. Within thirty (30) business days following demand, Tenant shall reimburse Port for all amounts so paid by Port, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(c) **Insurance of Others.** To the extent Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, Tenant shall require that such policies be endorsed to include the "**CITY AND COUNTY OF SAN FRANCISCO AND THE PORT OF SAN FRANCISCO AND THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES**" as additional insureds under the terms of any such policy. Unless otherwise specified in this agreement, Tenant will ensure that all contractors and sub-contractors performing work on the Premises and all operators and subtenants of any portion of the Premises carry adequate insurance coverages.

(d) **Excess Coverage.** All requirements may be satisfied by any combination of umbrella and excess liability policies (including blanket policies).

20.3. Release and Waiver. Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by *Sections 20.1(d)* to the extent that such loss is reimbursed by an insurer.

21. HAZARDOUS MATERIALS.

21.1. Compliance with Environmental Laws. Tenant will comply and cause its Agents, Invitees, and all Persons under any Sublease, to comply with all Environmental Laws, Operations Plans (if any), the Pier 70 Risk Management Plan, and prudent business practices, including, without limitation, any deed restrictions, regulatory agreements, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not, without the prior written consent of Port, which consent will not be unreasonably delayed or withheld, Handle, nor permit the Handling of Hazardous Materials on, under or about the Premises, except for (a) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (b) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable Laws and any reasonable conditions or limitations required by Port,

(c) janitorial or office supplies or materials in such amounts as are customarily used for general office, residential or commercial purposes so long as such Handling is at all times in compliance with all Environmental Laws, and (d) Pre-Existing Hazardous Materials that are Handled for Remediation purposes under the jurisdiction of an Environmental Regulatory Agency.

21.2. *Tenant Responsibility.* Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials by complying with all Environmental Laws and occupational health and safety Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises:

(a) Other than the Pre-Existing Hazardous Materials, will not permit any Hazardous Materials to be present in, on, under or about the Premises except as permitted under **Section 21.1**;

(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 any investigation, construction, operations, use or any other activities conducted in, on, or under the Premises, and will not engage in or permit any activity at the Premises, or in the operation of any vehicles used in connection with the Premises in violation of any Environmental Laws;

(d) Tenant will be the “**Generator**” of any waste, including hazardous waste, resulting from investigation, construction, operations, use or any other activities conducted in, on, or under the Premises;

(e) Will comply with all provisions of the Pier 70 Risk Management Plan with respect to the Premises, at its sole cost and expense, including requirements to notify site users, comply with risk management measures during construction, and inspect, document and report site conditions to Port annually and

(f) Will comply, and will cause all of its Subtenants that are subject to an Operations Plan, to comply with the Operations Plan applicable to Tenant or such Subtenant.

21.3. *Tenant’s Environmental Condition Notification Requirements.* The following requirements are in addition to the notification requirements specified in the (i) Operations Plan(s), if any, (ii) the Pier 70 Risk Management Plan, and (iii) Environmental Laws:

(a) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under **Section 21.1**, Handled, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or 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. In addition to Tenant’s notice to Port by oral or other means, Tenant must provide Port written notice of any such Release or Handling within twenty-four (24) hours following such Release or Handling.

(b) Tenant must notify Port as soon as practicable, orally or by other means that will transmit the earliest possible notice to Port staff of Tenant’s receipt or knowledge of any of the following, and contemporaneously provide Port with an electronic copy within twenty-four (24) hours following Tenant’s receipt of any of the following, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during Tenant’s occupancy of the Premises that Tenant or its Agents or Invitees provide 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 receive 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, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use during the Term or Tenant's occupancy of the Premises;

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

(v) Other than any Environmental Regulatory Approvals issued by the Department of Public Health and the Hazardous Materials Unified Program Agency, any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

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

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the name of the issuing entity, the Environmental Regulatory Approval identification number, and the dates of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises. Tenant must provide Port with copies of any of the documents within the scope of this **Section 21.3(d)** upon Port's request.

(e) Tenant must provide Port with copies of all non-privileged communications with Environmental Regulatory Agencies, copies of investigation reports conducted by Environmental Regulatory Agencies, and all non-privileged communications with other persons regarding actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises.

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

21.4. Remediation Requirement.

(a) After notifying Port in accordance with **Section 21.3** and subject to **Section 21.4(d)**, Tenant must Remediate, at its sole cost and 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; provided Tenant must take all necessary immediate actions to the extent practicable to address an emergent Release of Hazardous Materials to confine or limit the extent or impact of such Release, and will then provide such notice to Port in accordance with **Section 21.3**. Except as provided in the previous sentence, Tenant must obtain Port's approval, which approval will not be unreasonably withheld, conditioned or delayed, of a Remediation work plan whether or not such plan is required under Environmental Laws, then begin Remediation actions immediately

following Port's approval of the work plan and continue diligently until Remediation is complete.

(b) In addition to its obligations under *Section 21.4(a)*, before this Lease terminates for any reason, Tenant must Remediate, at its sole cost and in compliance with all Environmental Laws and this Lease: (i) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of Hazardous Materials during the Term; and (ii) any Hazardous Material Condition discovered during Tenant's occupancy that is required to be Remediated by any Regulatory Agency if Remediation would not have been required but for Tenant's use of the Premises, or due to Subsequent Construction or construction of the Horizontal Improvements.

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

(d) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition or Handle or Release Pre-Existing Hazardous Materials in, on, under, around or about the Premises, Tenant will not be obligated to Remediate any Hazardous Material Condition existing before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

21.5. *Pesticide Prohibition.* Tenant will comply with the provisions of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage as further described in *Section XX*. [**Note: Insert relevant section in Special City/Port Requirements Exhibit**].

21.6. *Additional Definitions.*

"**Environmental Laws**" includes all present and future federal, State and local Laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees, and all permits, licenses, approvals, or other entitlements, or rules of common law pertaining to Hazardous Materials (including the Handling, Release, or Remediation thereof), industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, any environmental mitigation measure adopted under Environmental Laws affecting any portion of the Premises, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety, or community right-to-know requirements related to the work being performed under this Lease. "**Environmental Laws**" include the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), Section 20 of the San Francisco Public Works Code (Analyzing Soils for Hazardous Waste), the FOG Ordinance, the Pier 70 Risk Management Plan and that certain Covenant and Environmental Restrictions on Property made as of August 11, 2016, by the City, acting by and through the Port, for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region and recorded in the Official Records as document number 2016-K308328-00.

"**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 RWQCB, Cal-OSHA, the Bay

Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the SFPUC, 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 or potential for human exposure 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, it being understood that the mere discovery of Hazardous Materials does not cause “Exacerbation”. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, construction of Improvements and Alterations under this Lease. **“Exacerbate”** also means failure to comply with the Pier 70 Risk Management Plan. **“Exacerbation”** has a correlative meaning.

“Handle” when used with reference to Hazardous Materials means to use, generate, move, handle, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material. **“Handling”** and **“Handled”** will have correlative meanings.

“Hazardous Material” means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted, or otherwise regulated under Environmental Laws as a **“hazardous constituent”**, **“hazardous substance”**, **“hazardous waste constituent”**, **“infectious waste”**, **“medical waste”**, **“biohazardous waste”**, **“extremely hazardous waste”**, **“pollutant”**, **“toxic pollutant”**, or **“contaminant”**, or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife, or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety. **“Hazardous Materials”** also includes any chemical identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

“Hazardous Material Claim” means any Environmental Regulatory Action or any claim made or threatened by any third party against the Indemnified Parties, the State Lands Indemnified Parties, or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the Release or Exacerbation of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, Attorneys' Fees and Costs and fees and costs of consultants and experts.

“Hazardous Material Condition” means the Release or Exacerbation, or threatened Release or Exacerbation, of Hazardous Materials in, on, under, or about the Premises or the environment, or from any vehicles Tenant, or its Agents and Invitees use in, on, under, or about the Premises during the Term or Tenant's occupancy of the Premises.

