



ORIGINAL

PIER 1
SAN FRANCISCO, CA 94111

**SIDEWALK ENCROACHMENT PERMIT AND REVOCABLE
LICENSE TO USE PROPERTY**

LICENSE NO. 14651

BY AND BETWEEN

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

AND

**D & G COMPANY
A LIMITED LIABILITY CORPORATION
DBA LOU'S PIER 47**

SWL 302

**MONIQUE MOYER
EXECUTIVE DIRECTOR
SAN FRANCISCO PORT COMMISSION**

**RODNEY FONG, PRESIDENT
STEPHANIE SHAKOFSKY, VICE PRESIDENT
KIMBERLY BRANDON, COMMISSIONER
MICHAEL HARDEMAN, COMMISSIONER
ANN LAZARUS, COMMISSIONER**

ORIGINAL

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BASIC LICENSE INFORMATION

<i>License Date:</i>	March 1, 2010
<i>License Number:</i>	14651
<i>Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Port's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Licensee:</i>	D & G Company, a Limited Liability Corporation dba Lou's Pier 47
<i>Licensee's Contact Person:</i>	Glenn Meyers
<i>Licensee's Address:</i>	300 Jefferson Street San Francisco, CA 94111 Telephone: (415) 243-8908 Facsimile: (415) 243-8695
<i>Contact Information for Licensee's Agent for Service of Process (if Licensee is a corporation):</i>	Glenn Meyers 133 Stillman Street San Francisco, CA 94017
<i>Port Lease:</i>	Port, as landlord, and Licensee, as tenant, have entered into Port Lease No. L-14630 dated for reference purposes on July 1, 2010 with respect to 4,363 square feet of real property located at 300 Jefferson Street in the City and County of San Francisco (" Lease ") to be used as a restaurant as more particularly described in that certain Lease, as may be amended from time to time, the terms and conditions of which are incorporated by reference herein. Licensee desires to use the sidewalk and airspace owned by Port adjacent to the License Area for outdoor restaurant seating and associated placement of street furniture, planters, fences and railings. Any terms not defined in this License should have the same meaning as such terms in the Lease.
<i>License Area:</i>	Non-exclusive use of approximately 609.5 rentable square feet of sidewalk space and the airspace immediately above the sidewalk in the City and County of San Francisco, State of California, as further described in <i>Exhibit A</i> attached hereto and made a part hereof, together with any

	and all Improvements and Alterations thereto.
<i>Length of Term:</i>	Month to Month until revoked by Port or terminated by either party, and in no event later than the Expiration Date of the Lease ("Term"). Port may terminate this License at any time and without cause upon twenty-four (24) hours written notice. Prior to the effective date of such revocation, Licensee shall remove or cause to be removed all Improvements installed within the License Area as well as any other personal property of Licensee, its agents, contractors and Licensees, without expense to Port, and shall restore the License Area to a condition satisfactory to Port.
<i>Commencement Date:</i>	The Commencement Date of the Lease
<i>Expiration Date:</i>	Month to Month; but no later than the Expiration Date of the Lease
<i>License Fee:</i>	<p>(a) Licensee agrees to pay, as a License fee, Percentage Rent to Port in the amount of 6.75% of Gross Revenues transacted on the License Area ("License Fee"). If this License is still in effect in month 120 of the Lease, the License Fee will increase to 7% of Gross Revenue. Licensee shall pay the License Fees in the amount and manner, and at the same time as specified in the Lease, including without limitation, in Section 5.2 of the Lease.</p> <p>(b) Books and Records. Licensee agrees that the business of Licensee upon the Premises as defined in the Lease and the License Area shall be operated with a non re-settable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to Port shall be issued with each sale, whether for cash, credit or exchange. Furthermore, Licensee shall keep (and shall cause its Sublicensees and assignees to keep) at the Premises as defined in the Lease at all times during the Term complete and accurate Books and Records (as defined in Section 2 of the Lease) that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this License, the Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the License Area and shall retain such Books and Records for a period of the later of (i) four (4) years after the end of the Term to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is</p>

terminated (the "**Audit Period**"). For purposes of this provision, "**Books and Records**" means all of Licensee's books, records, and accounting reports or statements relating to this License and the operation and maintenance of the License Area, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the License Area, and any other bookkeeping documents Licensee utilizes in its business operations for the License Area. Licensee shall maintain a separate set of accounts to allow a determination of Gross Revenue generated directly from the License Area and all exclusions therefrom.

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

- (d) If an audit reveals that Licensee has understated its Gross Revenues for said audit period, Licensee shall

	<p>pay Port, promptly upon demand, the difference between the amount Licensee has paid and the amount it should have paid to Port, plus interest at the Interest Rate from the date of the error in the payment. If an audit reveals that Licensee has overstated its Gross Revenues for said audit period, Licensee shall be entitled to a credit against rent for either Base Rent or Percentage Rent next owed equal to the difference between the amount Licensee has paid and the amount it should have paid to Port. If Licensee understates its Gross Revenues for any audit period by three percent (3%) or more, Licensee shall pay the cost of the audit. A second understatement within any three (3) Lease Year period of the first such understatement shall be considered an Event of Default of this License.</p>
<i>Security Deposit:</i>	Five Hundred Dollars and No Cents (\$500.00)
<i>Permitted Activity and Manner of Use:</i>	<p>Licensee may use the sidewalk and air space within the License Area for the installation, operation and maintenance of tables and chairs, street furniture, lighting, litter receptacles, benches and awnings collectively referred to herein as the "Improvements." Licensee may pipe background music to the License Area in compliance with all Laws and necessary Regulatory Approvals. All costs related to the Improvements including without limitation the installation, operation, and maintenance thereof, shall be the sole responsibility of Licensee. Changes in type or function of business or other changes in use shall be made only upon the express written consent of Port.</p> <p>Licensee shall be responsible for the security of the License Area during standard business hours and for the orderly conduct of patrons, shall prevent loitering in the License Area by persons other than Licensee's patrons, and shall take appropriate actions to enforce these measures. Licensee shall be solely responsible for any destruction, damage, theft or vandalism of, or to, the Improvements.</p> <p>Other Requirements: Licensee is limited to eight (16) 2 Top (32 Seats) tables. The seating area is limited to 45' linear feet and 5' feet wide more specifically depicted on <i>Exhibit A</i></p>
<i>Rules & Regulations:</i>	Licensee shall comply with the Rules and Regulations attached hereto as <i>Exhibit C</i> and hereby incorporated.
<i>Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8 below, Licensee shall be prohibited from using the License Area for any of the following activities:</p> <p>(a) Licensee's operations hereunder shall not unreasonably</p>