“**Investigate**” or “**Investigation**” when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion of the site or the Improvements or which have been, are being, or threaten to be Released into the environment. Investigation will include preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

“**New Hazardous Material**” means a Hazardous Material that is not a Pre-Existing Hazardous Material.

“**Pier 70 Risk Management Plan**” means the Pier 70 Risk Management Plan, Pier 70 Master Plan Area, prepared for the Port of San Francisco by Treadwell & Rolo and dated July 25, 2013, and approved by the RWQCB on January 24, 2014, including any amendments and revisions thereto that are approved by the RWQCB, and as interpreted by Regulatory Agencies with jurisdiction.

“**Pre-Existing Hazardous Materials**” means any Hazardous Material existing on, in, about or around the Premises as of the Effective Date and identified in the Pier 70 Environmental Site Investigation Report, Pier 70 Remedial Action Plan, or Pier 70 Risk Management Plan.

“**Release**” means when used with respect to Hazardous Materials any accidental, actual, imminent or intentional spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater, or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

“**Remediate**” or “**Remediation**” when used with reference to Hazardous Materials means any activities undertaken to clean up, abate, remove, transport, dispose, contain, treat, stabilize, monitor, remediate, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. Remediation includes, without limitation, those actions included within the definition of “**remedy**” or “**remedial action**” in California Health and Safety Code Section 25322 and “**remove**” or “**removal**” in California Health and Safety Code Section 25323.

“**State Lands Indemnified Parties**” means the State of California, the California State Lands Commission, and all of their respective heirs, legal representatives, successors and assigns, and all other Persons acting on their behalf.

22. PORT’S RIGHT TO PAY SUMS OWED BY TENANT.

22.1. Port May Pay Sums Owed by Tenant Following Tenant’s Failure to Pay.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to Port for any Tenant Event of Default, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any Person other than Port (other than any Imposition, mechanics’ lien or encumbrance with respect to which the provisions of *Articles 6* and *7* apply, or any other sum required to be paid by Tenant which Tenant is contesting in good faith and with due diligence and which would not become a lien on the Property), Port may, at its sole option, but will not be obligated to, upon ten (10) days prior notice to Tenant, pay such sum for and on behalf of Tenant.

22.2. Tenant’s Obligation to Reimburse Port. If pursuant to *Section 22.1*, Port pays any sum required to be paid by Tenant hereunder, Tenant will reimburse Port as Additional Rent, the sum so paid. All such sums paid by Port are due from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date, will bear interest at the lesser of the Default 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 in full by Tenant. Port’s rights under this *Article 22* are in

addition to its rights under any other provision of this Lease or under applicable Laws. The provisions of this **Section 22.2** will survive the expiration or earlier termination of this Lease.

23. EVENTS OF DEFAULT .

23.1. Events of Default. Subject to the provisions of **Section 23.2**, the occurrence of any one or more of the following events which remain uncured after the passage of time set forth pursuant to this **Article 23** shall constitute an “**Event of Default**” under the terms of this Lease:

(a) Tenant fails to pay any Rent or Imposition when due, which failure continues for five (5) business days following written notice from Port; provided, however, Port will not be required to give such notice on more than two (2) occasions during any calendar year, and failure to pay any Rent or Imposition thereafter when due will be deemed an Event of Default without need for further notice;

(b) Tenant fails to deliver into escrow the duly executed and acknowledged Partial Release and Termination for an applicable Development Parcel within the time period set forth in **Section 1.1(b)(i)**, and such failure continues for one (1) business day following written notice from Port;

(c) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from Port;

(d) Tenant fails to comply with the requirements set forth in **Exhibit XX** for each Special Event and such failure continues for one (1) business day following written notice from Port; provided, however, if Tenant commits the same default with respect to consecutive, related Special Events more than two (2) times within a twelve (12) month period (by way of example only, holding a prohibited Special Event during non-business hours on more than two (2) occasions), then Tenant will not be entitled to any cure period under this **Section 23.1(d)** after notice of such second default;

(e) A **Material Breach** (as such terms is defined in the DDA) by Master Developer occurs under the DDA and remains uncured but such Tenant Event of Default under this Lease will be deemed cured if the **Material Breach by Master Developer** is cured pursuant thereto;

(f) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, which abandonment is not cured within thirty (30) days after notice from Port of Port’s belief of abandonment;

(g) The Premises are used for Prohibited Uses, as determined by Port in its reasonable discretion, and such Prohibited Use(s) continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such period and diligently and in good faith continues to cure the default; provided, further, without limitation of the foregoing, the Parties agree that Tenant’s internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(h) Tenant fails to comply with the provisions of **Section 11.1** (Covenant to Repair and Maintain the Premises) within five (5) days following written notice from Port; provided, however, if such default cannot reasonably be cured within such five (5) day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such five (5) day period and diligently and in good faith continues to cure the default; provided, however, without limitation of the foregoing, the Parties agree that Tenant’s internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(i) Tenant fails to comply with the provisions of *Article 21* and such failure continues for a period of one (1) business day following written notice from Port; provided, however, if such default cannot reasonably be cured within such one (1) business day period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such one (1) business day period and diligently and in good faith continues to cure the default; provided, further that the Parties agree that Tenant's internal deliberations to determine the path to cure such default will be deemed to be a commencement of cure;

(j) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within one hundred eighty (180) days;

(k) A writ of execution is levied on the Leasehold Estate which is not released within one hundred eighty (180) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred eighty (180) days; provided, however, that the exercise by a Mortgagee of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this *Section 23.1(k)*;

(l) Tenant makes a general assignment for the benefit of its creditors; or

(m) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation and Improvement Measures that Tenant is required to comply with) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

23.2. *Special Provisions Concerning Mortgagees and Events of Default.*

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage will not, in and of itself, constitute a default under this Lease. Port will also accept a cure of an Event of Default by any Tenant investor or mezzanine lender; provided, however, such parties will not have any additional time to cure any Event of Default.

24. REMEDIES.

24.1. *Port's Remedies Generally.* [Note: Coordinate with DDA and also consider potential remedies for failure to timely perform Horizontal Improvements.]

(a) Upon the occurrence and during the continuance of an Event of Default under this Lease, except as expressly limited herein, Port has all rights and remedies provided in this Lease or available at Law or in equity (including the right to seek injunctive relief or an order for specific performance, where appropriate), including the right to self-help to the extent provided for herein; provided, however, notwithstanding anything to the contrary in this Lease, any right to cure and any remedy available to Port regarding any Event of Default under the Workforce Development Program, is limited to those rights and remedies provided in the applicable Law for such applicable Special City and Port Provisions; provided, further, Port's right to terminate this Lease for a Tenant Event of Default will be limited to Tenant Event of Defaults described in *Sections 23.1(a)* (but only with respect to Tenant's failure to pay any Impositions), *23.1(e)*, *23.1(g)* and *23.1(i)*.

(b) In addition to the foregoing Remedies, (i) Port will have the right to prohibit Tenant's use of the Premises for Special Events if more than XX Event of Defaults

under **Section 23.1(d)** occur during any given XX-month period, and [(ii) with respect to an Event of Default due to Tenant's failure to pay Rent, Port will have the remedies set forth in the Financing Plan].

(c) Except as expressly provided herein, all of Port's rights and remedies are cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights will not preclude the exercise of any other.

24.2. Right to Keep Lease in Effect.

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

(b) **No Termination Without Notice.** No act by Port allowed by this **Section 24.2**, nor any appointment of a receiver upon Port's initiative to protect its interest under this Lease, nor any withholding of consent to a Transfer or termination of a Transfer in accordance herewith, will terminate this Lease, unless and until Port notifies Tenant in writing that Port elects to terminate this Lease.

(c) **Application of Proceeds of Reletting.** If Port elects to relet the Premises as provided in **Section 24.2(a)**, the rent that Port receives from reletting will be applied to the payment of:

(i) First, all costs incurred by Port in enforcing this Lease, whether or not any action or proceeding is commenced, including Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing Personal Property, costs in connection with reletting the Premises, or any portion thereof, altering, installing, modifying and constructing tenant improvements required for a new tenant, and costs of repairing, securing and maintaining the Premises or any portion thereof;

(ii) Second, the payments of any indebtedness other than Rent due hereunder from Tenant to Port;

(iii) Third, Rent due and unpaid under this Lease;

(iv) After deducting the payments referred to in this **Section 24.2(c)**, any sum remaining from the rent Port receives from reletting will be held by Port and applied to monthly installments of future Rent as such amounts become due under this Lease. In no event will Tenant be entitled to any excess rent received by Port. If on a date Rent or other amount is due under the Lease, the rent received by Port as of such date from any reletting is less than the Rent or other amount due on that date, or if any costs incurred by Port in reletting, remain after applying the rent received from such reletting, Tenant will pay to Port such deficiency. Such deficiency will be calculated and paid monthly.

(d) **Payment of Rent.** Tenant will pay to Port Rent on the dates the Rent is due, less the rent Port has received from any reletting which exceeds all costs and expenses of Port incurred in connection with a Tenant Event of Default and the reletting of all or any portion of the Premises.

24.3. Port's Right to Cure Tenant's Default. Port, at any time after Tenant commits an Event of Default, may, at Port's sole option, cure the default at Tenant's sole cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities (including without limitation, Attorneys' Fees and Costs), all such sums, costs, damages, or liabilities paid by Port will 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 Default 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.

24.4. Termination of Tenant's Right to Possession. Upon an Event of Default that allows for termination: **[Note: Further discussion regarding bondholders' rights and whether lease could continue at Port's option if DDA is terminated.]**

(a) Before exercising any right to terminate this Lease and Tenant's right to possession of the Premises under *Sections 23.1(a)* (but only with respect to Tenant's failure to pay any Imposition), *23.1(e)*, *23.1(g)*, and *23.1(i)*, Port will provide Tenant with a second written notice ("Second Default Notice") and the additional cure period set forth below:

(i) For an Event of Default under *Section 23.1(a)*, Tenant will have five (5) business days following delivery of the Second Default Notice to cure;

(ii) For an Event of Default under *Sections 23.1(e)* or *23.1(g)*, Tenant will have one (1) business day following delivery of the Second Default Notice to cure; provided, however, if such default cannot reasonably be cured within such one (1) business day period, then Port will not exercise its termination right if Tenant is diligently and in good faith continues to cure the default to completion;

(b) Port may terminate this Lease and Tenant's right to possession of the Premises for the Events of Default described in *Section 24.4(a)* at any time following expiration of the cure periods set forth in *Section 24.4(a)* for the applicable Event of Default by providing Tenant with a written notice of termination.

(c) 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 will not constitute a termination of Tenant's right to possession.

(d) 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:

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

(ii) 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

(iii) 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

(iv) 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 therefrom. 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 24.4(d)(i) and 24.4(d)(ii)* above will be computed by allowing interest at an annual rate equal to the lesser of the Default 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 24.4** will 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%).

24.5. Continuation of Subleases and Other Agreements. Port has the right, at its sole option, to assume any and all Subleases and agreements by Tenant for the maintenance or operation of the Premises. Tenant hereby further covenants that, upon request of Port following a Tenant Event of Default and termination of Tenant’s interest in this Lease, Tenant will execute, acknowledge and deliver to Port such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in Port the then existing Subleases and other agreements then in force, as above specified.

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

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

24.8. Remedies Not Exclusive. The remedies set forth in this **Article 24** are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by other terms and provisions of this Lease, Law or in equity. Tenant’s obligations hereunder will survive any termination of this Lease.

25. EQUITABLE RELIEF.

In addition to the other remedies provided in this Lease, either Party is entitled at any time after a default or threatened default by the other Party to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an event of default by the other Party, the non-defaulting Party is entitled to any other equitable relief which may be appropriate to the circumstances of such event of default.

26. NO WAIVER.

26.1. No Waiver by Port or Tenant. No failure by Port or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, will be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach will affect or alter this Lease, which shall continue in full force and effect, or the respective rights of Port or Tenant with respect to any other then existing or subsequent breach.

26.2. No Accord or Satisfaction. No submission by Tenant or acceptance by Port of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder will waive any of Port’s rights or remedies hereunder or constitute an accord or satisfaction, whether or not Port had knowledge of any such failure except with respect to the Rent so paid. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment will operate as a compromise or accord or satisfaction unless the same is approved as such in writing by Port. Port may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including

any amount claimed to be due as Additional Rent) will be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments will be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made “under protest” (or words of similar import).

27. DEFAULT BY PORT; TENANT’S REMEDIES.

27.1. *Default by Port.* Port will be deemed to be in default hereunder only if Port fails to perform or comply with any obligation on its part hereunder, and (i) such failure continues for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than sixty (60) days after written notice thereof from Tenant (provided that Port will use reasonable efforts to cure such default within a thirty (30) day period after receipt of such written notice from Tenant), or, (iii) if such default cannot reasonably be cured within such sixty (60) day period, Port does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default.

27.2. *Tenant’s Exclusive Remedies.* Upon the occurrence of default by Port described above, which default substantially and materially interferes with the ability of Tenant to construct the Horizontal Improvements, Tenant will have the exclusive right (a) to seek equitable relief, including specific performance, in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on Port or its Agents; or (b) if and only if Master Developer has a right to terminate the DDA on account of the applicable default, and Master Developer elects to terminate the DDA, to terminate this Lease. Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant’s remedies hereunder constitutes Tenant’s sole and absolute right and remedy for a default by Port hereunder, and Tenant has no remedy of self-help.

28. TENANT’S RECOURSE AGAINST PORT.

28.1. *No Recourse Beyond Value of Property Except as Specified.* Tenant agrees that notwithstanding any other term or provision of this Lease, (a) Tenant will have no recourse with respect to, and Port will 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) and (b) neither Port nor the Indemnified Parties will be liable under any circumstances for injury or damage to, or interference with Tenant’s business, including loss or profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring. By Tenant’s execution and delivery hereof and as part of the consideration for Port’s obligations hereunder, Tenant expressly waives all such liability.

28.2. *No Recourse Against Specified Persons.* No commissioner, officer, or employee of the Indemnified Parties will be personally liable to Tenant, or any successor in interest, for any Event of Default by Port, and Tenant agrees that it will have no recourse with respect to any obligation of Port under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such Person.

28.3. *Nonliability of Tenant’s Members, Partners, Shareholders, Directors, Officers and Employees.* No member, officer, partner, shareholder, director, board member, agent, or employee of Tenant will be personally liable to Port, and Port will have no recourse against any of the foregoing, in an Event of Default by Tenant or for any amount which may become due to Port or on any obligations under the terms of this Lease or any claim based upon this Lease.

29. LIMITATIONS ON LIABILITY.

29.1. *Waiver of Indirect or Consequential, Incidental, Punitive and Special Damages.* As a material part of the consideration for this Lease, in no event will either Party be liable to the

other Party for any consequential, incidental, special and punitive damages arising out of any such Party's default.

29.2. Limitation on Parties' Liability Upon Transfer. In the event of any transfer of Port's interest in and to the Premises, Port (and in case of any subsequent transfers, the then transferor) will automatically be 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 (or such transferor, as the case may be), 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; provided, however, that Port (or such subsequent transferor) has transferred to the transferee any funds in Port's (or in the possession of such subsequent transferor) in which Port (or such subsequent transferor) has an interest, in trust, for application pursuant to the provisions hereof, and such transferee has assumed all liability for all such funds so received by such transferee from Port (or such subsequent transferor).