	<p>interfere with or impede the use of any roadway or sidewalk, within or proximate to the License Area by the public, other Port tenants or the Port, and except as to the Permitted Activities, Licensee's operations shall not interfere with the use of adjacent Port properties by their respective tenants.</p> <p>Port shall have all remedies set forth in this License, and at law or equity in the event Licensee performs any of the Prohibited Uses.</p>
<i>Improvements:</i>	<p>The construction, repair and maintenance of all Improvements must comply with Section 13 of the Lease.</p> <p>The Improvements in the License Area shall be attractive and of good quality. Licensee shall not place any Improvements within the License Area without Port's and, at Port's election, the Waterfront Design Advisory Committee's, written approval of the design, size, color, position and method of attachment or installation of such Improvements. All such Improvements shall be designed, installed, operated and maintained so as to prevent any unreasonable interference with general pedestrian use of the sidewalk and to minimize any potential tripping or other hazards. Licensee shall ensure that any installation of Improvements complies with the provisions of California Government Code Sections 4216, et. seq., with regard to notification and location of possible underground facilities and utilities.</p>
<i>Cure Period:</i>	Twenty-Four (24) Hours
<i>Load Restrictions:</i>	See <i>Schedule 2</i> attached hereto.
<i>Maintenance and Repair:</i>	Sole responsibility of Licensee--no exceptions
<i>Utilities and Services:</i>	Sole responsibility of Licensee--no exceptions
<i>Location of Asbestos in License Area:</i>	See <i>Schedule 1</i> attached hereto.
<i>Insurance:</i>	<p>Licensee shall be subject to the same insurance requirements for the License Area as are required for the Premises in the Lease, which requirements are incorporated herein by reference and are shown on Exhibit B attached hereto and made a part hereof. Licensee may obtain one policy to cover both the Premises and the License Area for each requisite type of insurance coverage, as long as coverage of both is evidenced in writing by Licensee's respective insurance carriers and provided to Port.</p>

<i>Additional City Requirements:</i>	The City has adopted an Employee Signature Authorization Ordinance (S.F. Admin Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "CARD CHECK" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Licensee shall comply with the requirements of such ordinance including, without limitation, any requirements in the ordinance with respect to its sublicensees or operators.
<i>Prior License:</i>	The parties agree that as of the Commencement Date of this License, Sidewalk Encroachment Permit and Revocable License E-12588 (" Prior License "), between D & G Company, LLC, a California Limited Liability Company and Port is hereby terminated; provided, however, that the parties shall continue to be liable for any obligations under the Prior License which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior License.
<i>Prepared By:</i>	Jeffrey A. Bauer, Senior Commercial Leasing Manager

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as licensor, and the party identified in the Basic License Information as licensee ("**Licensee**"). The Basic License Information that appears on the preceding pages and all Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "**License**." In the event of any conflict or inconsistency between the Basic License Information and the License provisions, the Basic License Information will control.

2. GRANT OF LICENSE.

2.1. License. In consideration of the stated conditions and agreements, Port hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in the Basic License Information and *Exhibit A* attached hereto.

2.2. Encroachment.

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

(b) In addition, Licensee shall pay to Port an additional charge in the amount of Three Hundred Dollars (\$300) 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 Licensee has failed to vacate the Encroachment Area, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars (\$400) for each additional Notice to Vacate, if applicable, delivered by Port to Licensee 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 License Area, issuance of each Notice to Vacate and survey of the Encroachment Area. Licensee's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this License, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of Section 14 below (Indemnity and Exculpation) shall also apply to Licensee's and its Agents' and Invitees' use and occupancy of the Encroachment Area as if the License Area originally included the Encroachment Area, and Licensee shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Licensee in so surrendering the

Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 2.2 and the reasonableness of the amount of the charges described in this Section 2.2.

Initials:

Licensee

Port

3. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("**Term**") unless sooner terminated pursuant to the terms of this License.

Without limiting any of Port's rights hereunder, by initialing below, Licensee agrees and acknowledges that Port may, in its sole and absolute discretion, revoke or terminate this License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Licensee ("**Port's Termination Right**"). Failure of Licensee to initial below shall in no way affect or hinder Port's Termination Right.

Initials:

Licensee

4. FEES.

4.1. License Fee. Licensee shall pay the License Fee set forth in the Basic License Information upon execution of this License, and thereafter if the Term is for a period greater than one (1) month, in advance on or before the first day of each month during the Term. The monthly License Fee shall be paid to Port in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever. All sums payable by Licensee to Port hereunder shall be paid in cash or by good check to the Port and delivered to Port's address specified in the Basic License Information, or such other place as Port may designate in writing. Without limiting its right to revoke or terminate this License or any of its other rights hereunder, Port may increase the License Fee at any time and from time to time upon not less than thirty (30) days written notice to Licensee. The License Fee and all other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "**Fees**."

4.2. Additional Charges. Without limiting Port's other rights and remedies set forth in this License, at law or in equity, in the event Licensee fails to submit to the appropriate party, on a timely basis, the items identified in Sections 15.3(d) (Environmental Regulatory Approval), 15.10 (SWPP), 21.1(d) (HRC Form), or to provide evidence of the required insurance coverage described in Section 11 below (Insurance), then upon written notice from Port of such failure, Licensee shall pay an additional charge in the amount of Three Hundred Dollars (\$300). In the event Licensee fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Licensee additional written notice requesting such document, then Licensee shall pay to Port an additional charge in the amount of Three Hundred Fifty Dollars (\$350) for each additional written notice Port delivers to Licensee requesting such document. The parties agree that the charges set forth in this Section 4.2 represent a fair and

reasonable estimate of the administrative cost and expense which Port will incur by reason of Licensee's failure to provide the documents identified in this Section 4.2 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 4.2 and the reasonableness of the amount of the charges described in this Section 4.2.

Initials:

Licensee



Port

4.3. Late Charges. Licensee acknowledges that late payment by Licensee to Port of Fees due hereunder will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, Port will assess a late charge on any Fees (except late charges), or any portion thereof, which are due and unpaid for more than three (3) days, plus reasonable attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees when due under this License. Late charges shall be computed by calculating the amount of interest accruing on the unpaid Fees at the Interest Rate from the date on which the Fees first became due until the Fees are paid. The parties agree that such late charges represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment by Licensee.

4.4. Returned Checks. If any check for a payment for any License obligation is returned without payment for any reason, Licensee shall pay, as an additional charge, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge and default interest.