30. ESTOPPEL CERTIFICATES.

30.1. Estoppel Certificate by Tenant. Tenant will execute, acknowledge and deliver to Port (or at Port's request, to a prospective purchaser or mortgagee of Port's interest in the Premises), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as *Exhibit XX* stating to Tenant's knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by Port. In addition, if requested, Tenant will attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by any Port, any successor agency, and any prospective purchaser or mortgagee of the Premises or any part of Port's interest therein. Tenant will also insert a provision similar to this Section into each Sublease requiring Subtenants under Subleases to execute, acknowledge and deliver to Port, within twenty (20) business days after request, an estoppel certificate substantially in the form attached hereto as *Exhibit XX* covering the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease, along with a true and correct copy of the applicable Sublease and all amendments thereto.

30.2. Estoppel Certificate by Port.

Port will execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Mortgagee, prospective Mortgagee, prospective purchaser, or other prospective transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate substantially in the form attached hereto as *Exhibit XX* stating to Port's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, whether or not, to the knowledge of Port, there are then existing any defaults under this Lease (and if so, specifying the same) and (c) any other matter actually known to Port, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, Port will attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by Port that, to its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any

Mortgagee, prospective Mortgagee, prospective purchaser, or other prospective transferee of Tenant's interest under this Lease.

31. APPROVALS BY PORT; STANDARD OF REVIEW; FEES FOR REVIEW.

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

31.2. *Standard of Review.* Except as expressly provided otherwise or when Port is acting in its regulatory capacity, the following standards will apply to the Parties' conduct under this Agreement.

(a) **Advance Writings Required.** Whenever a Party's approval or waiver is required: (i) the approval or waiver must be obtained in advance and in writing; and (ii) the Party whose approval or waiver is sought may not unreasonably withhold, condition, or delay its approval or waiver, as applicable.

(b) **Commercial Reasonableness.** Whenever a Party is permitted to make a judgment, form an opinion, judge the sufficiency of the other Party's performance, or exercise discretion in taking (or refraining from taking) any action or making any determination, or grant or withhold its approval or consent, unless otherwise stated in this Lease, that Party must employ commercially reasonable standards in doing so. In general, the Parties' conduct in implementing this Lease, including construction of Improvements, disapprovals, demands for performance, requests for additional information, and any exercise of an election or option, must be commercially reasonable.

31.3. *Fees for Review.* Unless a different time period is required in this Lease, within thirty (30) days after Port's written request, Tenant will pay Port, as Additional Rent, Port's reasonable costs, including, without limitation, Attorneys' Fees and Costs and costs of Port staff time incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed Transfer, Mortgage, estoppel certificate, or any other matter under this Lease requiring Port's approval or review excluding any such costs incurred by Port in its regulatory capacity, which costs will be paid separately by Tenant to the extent required by the applicable regulatory requirements. Tenant will pay such reasonable costs regardless of whether or not Port consents to such proposal.

32. NO MERGER OF TITLE.

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

33. QUIET ENJOYMENT.

Subject to the Permitted Encumbrances, the Premises being in and around construction throughout the Term, Construction Impacts from the adjacent and nearby Development Projects, the terms and conditions of this Lease and applicable Laws, Port agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, will lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by Port. Notwithstanding the foregoing, Port has no liability to Tenant in the event any defect exists in the title of Port as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment. Tenant's sole remedy with respect to any such existing title defect is to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

34. SURRENDER OF PREMISES.

34.1. *End of Lease Term.*

(a) **Conditions of Premises.** Except with respect to those portions of the Premises for which this Lease terminates upon conveyance of Development Parcels to Vertical Developers or the City upon Acceptance of Horizontal Improvements, as applicable, (either case of which will also be governed by the DDA and other Project Approvals), upon the expiration or other termination of the Term of this Lease, Tenant will quit and surrender to Port the Premises (i) in good order and condition, (ii) clean, free of debris, waste, and Hazardous Materials (other than any Pre-Existing Hazardous Materials that have not been Handled, Released, or Exacerbated by Tenant, its Agents, or Invitees), and (iii) free and clear of all liens and encumbrances other than the Permitted Encumbrances. If it is determined by Port that the condition of all or any portion of the Premises is not in compliance with the provisions of this Lease with respect to Hazardous Materials at the expiration or earlier termination of this Lease, then at Port's sole option, Port may require Tenant to hold over possession of the Premises until Tenant can surrender the Premises to Port in the condition required herein. Except as set forth in **Section 34.1(b)**, the Premises will be surrendered with all Horizontal Improvements, other Improvements, repairs, alterations, additions, substitutions and replacements thereto. Tenant hereby agrees to execute all documents as Port or the City may deem necessary to evidence or confirm any such other termination.

(b) **Demolition of Improvements.**

(i) At the expiration or earlier termination of this Lease, at Port's sole election ("**Demolition Option**"), Port may require Tenant, at Tenant's sole cost, to Demolish and Remove the Improvements, including Horizontal Improvements that have not been Accepted by the City that Port or the City reasonably believe are defective, and surrender the Premises as a vacant parcel of real property. Port will notify Tenant of Port's election to exercise the Demolition Option (i) no later than twenty-four (24) months prior to the expiration of this Lease, or (ii) within ninety (90) days following termination of this Lease due to a Tenant Event of Default.

(ii) If Port exercises the Demolition Option in accordance with **Section 34.1(b)(i)**, then if Port agrees that Tenant will complete the Demolition and Removal after the expiration or earlier termination of this Lease (or promptly thereafter if the Lease is terminated due to a Tenant Event of Default), Port and Tenant will enter into Port's standard license granting Tenant non-possessory access to the Premises in order for Tenant to perform the Demolition and Repair following the expiration or earlier termination of this Lease; provided, however, Tenant will perform the Demolition and Removal in compliance with **Article 13** (Subsequent Construction) and Port may require insurance, bond, guaranty, Indemnification, and other requirements that exceed the coverage amounts or licensee obligations set forth in Port's standard license, that Port determines are reasonably appropriate to protect its interest in light of the risks and liabilities associated with the Demolition and Removal.

(iii) Tenant must commence and complete the Demolition and Removal in a timely manner and with due diligence and care, and complete the same within the time period agreed to between the Parties.

(c) **Subleases.** Upon any termination of this Lease, all Subleases hereunder will automatically terminate.

(d) **Personal Property.** On or before expiration or earlier termination of this Lease, Tenant will remove and will cause all Subtenants to remove, all of their respective trade fixtures, signs and other Personal Property. If the removal of such Personal Property causes damage to the Premises, Tenant will promptly repair such damage, at no cost to Port. Any items not removed by Tenant as required herein will be deemed abandoned and may be stored, removed, and disposed of by Port at Tenant's sole cost and expense, and Tenant waives all claims against Port for any Losses resulting from Port's retention, removal or disposition of such Personal Property; provided, however, that Tenant will be liable to Port for all costs incurred in storing, removing and disposing of such abandoned property or repairing any damage to the Premises resulting from such removal.

(e) **Quitclaim.** Upon the expiration or earlier termination of this Lease, the Premises will 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 will 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 will promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effectuate the termination of Tenant's leasehold estate hereunder and to effectuate such transfer or vesting of title to the Premises, the Improvements and Personal Property that Port agrees are to remain within the Premises.

(f) **Survival.** The provisions of this *Section 34.1* will survive the expiration or earlier termination of this Lease.

35. NOTICES.

35.1. Notices.

All notices, demands, consents, and requests which may or are to be given by any Party to the other will be in writing, except as otherwise provided herein. All notices, demands, consents, and requests to be provided hereunder shall be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or, if mailed, on the date that is two (2) days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

<i>To Port:</i>	Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: Deputy Director of Real Estate and Development Re: Pier 70 Waterfront Site
<i>With a copy to:</i>	Port of San Francisco Pier 1 San Francisco, CA 94111 Attn: Deputy Director of Real Estate and Development Re: Pier 70 Waterfront Site

<i>Master Developer:</i>	
<i>With a copy to:</i>	

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by electronic-mail to the electronic-mail address set forth above (or such other address as may be provided from time to time by notice given in the manner required hereunder); however, neither Party may give official or binding notice by electronic-mail.

35.2. Form and Effect of Notice.

Every notice given to a Party or other Person under this Section must state (or shall be accompanied by a cover letter that states):

- (a) the Section of this Lease pursuant to which the notice is given and the action or response required, if any; and
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto.

In no event will a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this *Section 35.2*.

36. INSPECTION OF PREMISES BY PORT.

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

36.2. Entry for Horizontal Improvements. With respect to the development of Horizontal Improvements, Port and its Agents have the right of entry onto Premises in accordance with [Section 14.8(b) of the DDA] to the extent reasonably necessary to carry out the purposes of the DDA.

36.3. General Entry. In addition to its rights pursuant to *Section 36.1*, subject to the rights of any Subtenants, Port and its authorized Agents will have the right to enter the Premises at all reasonable times and upon reasonable notice as stated below 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 in accordance with *Sections 11.2 or 24.2*;
- (b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;
- (c) To obtain environmental samples and perform equipment and facility testing.

Port agrees to give Tenant reasonable prior notice of Port's entering on the Premises except in an emergency for the purposes set forth above. Such notice will be not less than

one (1) days' prior notice. Tenant will have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice will be required for Port's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in **Section 36.3(a)**.

36.4. Emergency Entry. Port may enter the Premises at any time, without notice, in the event of an emergency. Port will 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, will 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.

36.5. No Liability. Port will 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 **Article 36** 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.

36.6. Nondisturbance. Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in this **Article 36** in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

36.7. Subtenant Agreement. Tenant will require each Subtenant to permit Port to enter its premises for the purposes specified in **Section 36.1** through **Section 36.4**.

37. MORTGAGES.

Tenant will have the right to Mortgage the Leasehold Estate in accordance with the attached **Exhibit XX**.

38. NO JOINT VENTURE.

Nothing contained in this Lease will be deemed or construed as creating a partnership or joint venture between Port and Tenant or between Port and any other Person, or cause Port to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

39. ECONOMIC ACCESS.

Tenant will comply with the Workforce Development Plan attached hereto as **Exhibit XX** (collectively, the "**Workforce Development Plan**"). The Workforce Development Plan is designed to afford opportunities for San Francisco residents to participate in the construction and operation of the Horizontal Improvements. Tenant will comply with the Workforce Development Plan with respect to the operation and leasing of the Premises, and will include in its Subleases, applicable provisions of the Workforce Development Plan in accordance with the same.

40. 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 organized and validly existing under the laws of the State of [_____]. 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 [_____].

(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 and upon execution, are legal, valid and binding obligations of Tenant, enforceable against Tenant in accordance with its terms; and do not violate any provision of any agreement or judicial order to which Tenant is a party or to which Tenant is subject.

(c) **No Suspension.** That Tenant has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Tenant has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it will immediately notify the Port of same and the reasons therefore together with any relevant facts or information requested by Port. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(d) **No Limitation on Ability to Perform.** Neither Tenant's [articles of organization or operating agreement], nor any 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. Except as may otherwise have been disclosed to Port in writing, 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.

(e) **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.

(f) **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, statute, ordinance, or regulation 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.

(g) **Financial Matters.** Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received 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) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code, (v) no federal or state tax liens have been filed against Tenant, and (vi) there is no material adverse change in Tenant's financial condition and Tenant is meeting its financial obligations as they mature.

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

41. MITIGATION AND IMPROVEMENT MEASURES.

In order to mitigate the significant environmental impacts of this Lease and operation of the Premises, Tenant agrees that the operation of the Project will be in accordance with the Mitigation and Improvement Measures attached to this Lease as **Exhibit XX**. Tenant will incorporate such Mitigation and Improvement Measures into any contract for the operation of the Improvements.

42. SPECIAL PROVISIONS.

Tenant will comply with the Port and City Special Provisions attached hereto as *Exhibit XX*.

43. GENERAL.

43.1. Time of Performance.

(a) **Expiration.** All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) **Weekend or Holiday.** A performance date which falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 p.m. the next working day.

(c) **Days for Performance.** All periods for performance or notices specified herein in terms of days will be calendar days, and not business days, unless otherwise provided herein.

(d) **Time of the Essence.** Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder, subject to Force Majeure.

43.2. Interpretation of Agreement.

(a) **Exhibits and Schedule.** Whenever an “**Exhibit**” or “**Schedule**” is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such exhibits and schedules are incorporated herein by reference.

(b) **Captions.** Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions will not define or limit the scope or intent of any provision of this Lease.

(c) **Words of Inclusion.** The use of the term “**include**”, “**including**”, “**such as**”, or words of similar import, when following any general term, statement or matter will not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) **No Presumption Against Drafter.** This Lease has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Lease will be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including California Civil Code Section 1654).

(e) **Fees and Costs.** The Party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) **Lease References.** 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 and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section or paragraph of this Lease or any specific subdivision thereof.

(g) **Approvals.** Unless otherwise specifically stated in this Lease, wherever a Party hereto has a right of approval or consent, such approval or consent will not be unreasonably withheld, conditioned or delayed and such approval or consent will be given in writing.

(h) **Legal References.** Wherever reference is made to a specific code or section of a specific Law, the reference will be deemed to include any amendment, restatement or replacement.

43.3. Successors and Assigns. This Lease is binding upon and will inure to the benefit of the successors and assigns of Port, Tenant, and any Mortgagee. Where the term “**Tenant**,” “**Port**,” “**Mortgagee**” is used in this Lease, it means and includes their respective successors and assigns, or including, as to any Mortgagee, any transferee and any successor or assign of such transferee. Whenever this Lease specifies or implies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or the entity which has succeeded to Port’s rights and obligations no longer exists, then the City will be deemed to be the successor and assign of Port for purposes of this Lease.

43.4. No Third-Party Beneficiaries. This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and will not be deemed to have conferred any rights, express or implied, upon any other Person, except as provided in **Article 37** with regard to Mortgagees.

43.5. Real Estate Commissions. Port is not liable for any real estate commissions, brokerage fees or finder’s fees which may arise from this Lease or any Sublease. Tenant and Port each represents that neither has engaged any broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, through either Party, the Party through whom such claim is made agrees to Indemnify the other Party (including the Indemnified Parties) from any Losses arising out of such claim.

43.6. Counterparts. This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

43.7. Entire Agreement. This Lease (including the Exhibits) constitutes the entire agreement between the Parties with respect to the subject matter set forth therein, and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parol evidence of any prior or other agreement will be permitted to contradict or vary the terms of this Lease.

43.8. Amendment. Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties. If Master Developer seeks an amendment to the DDA pursuant to [Section 3.4 thereof,] and such amendment requires a corresponding amendment to this Lease, [then the provisions of Section 3.4 thereof shall be deemed incorporated herein by reference.]

43.9. Governing Law; Selection of Forum. This Lease will be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for Port’s entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of Port, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

43.10. Recordation. This Lease will not be recorded by either Party. The Parties agree to execute and record in the Official Records a Memorandum of Lease in the form attached hereto as **Exhibit XX**. Promptly upon Port’s request following the expiration of the Term or any other termination of this Lease, Tenant will deliver to Port a duly executed and acknowledged

quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to Port and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. Port may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

43.11. Attorneys' Fees. 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, will be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable Attorneys' Fees and Costs, which will be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section includes, 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. Attorneys' Fees and Costs under this Section includes attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney will 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.

43.12. Severability. If any provision of this Lease, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision will not affect any other provision of this Lease or the application of such provision to any other Person or circumstance, and the remaining portions of this Lease will continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

44. DEFINITION OF CERTAIN TERMS.

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section [to be cross-checked and finalized with final lease drafts]:

"**28-Acre Site**" is defined in *Recital B*.