5. SECURITY DEPOSIT.

Licensee shall pay to Port on or before the Commencement Date, in addition to the advance payment of the first month's License Fee, a deposit, in cash, in the sum specified in the Basic License Information, as security for the faithful performance by Licensee of all terms, covenants and conditions of this License. Licensee agrees that Port may (but shall not be required to) apply the security deposit in whole or in part to (a) pay any sum due to Port under this License, (b) compensate Port for any damage to the License Area caused by Licensee or its Agents or Invitees, (c) cure any default by Licensee, or (d) cure, or attempt to cure, any failure of Licensee to perform any covenant, term or condition of this License. If Port uses any portion of the security deposit to cure any default by Licensee hereunder, Licensee shall replenish the security deposit to the original amount within 24 hours of Port's notice of the amount due. Port's obligation with respect to the security deposit is solely that of debtor and not trustee. Licensee shall not be entitled to any interest on such security deposit. Port shall not be required to keep the security deposit separate from its general funds. If Licensee is not in default at the termination of this License, Port shall return the unused balance of the security deposit to Licensee after Licensee vacates the License Area. The amount of the security deposit shall in no way limit Licensee's obligations under this License, and nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this License or provided by law or equity.

Licensee hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the security deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Licensee or any agent, employee or invitee of Licensee, and that following a default by Licensee, all or any portion of the security deposit may be retained by Port following a termination of this License

and applied to future damages, including damages for future rent, pending determination of the same.

6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA.

The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by Port. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By entering onto the License Area under this License, Licensee acknowledges its receipt of *Schedule 1* regarding the presence of certain Hazardous Materials, and *Schedule 2* regarding the condition of the substructure, if any, of the License Area and shall be deemed to have inspected the License Area and accepted the License Area in its "As Is" condition and as being suitable for the conduct of Licensee's activity thereon.

Port shall have the full right and authority to make, revoke, impose, and amend any rules and regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no rules and regulations currently exist for the Facility, Licensee agrees to be bound by any rules and regulations Port later imposes on the Facility. Licensee also acknowledges that Port's exercise of any of its rights regarding the License Area and other Port property in the vicinity of the License Area will not entitle Licensee to any abatement or diminution of Fees.

7. PROHIBITED USES.

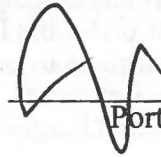
Licensee shall use the License Area solely for Permitted Activities and for no other purpose. Licensee shall not place any object, machinery or equipment on any portion of the License Area that exceeds the load restrictions, if any, described in the Basic License Information or in *Schedule 2*. Any other use in, on or around the License Area or surrounding or adjacent Port property shall be strictly prohibited, including, but not limited to, waste, nuisance or unreasonable annoyance to Port, its other licensees, tenants, or the owners or occupants of adjacent properties, interference with Port's use of its property, or obstruction of traffic (including, but not limited to, vehicular and pedestrian traffic) (each, a "Prohibited Use").

In the event Port determines after inspection of the License Area that a Prohibited Use or Prohibited Uses are occurring in, on or around the License Area, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to Port an additional charge in the amount of Three Hundred Dollars (\$300) upon delivery of written notice to Licensee to cease the Prohibited Use ("Notice to Cease Prohibited Use"). In the event Port determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to Port an additional charge in the amount of Four Hundred Dollars (\$400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each inspection of the License Area and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the License Area and Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 7 and the reasonableness of the amount of the charges described in this Section 7.

Initials:

Licensee



Port

8. COMPLIANCE WITH LAWS; REGULATORY APPROVAL; PORT ACTING AS OWNER OF PROPERTY.

8.1. *Compliance With Laws.* Licensee, at Licensee's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the License Area.

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

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

8.3. *Port Acting As Owner of Property.* By initialing below, Licensee agrees and acknowledges that (i) Port has made no representation or warranty that any required Regulatory Approval can be obtained, (ii) although Port is an agency of City, Port has no authority or influence over any other Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this License in its capacity as a landowner with a proprietary interest in the License Area and not as a Regulatory Agency of City with certain police powers, and (iv) Licensee is solely responsible for obtaining any and all required Regulatory Approvals in connection with the Permitted Activity on, in or around the License Area. Accordingly, Licensee understands that there is no guarantee, nor a presumption, that any required Regulatory Approval(s) will be issued by the appropriate Regulatory Agency and Port's status as an agency of City shall in no way limit the obligation of Licensee to obtain approvals from any Regulatory Agencies (including Port) which have jurisdiction over the License Area. Licensee hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

Initials:

Licensee

9. UTILITIES, SERVICES, MAINTENANCE AND REPAIRS.

9.1. Utilities. Port has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the License Area. Licensee shall make arrangements and shall pay all charges for all utilities to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, gas, electrical, water, sewer and telecommunication services. Licensee shall pay all charges for the utilities, including charges for the connection and installation of the utilities.

9.2. Services. Port has no responsibility or liability of any kind with respect to the provision of any services to Licensee or on, in, or to the License Area. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, security service, garbage and trash collection, janitorial service and extermination service.

9.3. Maintenance and Repairs. Licensee shall at all times during the Term, at its sole cost and expense, maintain and repair in good and working order, condition and repair the License Area and all improvements and alterations thereon. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area or to any improvements or alterations now or hereafter located thereon. In the event that Licensee or its Agents or Invitees cause any damage (excepting ordinary wear and tear) to the License Area or any other Port property, Port may, at its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from Port for costs incurred by Port related to any repair performed by Port in accordance with this Section, Licensee shall immediately reimburse Port therefor. This provision shall survive the expiration or earlier termination of this License.

10. TAXES AND ASSESSMENTS.

Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership, of the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Licensee further agrees to provide such other information as may be requested by City or Port to enable City or Port to comply with any reporting requirements under applicable law with respect to possessory interest.

11. INSURANCE.

11.1. Claims Made Policy. Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for two (2) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

11.2. Annual Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

11.3. Additional Insureds. Liability policies shall be endorsed to name as additional insureds the "CITY AND COUNTY OF SAN FRANCISCO, THE SAN FRANCISCO PORT COMMISSION, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS" (Insurance Certificate with Endorsement for such additional insureds).

11.4. Payment of Premiums. Licensee shall pay all the premiums for maintaining all required insurance.

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

11.6. General Insurance Matters.

(a) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

(b) All insurance policies shall be endorsed to provide that such insurance is primary to any other insurance available to the additional insureds with respect to claims covered under the policy and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

(c) Before commencement of activities under this License, certificates of insurance and brokers' endorsements, in form and with insurers acceptable to Port, shall be furnished to Port promptly upon request, along with complete copies of policies.

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

12. NOTICES.

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

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

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

13. DEFAULT BY LICENSEE; REMEDIES.

13.1. *Event of Default.* The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after Port has given notice to Licensee.

(c) An assignment, or attempted assignment, of this License by Licensee;

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

13.2. *Port's Remedies.* Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and Port may take any and all action to enforce Licensee's obligations.

14. INDEMNITY AND EXCULPATION.

14.1. *Indemnity.* Licensee shall Indemnify Port, City, and their Agents (collectively, the "Indemnified Parties") from, and, if requested, shall defend them against any and all liabilities, injuries, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind (collectively, "Claims") arising directly or indirectly out of: (a) any injury to or death of any person, including but not limited to Agents and Invitees of Licensee, or damage to or destruction of any property occurring in, on or about the License Area, or any part thereof, from any cause whatsoever, (b) any failure by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, or (c) the use, occupancy or condition of the License Area or the activities therein by Licensee or its Agents or Invitees. This Indemnity shall be enforceable regardless of the active or passive negligence of any of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on any of the Indemnified Parties. This Indemnity shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this License. This Indemnity includes all Claims, loss predicated in whole or in part, upon active or passive negligence of any of the Indemnified Parties. This Indemnity shall exclude Claims resulting solely and exclusively from the willful misconduct of Port or City which is not contributed to by any act of, or by any omission to perform some duty imposed by Law or agreement on Licensee or its Agents or Invitees.

In addition to Licensee's obligation to Indemnify the Indemnified Parties, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that actually or potentially falls within this Indemnification provision, even if the allegations are or may be groundless, false or fraudulent.

Licensee's obligation to defend shall arise at the time such Claim is tendered to Licensee by any of the Indemnified Parties and shall continue at all times thereafter.

The foregoing Indemnity obligation of Licensee includes Indemnification from all loss and liability, including attorneys' and consultants' fees, court costs, investigation and remediation costs, all other reasonable costs and expenses incurred by the Indemnified Parties, damages for decrease in the value of the License Area, and Claims for damages or decreases in the value of adjoining property. Licensee's Indemnification obligation shall begin from the first notice that any Claim or demand is or may be made. The provisions of this Section shall survive the expiration or earlier termination of this License.

14.2. Exculpation. Licensee, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims against the Indemnified Parties, and agrees to Indemnify the Indemnified Parties from any Claims for damages to goods, wares, goodwill, merchandise, equipment, business opportunities and persons in, upon or about the License Area for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City.

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

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

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

BY PLACING ITS INITIALS BELOW, LICENSEE SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT LICENSEE WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS LICENSE AGREEMENT WAS MADE, OR THAT LICENSEE HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials: Licensee: _____

14.4. Hazardous Materials Indemnification.

(a) In addition to its obligations under Section 14.1 (Indemnity) and Section 15 (Hazardous Materials), Licensee, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material Condition, except where caused by the Indemnified Parties' sole willful misconduct; and (ii) Licensee's Exacerbation of any Hazardous Material Condition.

(b) Licensee's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the License Area; (iii) damages for the loss

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

(c) Licensee's obligations hereunder shall survive the expiration or earlier termination of this License.

15. HAZARDOUS MATERIALS.

15.1. Requirements for Handling. Neither Licensee nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the License Area or any other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws.

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

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

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

(c) will comply with all Environmental Laws relating to the License Area and any Hazardous Material Condition, and will not engage in or permit any activity at the License Area or any other Port property, or in the operation of any vehicles or vessels used in connection with the License Area in violation of any Environmental Laws.

15.3. Licensee's Environmental Condition Notice Requirements.

(a) Licensee must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Licensee learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1 (Requirements for Handling), Handled, in, on, or about the License Area, any other Port property, or the environment, or from any vehicles or vessels that Licensee, its Agents or Invitees use during Licensee's occupancy of the License Area, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

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

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

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

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

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

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

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

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

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

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

15.4. Requirement to Remediate.

(a) Licensee's Remediation obligations under this Subsection (a) are subject to Subsection (b).

(i) After notifying Port in accordance with Section 15.3(a) (Licensee's Environmental Condition Notice Requirements), Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License, any Hazardous Material Condition occurring during the Term or while Licensee or its Agents or Invitees otherwise occupy any part of the License Area. Licensee must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this License terminates for any reason, Licensee must Remediate at its sole cost in compliance with all Environmental Laws and this License: (A) any Hazardous Material Condition caused by

Licensee's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Licensee's occupancy that is required to be Remediated by any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Licensee's use of the License Area.

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

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Licensee must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the License Area, 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 License Area in any manner related directly, or indirectly to Hazardous Materials.

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

15.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the License Area for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 16 (Port's Entry on License Area). Port's failure to inspect or obtain samples or to detect conditions attributable to Licensee's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Licensee's responsibility under this License.

15.6. Notification of Asbestos. Port hereby notifies Licensee, in accordance with the United States Occupational Safety and Health Administration ("OSHA") Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and the Division of Occupational Safety and Health of the California Department of Industrial Relations ("Cal-OSHA") General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in the Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in **Schedule 1** attached hereto.

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

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

Licensee agrees that its waiver of Claims set forth in Section 14 (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about

the License Area and the potential consequences of such fact. Licensee is aware that the presence, or possibility, of asbestos in or about the License Area may limit Licensee's ability to use the License Area without Licensee first performing abatement of such asbestos. The presence of asbestos in the License Area and the removal or non-removal by Port of all or a portion of the asbestos, whether in the License Area or elsewhere, shall not, however, (i) entitle Licensee to any Claim, (ii) relieve Licensee of any of its obligations hereunder, including without limitation the obligation to pay License Fees, or (iii) constitute or be construed as a breach of Licensee's rights under this License.

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

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

Licensee agrees that its waiver of Claims set forth in Section 14 (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the License Area and the potential consequences of such fact. Licensee is aware that the presence, or possibility, of lead in or about the License Area may limit Licensee's ability to use the License Area without Licensee first performing abatement of such lead. The presence of lead in the License Area and the removal or non-removal by Port of all or a portion of the lead, whether in the License Area or elsewhere, shall not, however, (i) entitle Licensee to any Claim, (ii) relieve Licensee of any of its obligations hereunder, including without limitation the obligation to pay License Fees, or (iii) constitute or be construed as a breach of Licensee's rights under this License.

Notwithstanding any other provisions of this License, Licensee agrees to defend and Indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims for damages arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

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

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

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

15.9. Survival. Licensee's obligations under this Section 15 (Hazardous Materials) shall survive the expiration or earlier termination of this License.