"**Access Rights**" as defined in *Section 4.4(b)*.

"**Acceptance**" means, with respect to any Horizontal Improvement, the acceptance by the Port or City of such Horizontal Improvement in accordance with the applicable procedures set forth in the DDA. "**Accept**" and "**Accepted**" have correlative meanings. .

"**Acquisition Agreement**" means [agreement for acquisition of Horizontal Improvements.]

"**Additional Rent**" means any and all sums (other than Base Rent) that may become due or be payable by Tenant under this Lease.

"**Affiliate**" means any Person directly or indirectly Controlling, Controlled by or under Common Control with the other Person in question. [Note: use same definition that we end up with in DDA]

"**Affordable Self Storage**" is defined in the Basic Lease Information.

"**Affordable Self Storage Site**" is defined in the Basic Lease Information and further depicted in *Exhibit XX*.

“**Agents**” means, when used with reference to either Party to this Lease, the members, officers, directors, commissioners, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

“**Agreement to Comply with CFD and Assessment Matters**” as defined in *Section 6.2(b)*.

“**Ancillary Permitted Uses**” as described in the Basic Lease Information.

“**Anniversary Date**” means each anniversary of the Commencement Date during the Term, unless the actual Commencement Date is not the first day of a month, in which case, each Anniversary Date will be determined as if the Commencement Date were the first day of the first full month after the actual Commencement Date.

“**Anticipated Conveyance Date**” as defined in *Section 1.1(b)(i)(2)*

“**As Is With All Faults**” as defined in *Section 1.2(c)*.

“**Attorneys’ Fees and Costs**” means reasonable attorneys’ fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs, and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

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

“**Base Rent**” as defined in *Exhibit D*.

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

“**Building 21 Site**” is defined in the Basic Lease Information and further depicted in *Exhibit XX*.

“**CASp**” is defined in *Section 1.1(c)*.

“**Casualty**” is defined in *Section 15.1(a)*.

“**CFD Assessment**” means the special taxes to be levied on the Land (and other property in the Pier 70 area) in accordance with the terms and conditions of the “Rate and Method of Apportionment of Special Tax” applicable to the Infrastructure CFD. [add reference to any other CFDs that might be in place]

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

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

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

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

“**Construction Impacts**” as described in *Section 5.1*.

“**Control**” means the ownership (direct or indirect) by one Person of more than fifty percent (50%) of the profits or capital of another Person. “**Controlled**” and “**Controlling**” have correlative meanings. “**Common Control**” means that two Persons are both Controlled by the same other Person.

“**DDA**” is defined in *Recital E*.

“**Dedicated Parcel**” as defined in the Housing Plan attached to the DDA.

“**Dedicated Parcel Completion Date**” as defined in the Housing Plan attached to the DDA.

“**Default Rate**” means an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due.

“**Demolition and Remove**” means the demolition of the Improvements and the removal and disposal of all debris in accordance with all Laws. “**Demolition and Removal**” have a correlative meaning.

“**Demolition Option**” as defined in *Section 34.1(b)(i)*.

“**Design for Development**” means the Pier 70 SUD Waterfront Site Design for Development approved by the Port Commission and the Planning Commission, as amended from time to time.

“**Development Parcel**” means a buildable parcel in the SUD.

“**Development Projects**” is defined in *Section 5.1*.

“**Encroachment Area**” is defined in *Section 1.1(e)*.

“**Encroachment Area Charge**” is defined in *Section 1.1(e)*.

“**Environmental Laws**” as defined in *Section 21.6*.

“**Environmental Regulatory Action**” is defined in *Section 21.6*.

“**Environmental Regulatory Agency**” is defined in *Section 21.6*.

“**Environmental Regulatory Approval**” is defined in *Section 21.6*.

“**Event of Default**” as defined in *Section 23.1*.

“**Exacerbate**” is defined in *Section 21.6*.

“**Executive Director**” means the Executive Director of the Port or his or her designee.

“**Final Construction Documents**” means plans and specifications sufficient for the processing of an application for a building permit in accordance with applicable Laws and the Interagency Cooperation Agreement.

“**FOG Ordinance**” means Sections 140-140.7 of Article 4.1 of the San Francisco Public Works Code, or any subsequent amendment or replacement of the same that sets forth prohibitions, limitations and requirements for the discharge of fats, oils and grease into the City’s sewer system by food service establishments.

“**Force Majeure**” means events which result in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s control, including, but not restricted to: (i) domestic or international events disrupting civil activities, such as war, acts of terrorism, insurrection, acts of the public enemy, and riots; (ii) acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties; (iii) epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions; (iv) inability to secure necessary labor, materials, or tools (but only if the Party claiming delay has taken reasonable action to obtain them on a timely basis) due to any of the above events, freight

embargoes, lack of transportation, or failure or delay in delivery of utilities serving the Premises; (v) Administrative Delay, Environmental Delay, or Down Market Delay (in each case as defined in the DDA); and (vi) in the case of Tenant, any delay resulting from a defect in Port's title to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, to Restore if appropriate, and to complete performance of the hindered act.

"Foreclosure" means a foreclosure of a Mortgage or other proceedings in the nature of foreclosure (whether conducted pursuant to court order or pursuant to a power of sale contained in the Mortgage), deed or voluntary assignment or other conveyance in lieu thereof.

"Generator" as described in *Section 21.2(d)*.

"Handle" is defined in *Section 21.6*.

"Hard costs" is defined in *Section 11.3*

"Hazardous Material" as defined in *Section 21.6*.

"Hazardous Material Claim" is defined in *Section 21.6*.

"Hazardous Material Condition" is defined in *Section 21.6*.

"Historic Building" means any of buildings 2, 12, 21 (to the extent the same has been added to the Premises in accordance with *Section 1.1(b)(iii)* and frame of building 15. **"Historic Buildings"** mean more than one Historic Building.

"Historic Core" is defined in *Section 5.2(a)(vii)*.

"Historic Core Project" is defined in *Section 5.2(a)(vii)*.

"Horizontal Improvements" means any improvements constructed or to be constructed by the Master Developer pursuant to the DDA.

"Horizontal Improvement Parcel" is defined in *Section 1.1(b)(ii)*.

"Impositions" is defined in *Section 6.1(b)*.

"Improvements" means all buildings, structures, fixtures and other improvements erected, built, placed, installed, constructed, renovated, or rehabilitated, located upon or within the Premises on or after the Commencement Date.

"Indemnified Party" and **"Indemnified Parties"** means the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Port; all of the Agents of the California State Lands Commission, the City, including its Port, and all of their respective heirs, legal representatives, successors and assigns, all other Person acting on their behalf, and each of them.

"Indemnify" means indemnify, protect and hold harmless. **"Indemnification"** has a correlative meaning.

"Indemnifying Party" is defined in *Section 19.6*.

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San-Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, Port shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

“**Indexed**” means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Commencement Date occurred to the first day of the most recent month for which the Index is available at any given time.

“**Infrastructure CFD**” means the City and County of San Francisco Community Facilities District No. [___] (Pier 70 Public Improvements).

“**Infrastructure Plan**” means the Infrastructure Plan attached to the DDA.

“**Investigate**” or “**Investigation**” are defined in *Section 21.6*.

“**Invitees**” when used with respect to Tenant means the customers, patrons, invitees, guests, members, licensees, assignees, and subtenants of Tenant and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

“**Known Pre-Existing Hazardous Materials**” is defined in *Section 21.6*.

“**Law**” or “**Laws**” means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof, whether or not in the present contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Premises or any part thereof, including, without limitation, any subsurface area, the use thereof and of the buildings and Improvements thereon. “**Laws**” include the Mitigation and Monitoring Program and the Pier 70 Risk Management Plan.

“**Lease**” means this lease, as it may be amended from time to time.

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

“**Live/Work**” as described in *Section 4.4(a)(v)*.

“**Loss**” or “**Losses**” when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable Attorneys’ Fees and Costs and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

“**Maintenance Notice**” is defined in *Section 11.3*.

“**Master Developer**” is defined in *Recital B*.

“**Master Tentative Map**” means _____.

“**Master Utilities Plan**” is defined in the DDA.

“**Memorandum of Lease**” means the Memorandum of this Lease, between Port and Tenant, recorded in the Official Records, in the form of *Exhibit XX* attached hereto.

“**Mitigation Monitoring and Reporting Program**” means the Mitigation Monitoring and Reporting Program that the Port Commission adopted by Resolution No. [_____] and attached hereto as *Exhibit XX*.

“**Mortgage**” means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of Tenant’s leasehold interest under this Lease recorded in the Official Records.

“**Mortgagee**” means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

“**Mortgagor**” is defined in *Section XX*.

“**Net Awards and Payments**” is defined in *Section 16.4*.

“**New Hazardous Materials**” is defined in *Section 21.6*.

“**Noonan Site**” is described in the Basic Lease Information and as further depicted in *Exhibit XX*.

“**Notice of Special Tax**” is defined in *Section 6.2(a)*.

“**Notice to Vacate**” is defined in *Section 1.1(e)*.

“**Official Records**” means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

“**Partial Condemnation**” is defined in *Section 16.3(b)*.

“**Partial Release of Master Lease**” as defined in *Section 1.1(b)(i)(1)* and further depicted in *Exhibit XX*.

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

“**Percentage Rent**” is defined in *Exhibit D*.

“**Permitted Encumbrances**” is described in *Section 1.2(a)*.

“**Permitted Title Exceptions**” is defined in *Section 1.2(a)*.

“**Permitted Transfer**” means a Transfer to a Permitted Transferee.

“**Permitted Transferee(s)**” means any transferee of the Master Developer’s interest in the DDA permitted or approved in accordance with the DDA.

“**Permitted Uses**” is defined in *Section 4.1*.

“**Person**” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

“**Personal Property**” means all fixtures, furniture, furnishings, equipment, machinery, supplies, software, and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

“**Pesticide Ordinance**” is defined in *Section 21.5*.

“**PG&E Remediation Site**” is described in the Basic Lease Information and further depicted in *Exhibit XX*.

“**Pier 70**” is defined in *Recital B*.

“**Pier 70 Parties**” is defined in *Section 5.2(a)(vii)*.

“**Pier 70 Risk Management Plan**” is defined in *Section 21.6*.

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

“**Pre-Approved Sublease**” is defined in *Section 18.2*.

“**Pre-Existing Hazardous Materials**” is defined in *Section 21.6*.

“**Premises**” is defined in the Basic Lease Information and *Section 1.1*.

“**Prevailing party**” is defined in *Section 43.11*.

“**Primary Permitted Use**” is defined in the Basic Lease Information.

“**Prime Rate**” means the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks, as published by the Wall Street Journal, or if the Wall Street Journal has ceased to publish the Prime Rate, then such other equivalent recognized source.

“**Prohibited Use**” or “**Prohibited Uses**” as defined in *Section 4.4(a)*.

“**Project**” means the [Pier 70] project as generally described in the Project Approvals.

“**Project Approvals**” is defined in *Recital B*.

“**Promotional Signage**” means signage containing advertising or promotional messages [relating to events, subtenants or otherwise relating to the Premises, which signage is intended to be visible primarily to persons on the Premises.] [OPEN]

“**public work**” is defined in *Section 13.3(f)*.

“**reasonable wear and tear**” is defined in *Section 11.1(d)*.

“**Record Drawings**” is defined in *Section 13.5(a)*. “**Regulatory Agency**” means any governmental agency having jurisdiction over the Premises, including, but not limited to, the City, RWQCB, and the Army Corps of Engineers.

“**Regulatory Approval**” means any authorization, approval or permit required by any Regulatory Agency.

“**Rehabilitation**” means the repair or alteration of an historic building that does not damage or destroy materials, features, or finishes considered important in defining the building’s historic character.

“**Related Third Party**” is defined in *Section 21.6*.

“**Release**” is defined in *Section 21.6*.

“**Remediate**” or “**Remediation**” is defined in *Section 21.6*.

“**Rent**” means the sum of Base Rent (including all adjustments) and Additional Rent. For purposes of this Lease, Rent includes all unpaid sums that are payable as Rent, but that are unpaid when earned and/or accrue for payment at a later time in accordance with the provisions of this Lease.

“**Restoration**” means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. (“**Restore**” and “**Restored**” shall have correlative meanings.)

“**RWQCB**” shall mean the San Francisco Bay Regional Water Quality Control Board of Cal/EPA, a state agency.

“**Security Deposit**” is defined in the Basic Lease Information.

“**Special Event**” means temporary or short term exhibitions, private and public gatherings, recreation, athletic events, filming, commemorations, market places, sporting events, musical and theatrical performances and other forms of live entertainment and includes setup/load in and demobilization/load out; parking for Special Events; temporary improvements; installation of

tents and structures; administrative and security functions and other amenities and facilities to accommodate such Special Events.

“**State**” means the State of California.

“**Sublease**” means any lease, sublease, license, concession, or other agreement (including, without limitation, a Sublease to Port) by which Tenant leases, subleases, demises, licenses, or otherwise grants to any Person in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other Persons).

“**Subsequent Construction**” means all repairs to and reconstruction, replacement, addition, expansion, Restoration, Rehabilitation, alteration, or modification of any Improvements, or any construction of additional Improvements. “**Subsequent Construction**” does not include any Horizontal Improvements.

“**Substantial Condemnation**” is defined in *Section 16.3(a)*.

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

“**SUD**” means Planning Code Section 249.XX establishing the [Pier 70] Special Use District, as it may be amended from time to time.

“**Tenant**” is identified in the Basic Lease Information, and its permitted successors and assigns.

“**Term**” is defined in *Section 2*.

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

“**Total Condemnation**” is defined in *Section 16.2*.

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

Notwithstanding the foregoing, as used herein, the term “**Transfer**” does not include (i) Special Events; or (ii) any hypothecation, encumbrance or mortgage of this Lease, or pledge of the ownership interests in Tenant, made in accordance with *Article 37*. **[Conform to DDA]**

“**Vertical DDA**” is defined in the DDA.

“**Vertical Developer**” is defined in the DDA.

“**Vertical Improvements**” is defined in the DDA.

“**Work**” is defined in *Section 13.4*.

“**worth at the time of award**” is defined in *Section 24.4*.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

Tenant

[INSERT NAME OF TENANT],

By: _____
Name: _____
Title: _____

Port

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

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Title: _____

Lease authorized by:

-Port Board of Directors Resolution No. [_____]

-Board of Supervisors Resolution No. [_____]

EXHIBIT XXXX
PROCEDURES FOR SPECIAL EVENTS

To Follow

EXHIBIT D

RENT

3. RENT.

3.1 *Payment of Percentage Rent.*

(a) Tenant will pay to Port from and after the Commencement Date and throughout the Term, participation rent equal to one hundred percent (100%) of Net Income generated at or from the Premises ("**Percentage Rent**") in accordance with **Section 3.1(b)**. Port will apply one hundred percent (100%) of the Percentage Rent as "**Land Proceeds**" as provided under Section 1.6 of the Financing Plan.

(b) From and after the Commencement Date, Tenant will determine the actual Percentage Rent payable for each calendar month in each calendar quarter during the Term by the twentieth (20th) day of the immediately following calendar quarter and Port will apply such amounts as "Land Proceeds" as provided under Section 1.6 of the Financing Plan, calculated as if such Percentage Rent for each calendar month had been applied monthly rather than quarterly. The monthly payments of Percentage Rent will be Tenant's good faith estimate of the Percentage Rent owed to Port. In the event this Lease expires or terminates on a day other than the last day of a calendar quarter, Percentage Rent for such fractional part of the calendar quarter preceding such expiration or termination date will be prorated to account for the partial calendar quarter and paid within twenty (20) days after such expiration or termination date, but if this Lease terminates as a result of a Tenant Event of Default, any amounts due hereunder will be payable immediately upon termination.