15.10. Storm Water Pollution Prevention

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

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

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

15.11. Presence of Hazardous Materials. California Law requires landlords to disclose to Licensees the presence or potential presence of certain Hazardous Materials. Accordingly, Licensee is hereby advised that Hazardous Materials (as herein defined) may be present on or near the License Area, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde.

16. PORT'S ENTRY ON LICENSE AREA.

16.1. Entry for Inspection. Port and its authorized Agents shall have the right to enter the License Area without notice at any time for the purpose of inspecting the License Area to determine whether the License Area is in good condition and whether Licensee is complying with its obligations under this License; to perform any necessary maintenance, repairs or restoration to the License Area; and to show the License Area to prospective licensees, tenants or other interested parties.

16.2. Emergency Entry. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means that Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a breach of Licensee's rights under this License.

16.3. No Liability. Port shall not be liable in any manner, and Licensee hereby waives any Claims for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Fees due hereunder, arising out of Port's entry onto the License Area, or entry by the public (as Licensee has a non-exclusive right to use the License Area) onto the License Area.

17. IMPROVEMENTS AND ALTERATIONS.

Unless specified in the Basic License Information, Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area).

18. SURRENDER.

Upon the expiration or earlier termination of this License, Licensee shall surrender to Port the License Area and any pre-existing alterations and improvements in good condition (except for ordinary wear and tear). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Licensee, or Licensee otherwise performing all of its obligations under this License. The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this License and any other encumbrances created by Port. On or before the expiration or earlier termination hereof, Licensee shall remove all of its personal property and, unless Port directs otherwise, any alterations and improvements that Licensee has installed with Port's consent, and perform all restoration made necessary by the removal of Licensee's personal property.

Without any prior notice, Port may elect to retain or dispose of Licensee's personal property and any alterations and improvements that Licensee has installed with or without Port's consent that Licensee does not remove from the License Area prior to the expiration or earlier termination of this License. These items shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned property, and Licensee waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Licensee shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned property and repairing any damage to the License Area or the Facility resulting from such removal. Licensee agrees that Port may elect to sell abandoned property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Licensee or otherwise according to the procedures set forth in California Civil Code Sections 1980-1981, the benefits of which Licensee waives.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify Port from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

19. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

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

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

19.3. *Limitation on Damages.* Licensee agrees that Licensee will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this License, or for any Claim based upon this License, except to the extent of the fair market value of Port's fee interest in the License Area (as encumbered by this License). Licensee's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Licensee expressly waives all such liability.

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

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

20. MINERAL RESERVATION.

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area. In accordance with the provisions of these Statutes, Port and Licensee shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from the Mineral Reservation area located by the California Grid System.

21. CITY AND PORT REQUIREMENTS.

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

21.1. Nondiscrimination.

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

(b) **Sublicenses and Other Contracts.** Licensee shall include in all Sublicenses and other contracts relating to the License Area a nondiscrimination clause applicable to such Sublicensee or other contractor in substantially the form of Subsection (a) above. In addition, Licensee shall incorporate by reference in all Sublicenses and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all Sublicensees and other contractors to comply such provisions.

(c) **Nondiscrimination in Benefits.** Licensee does not as of the date of this License and will not during its Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the

domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

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

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

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

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

(b) Notwithstanding the above, if Licensee meets the requirements of a "small business" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 21.2(a) above.

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

(d) Any Sublicense or Contract regarding services to be performed on the License Area entered into by Licensee shall require the Sublicensee or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Licensee shall notify the Purchasing Department when it enters into such a Sublicense or Contract and shall certify to the Purchasing Department that it has notified the Sublicensee or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Sublicensee or Contractor through written agreement with such Sublicensee or Contractor. Licensee shall be responsible for ensuring compliance with the HCAO for each Sublicensee, Contractor and Subcontractor performing services on the License Area. If any Sublicensee, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Licensee based on the Sublicensee's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Licensee with notice and an opportunity to cure the violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21.6. Prohibition of Tobacco Sales and Advertising. Licensee acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the License

Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

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

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

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

21.9. Pesticide Prohibition. Licensee shall comply with the provisions of Section 308 of Chapter 3 of the Environment Code (the "Pesticide Ordinance") which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Licensee to submit to Port an integrated pest management (IPM) plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the Term, (ii) describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with

the City. In addition, Licensee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

22. WAIVER OF RELOCATION.

Licensee hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, to the extent allowed under applicable Law.

23. SIGNS.

Licensee shall not have the right to place, construct or maintain any business signage, awning or other exterior decoration or notices on the License Area without Port's prior written consent. Any sign that Licensee is permitted to place, construct or maintain on the License Area shall comply with all Laws relating thereto, including but not limited to Port's Sign Guidelines and building permit requirements, and Licensee shall obtain all Regulatory Approvals required by such Laws. Licensee, at its sole cost and expense, shall remove all signs placed by it on the License Area at the expiration or earlier termination of this License.

24. MISCELLANEOUS PROVISIONS.

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

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

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

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

24.5. Interpretation of License.

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

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

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

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

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

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

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

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

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

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

24.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this License. Licensee agrees to indemnify and hold Port harmless from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this License.

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

24.9. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon Port's request,

Licensee shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

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

24.11. Attorneys' Fees. In the event of any action or proceeding in law or equity between Port and Licensee to enforce any provision of this License or to protect or establish any right or remedy of either party to this License, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit and, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. For purposes of this License, reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

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

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

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

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

24.16. No Recording. Licensee shall not record this License or any memorandum hereof in the Official Records of the City and County of San Francisco.

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

25. DEFINITIONS

For purposes of this License, the following terms have the meanings ascribed to them in this Section or elsewhere in this License as indicated:

"ACMs" is defined in Section 15.6.

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

"Basic License Information" refers to the summary of basic license information attached to this License.

"Cal-OSHA" is defined in Section 15.6.

"City" is defined in Section 1.

"Claims" is defined in Section 14.1.

"Commencement Date" means the date specified in the Basic License Information.

"Cure Period" means the period of time described in the Basic License Information.

"Encroachment Area" is defined in Section 2.2.

"Encroachment Area Charge" is defined in Section 2.2.

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

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

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, 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 License Area and any closure permit.

"Exacerbate" or **"Exacerbating"** when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. **"Exacerbation"** has a correlating meaning.

"Expiration Date" means the date specified in the Basic License Information.

"Facility" means the pier, building or other structure in or on which the License Area is located.

"Fees" means the License Fee and all other sums payable by Licensee under this License, including without limitation, any late charges.

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

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

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

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

"Indemnified Parties" is defined in Section 14.1.

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

"Indemnification" and **"Indemnity"** have correlating meanings.