3.2. *Additional Definitions.*

"**Adjustments**" mean (without duplication and provided they are not included in any Soft Costs or other costs entitled to a developer return under the DDA or Financing Plan) all reasonable actual out of pocket third party costs associated with the use of the Premises for Ancillary Permitted Uses, such as payment to special events managers and other Permitted Uses.

"**Gross Income**" means for any reporting period or portion thereof during the Term, the following: all payments, revenues, fees or amounts received by Tenant or by any other party for the account of Tenant from any Person for any Person's use or occupancy of any portion of the Premises (excluding security or other deposits to be returned to such Person upon the termination of such use or occupancy), or from any other sales, advertising, concessions, licensing or programming generated from the Premises, including, without limitation, all base rent, percentage rent, payments made to Tenant from any Subtenant to reimburse Tenant for operating expenses, common area maintenance expenses, insurance expenses, Impositions, or, in the case of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by such Subtenant, license fees, parking charges, advertising revenues, event or promotional fees, charges and permit fees. Without limiting the foregoing, "Gross Income" also includes any and all payments made to Tenant from the Business Interruption or delayed opening insurance proceeds.

"**Minimum Parking Revenues**" means an amount equal to sixty-six percent (66%) of an amount equal to (i) gross parking revenues generated from all parking lot or parking operations, less (ii) parking taxes and reasonable actual costs associated with the maintenance and repair of surface parking lots such as re-paving and striping costs.

"**Net Income**" means (i) Gross Income from sources other than gross parking revenues, less Adjustments, plus (ii) Minimum Parking Revenues.

3.3. **Reporting of Percentage Rent.**

(a) Tenant will deliver to Port a complete statement setting forth in reasonable detail its Net Income for each calendar month in each calendar quarter, including an itemized list of all Adjustments from Gross Income that Tenant claims and which are expressly permitted under this Lease, and a computation of the Percentage Rent for each calendar month in a calendar quarter (the "**Percentage Rent Statement**") by the twentieth (20th) day of the immediately following calendar quarter. A financial officer or other accountant employed by Tenant who is authorized and competent to prepare such Percentage Rent Statement must certify each Percentage Rent Statement as accurate, complete and current.

(b) If Port receives the Percentage Rent payment but does not receive the applicable Percentage Rent Statement by the twentieth (20th) day of the immediately following calendar quarter, such failure, until cured, will be treated as a late payment of Percentage Rent, subject to a Late Charge.

(c) If Tenant fails to deliver any Percentage Rent Statement within the time period set forth in this Section 3.3 (irrespective of whether any Percentage Rent is actually paid or payable by Tenant to Port) and such failure continues for thirty (30) days after the date Port delivers to Tenant written notice of such failure, Port will have the right, among its other remedies under this Lease, to have a Port Representative examine Tenant's Books and Records (and, to the extent permitted by the applicable Sublease, the Books and Records of any other occupant or user of the Premises) as may be necessary to determine the amount of Percentage Rent due to Port for the period in question. The determination made by Port Representative will be binding upon Tenant, absent manifest error, and Tenant will promptly pay to Port the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge and interest at the Default Rate.

3.4 **Books and Records.** Tenant will keep books and records according to generally accepted accounting principles consistently applied or such other method as is reasonably acceptable to Port. "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease 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 Property, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant will maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated directly from the Premises. If Tenant operates all or any portion of the Premises through a Subtenant or Agent (other than Port), Tenant will cause such Subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

3.5 **Audit.** Tenant agrees to make its Books and Records (and, to the extent within Tenant's control, the Books and Records of any other person relating to the calculation of Percentage Rent) available in the City and County of San Francisco to Port, or to any accountant employed or retained by Port or the City who is competent to examine and audit the Books and Records (hereinafter collectively referred to as "**Port Representative**"), for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Gross Income or Net Income, for a period of five (5) years after the applicable Percentage Rent Statement was delivered to Port. Tenant will reasonably cooperate with Port Representative during the course of any audit; provided however, once commenced, such audit will be diligently pursued to completion by Port within a reasonable time after its commencement. If an audit has commenced and Port claims that errors or omissions have occurred, Tenant will retain the Books and Records and make them available until those matters are resolved.

If an audit reveals that Tenant has understated its Gross Income or Net Income for said audit period, Tenant will pay Port, within fifteen (15) days after receipt of such audit results, the difference between the amount Tenant has paid and the amount it should have paid to Port,

plus interest at the Default Rate. If Tenant understates its Gross Income for any audit period by five percent (5%) or more of Tenant's understated amount, Tenant will pay Port's cost of the audit. Any overpayments revealed by an audit will be credited towards Rent payments due subsequent to the audit until credited in full.

3.6 **Manner of Payment.** Percentage Rent will be applied by Port as a credit toward Land Proceeds in accordance with the Financing Plan. Tenant will pay all Rent to Port in lawful money of the United States of America at the address for notices to Port specified in this Lease, or to such other Person or at such other place as Port may from time to time designate by notice to Tenant. Percentage Rent is payable without prior notice or demand. Rent is due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Additional Rent is due thirty (30) days following the giving by Port and the receipt by Tenant of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

3.8 **Interest on Delinquent Rent.** Rent not paid when due (or in the case of Percentage Rent, if not reported when due or applied when due) will bear interest from the date due until paid (or, for Percentage Rent, when reported or when applied) at an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the Prime Rate that is in effect as of the date payment is due (the "**Default Rate**"). However, interest will not be payable on Late Charges incurred by Tenant or to the extent such payment would violate any applicable usury or similar law. Payment of interest will not excuse or cure any default by Tenant.

3.9 **Late Charge.** Tenant acknowledges and agrees that late payment by Tenant to Port of Rent, or Tenant's failure to provide the Percentage Rent Statement to Port, will cause Port increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, without limiting any of Port's rights or remedies hereunder and regardless of whether such late payment results in a Tenant Event of Default, Tenant will pay a late charge (the "Late Charge") equal to the higher of (a) five percent (5%) of all Rent or any portion thereof which remains unpaid more than five (5) days following the date it is due (or with respect to a failure by Tenant to deliver the Percentage Rent Statement to Port within five (5) days following the date it is due, five percent (5%) of Percentage Rent due for the subject period of the Percentage Rent Statement), or (b) [**Note: Increase following amount by \$500 every 5 years after execution of the DDA:** One Thousand Dollars (\$1,000)], which amount will be increased by an additional One Thousand Dollars (\$1,000) on the tenth (10th) anniversary of the Commencement Date and every ten (10) years thereafter; provided, however, Tenant will not be subject to a Late Charge more than once every calendar year if Tenant pays the unpaid Rent or delivers the Monthly Statement to Port, as applicable, within five (5) days of written notice from Port of such failure. The Parties agree that the Late Charge represents a fair and reasonable estimate of the cost that Port will incur by reason of a late payment by Tenant.

3.10 **No Abatement or Setoff.** Tenant will pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, credit, deduction, or counterclaim.

3.11 **Net Lease.** It is the purpose of this Lease and intent of Port and Tenant that all Rent is absolutely net to Port, so that this Lease yields to Port the full amount of Rent at all times during the Term, without deduction, abatement or offset. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties is Port 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. Without limiting the foregoing, Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises, any rights or interests

of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, use or occupancy of the Premises, or any portion thereof. No occurrence or situation arising during the Term, or any Law, whether foreseen or unforeseen, and however extraordinary, relieves Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or otherwise relieves Tenant from any of its obligations under this Lease, or except as set forth in this Lease, gives Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver will not affect or impair any right or remedy expressly provided Tenant under this Lease.

3.12 ***Survival.*** Tenant's obligation to pay any unpaid Rent due and payable will survive the expiration or earlier termination of this Lease.