"Interest Rate" means interest accruing against the principal sum at the rate of ten percent (10%) per year.

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

"Invitees" means Licensee's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, Sublicensees, and any other person whose rights arise through them.

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

"License" is defined in Section 1.

"License Area" means the area described in the Basic License Information.

"License Fee" means the monthly usage charge for the License Area described in the Basic License Information.

"Notice to Cease Prohibited Use" is defined in Section 7.

"Notice to Vacate" is defined in Section 2.2.

"OSHA" is defined in Section 15.6.

"PACMs" is defined in Section 15.6.

"Permitted Activity" means the activity described in the Basic License Information.

"Port" is defined in Section 1.

"Port's Termination Right" is defined in Section 3.

"prevailing party" is defined in Section 19.1.

"Prohibited Use" is defined in Section 7.

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

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

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

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

"SWPPP" is defined in Section 15.10.

"Term" is defined in Section 3.

"Waiving Party" is defined in Section 11.5.

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IN WITNESS WHEREOF, Port and Licensee have executed this License as of the last date set forth below

Licensee: **D & G COMPANY, A LIMITED LIABILITY CORPORATION, DBA LOU'S PIER 47**

Two Corporate Officers
MUST SIGN

By: [Signature]
Name: GARNETT MEYERS
Title: OWNER

Date signed: 5/27/10

By: [Signature]
Name: GLEN MEYERS
Title: owner

Date signed: 5/27/10

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

By: [Signature]
Susan Reynolds,
Deputy Director, Real Estate

Date signed: 7/19/10

Approved as to Form: **DENNIS J. HERRERA, City Attorney**

By: [Signature]
Deputy City Attorney

License Prepared by Jeffrey A. Bauer, Commercial Property Manager

(initial)

EXHIBIT A
LICENSE AREA

(To be attached.)

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INITIALS:

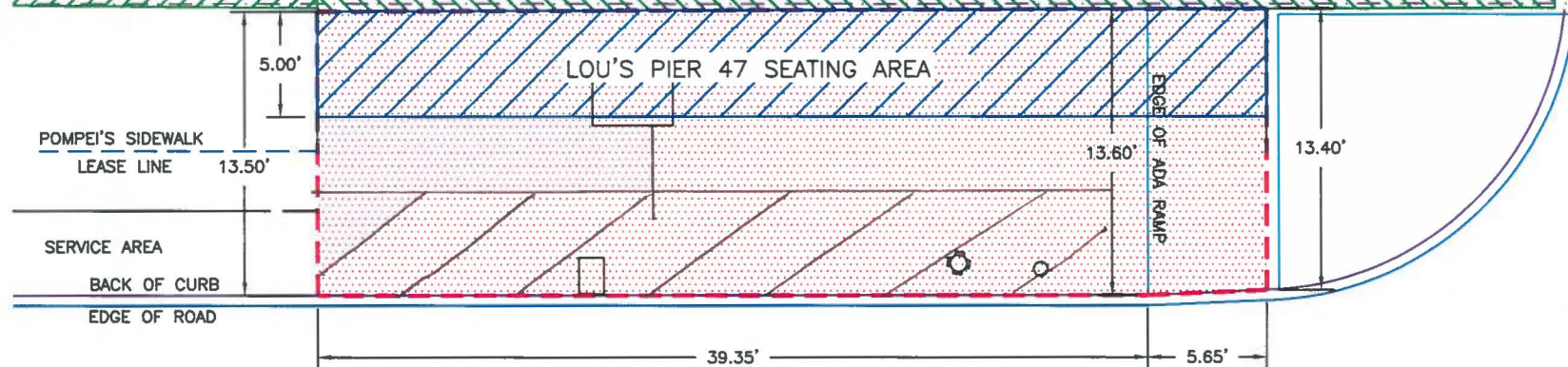
PORT:

TENANT:

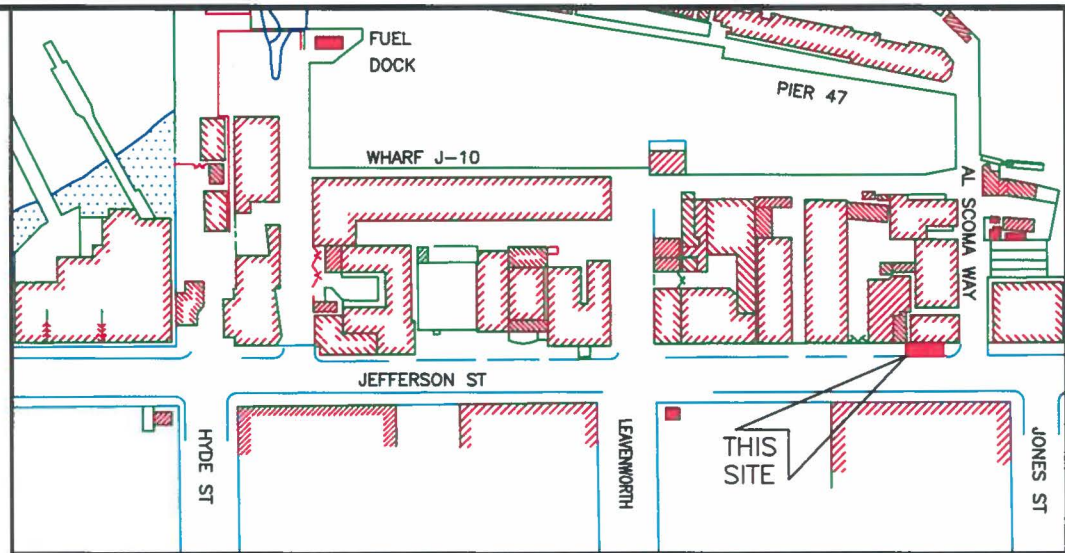
DATE:

EXHIBIT A

1-28-2010

POMPEI'S GROTTO
RESTAURANTLOU'S
PIER 47

D&G LLC dba LOU'S PIER 47
SIDEWALK ENCROACHMENT PERMIT
AREA = 609.5 Sq Ft



LEASE NO.

L-14651



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

D&G LLC
dba LOU'S PIER 47

DRAWN BY: ECC

CHECKED BY: J. BAUER

PLACE CODE NO.

4004-LAND1

DATE: NOV 13, 2008

SCALE: NONE

SHEET NO.

OF SHEETS

Exhibit B

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

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

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

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

15.10. Storm Water Pollution Prevention.

(a) Tenant shall comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. As applicable, Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises shall be submitted to Port's Real Estate Division prior to beginning on-site construction or operations.

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

15.11. Presence of Hazardous Materials. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in *Schedule 1* attached hereto. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related statutes. Tenant must disclose the information contained in this Section 15.11 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

For purposes of this Section 15, the term "Commencement Date" shall mean the commencement date (including any early entry period, if any) of the Prior Lease.

16. INSURANCE

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

(a) **General Liability Insurance.** Comprehensive or commercial general liability insurance, with limits not less than Three Million Dollars (\$3,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to

the Premises with risk of explosion, collapse or underground hazards. In addition, Tenant shall maintain liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) per occurrence and annual aggregate. In addition, if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then Tenant shall maintain liquor liability coverage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and annual aggregate. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

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

(c) Worker's Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance. Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with Sections 8.2(h) and 8.2(i) above, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(d) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement), including earthquake, subject to provisions of Section 16.6(b), and flood, subject to the provisions of Section 16.6(c), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage).

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

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

(g) Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured

pursuant to Sections 16.1(d), 16.1(e) and 16.1(f) above, with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

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

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

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

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

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

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

16.6. General Insurance Matters.

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

(b) As to earthquake insurance:

(i) during construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation).

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

(c) As to flood insurance only:

(i) During construction of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to the maximum amount as is available at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco, from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and without any deduction being made for depreciation);

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

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

(e) All insurance policies required to be maintained by Tenant hereunder shall provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port. Such notice shall be given in accordance with the notice provisions of Section 31 below.

(f) Tenant shall deliver to Port certificates of insurance and additional insured policy endorsements in a form satisfactory to Port evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(g) Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth in Section 16.1 above if Port finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with the use of the Premises.

17. DAMAGE AND DESTRUCTION.

17.1. General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section 17.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which (i) could materially impair use or operation of

SCHEDULE 1

ASBESTOS NOTIFICATION AND INFORMATION

(To be attached.)

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NOTICE TO EMPLOYEES, OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS

ASBESTOS IN BUILDINGS

FOR PERIOD THROUGH: April 2009

It is the responsibility of the master tenant to provide this notice to any subtenant within their leasehold.

In January of 1989, Assembly Bill 3713 was signed into law and added to the California Health and Safety Code. This bill provides for written notice to employees concerning specific matters related to working in a building with asbestos containing construction materials. It applies to building built before 1979 where the owner knows that the building contains asbestos-containing materials; it does not require that a building be surveyed to determine the presence of asbestos.

WHAT IS ASBESTOS?

Asbestos is a naturally occurring group of fibrous minerals which have been used extensively in public buildings, apartment buildings and homes. Asbestos was incorporated into pipe insulation, acoustic plaster, acoustic tile, duct and furnace insulation, floor tiles, textiles and hundreds of other building materials. In most City buildings, asbestos is located in insulation on piping systems, acoustic plaster on ceilings, acoustic ceiling tiles, vinyl asbestos floor tiles, and structural fireproofing. Asbestos may be found in soils as well, especially if soil is non-native or commingled with municipal waste (land fill).

WHY IS ASBESTOS HAZARDOUS?

Asbestos is a concern because of the potential health risks associated with breathing asbestos fibers. It is important for you to know that most people with asbestos-related diseases were asbestos workers before 1972. These workers were repeatedly exposed to high levels of asbestos each working day with little or no protection. Asbestos workers today are required to follow specific work practices and wear appropriate protection to minimize exposure.

Significant exposure to asbestos fibers can lead to asbestosis and certain forms of cancer. Asbestosis is one of the many dust-related lung diseases. It is associated with chronic exposure to relatively high levels of asbestos and is characterized by the permanent deposition of asbestos fibers in the respiratory tract. The earliest and most prominent clinical finding, breathlessness upon exertion, rarely becomes apparent until at least a decade of exposure.

In addition to asbestosis, the association of asbestos and lung cancer has been well established over the past two decades. Scientists have studied insulation and shipyard workers who were exposed to HIGH AIRBORNE LEVELS of asbestos. These studies indicated that asbestos workers were about five times as likely to get lung cancer as non-asbestos workers who did not smoke. Asbestos workers who also smoke were found to be at much greater risk (about 50 times) of dying of lung cancer than non-smoking non-asbestos workers. Mesothelioma, a rare form of cancer of the chest or abdominal cavity, occurs among occupational groups exposed to certain types of asbestos.

ASBESTOS SAMPLING RESULTS

A variety of exposure standards and health action levels have been established for various purposes:

The Occupational Safety and Health Administration (OSHA) asbestos standards (Title 29 of the Code of Federal Regulations), which apply to employees who actually work with asbestos, mandate a permissible exposure limit (PEL) of 0.1 fibers per cubic centimeter of air (f/cc) determined as an 8 hour time weighted average (TWA) and an excursion limit of 1 f/cc as a 30 minute TWA. When employees are exposed at these levels, OSHA and Cal/OSHA (Title 8 of the California Code of Regulations) require medical monitoring and other control methods.

The Environmental Protection Agency (EPA) has recommended a "clearance level" for asbestos of 0.01 f/cc, as measured by phase contrast microscopy (PCM). If measured by the transmission electron microscopy (TEM) method described in 40 CFR Part 763, the Asbestos Hazard Emergency Response Act (AHERA), the clearance level is either 0.02 structure/cc or 70 structures per square millimeter of filter (s/mm²). This means that once an operation involving asbestos (such as removal) is complete, the area is "safe" for re-occupancy as long as the asbestos air concentrations are less than or equal to the "clearance level". These same levels have also been adopted in the California Education Code (Section 494200.7) as the school abatement clearance level.

The state of California has an additional requirement relating to disclosure of the presence of asbestos. Proposition 65, which as voted into law by the state citizens, basically requires posting of area where anyone is exposed to a carcinogen at a level where there is a significant risk of cancer. The California Health and Welfare Agency has established this level at 100 fibers of asbestos per day.

GENERAL PROCEDURES AND HANDLING RESTRICTIONS

As you can see, the concern is with asbestos fibers in the air. When asbestos materials are in good condition, it is unlikely that fibers will be released into the air, unless the asbestos materials are damaged or disturbed. Asbestos-containing materials must not be disturbed so that fibers do not get into the air. Do not cut into, drill into, nail, or pin anything onto, sand, move bump, rub against or otherwise disturb any asbestos containing materials. If you should discover any damaged asbestos-containing material, do not touch it; do not attempt to clean it up. Contact your supervisor or property manager immediately and report the situation.

City employees required to enter areas and perform work activities that might involve the disturbance of asbestos materials have been trained in the proper procedures to minimize exposure. Work that requires major disturbances of asbestos materials (such as removal) is performed under specific conditions which include work practice procedures, removal technique and clearance air sampling.

If any construction, maintenance, or remodeling is conducted in an area of the building where there is the potential for employees to come in contact with asbestos containing building materials, it is required that the area be marked with a clear and conspicuous warning sign. The warning sign must read:

**"CAUTION. ASBESTOS
CANCER AND LUNG DISEASE HAZARD
DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT"**

Much of this information may be new to you. If you have questions about asbestos, you may call the Department of Public Health Bureau of Environmental Health Management at 252-3800.

This written announcement fulfills the asbestos notification requirement of Division 20, Chapter 10.4, Section 25915 of the California Health and Safety Code (Assembly Bill 3713).

SITE SPECIFIC INFORMATION

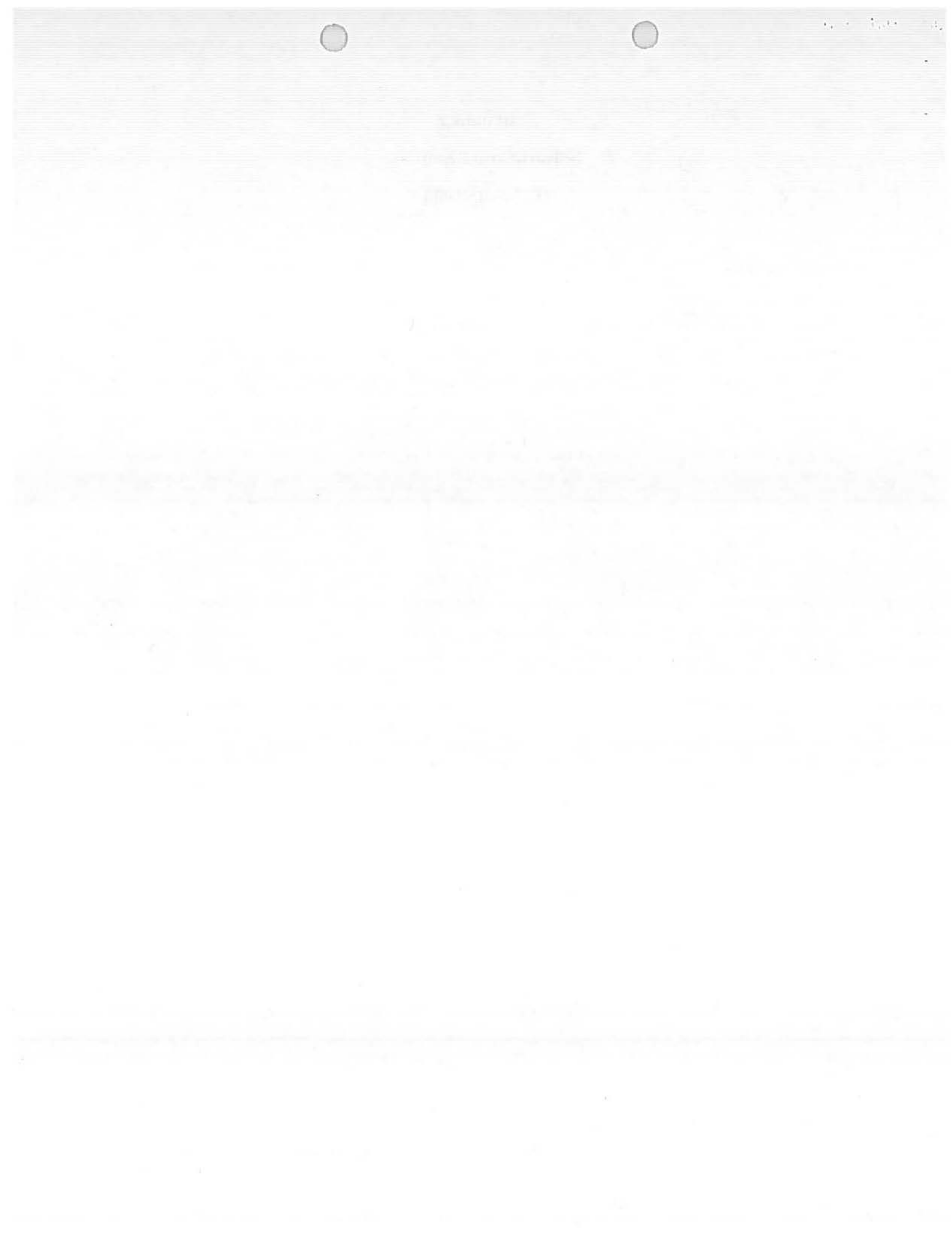
At this time, the Port has not sampled for asbestos in your building. The following materials, if present in your building, are assumed to contain asbestos and should be treated as such:

Insulation on pipes and ducts; Fireproofing; Drywall and associated taping compound; Plaster; Texturing or acoustic materials on walls or ceilings; Stucco; ceiling tiles; floor tiles or sheet flooring; roofing; fire door core insulation; carpet, baseboard, flooring, and ceiling tile mastics; window glazing compound; ceramic tile grout and mastic. Asbestos may also be found in soil due to natural or man-made conditions.

These materials must not be drilled into, sanded, demolished or otherwise disturbed by unauthorized personnel. Prior to any renovation activities or other activities which may disturb asbestos, please contact your property manager.

The asbestos coordinator for this building is Tim Felton, who can be reached at 274-0582.

SCHEDULE 2
Substructure Report(s)
(To be attached.)



BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM

(III) Condition Assessment

Condition	Yes	No	More Review Needed
1) Collapse, partial collapse, off foundation		X	
2) Major building element significantly damaged		X	
3) Severe cracking of walls, obvious distress		X	
4) Parapet or other falling hazard		X	
5) Severe ground or slope movement present		X	
6) Other hazard present		X	

Comments-

- 1) Appears to be in good condition

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM

(V) Recommendations/Actions Required:

(A) Immediate Actions-

- (1) Load restrictions
Not Required
- (2) Barricades/Closures
Not Required

(B) Long Term Actions

The following actions are required

- (1) Detailed Structural Evaluation Required?
If yes, due Date-
Not Required
- (2) Repair Plans
(i) Submit Repair Plans by _____
(ii) Secure all permits (including BCDC, ARMY Corps, CEQA, Historic review etc)
Not Required

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Figure 1: Front view, from south



Figure 2: East (right) side

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Figure 3: Back (north) side, in alley

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM

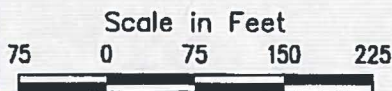


Figure 4: Upper room

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Figure 5: Lower floor restaurant



THE BAY COMPANY
L-12398

U.S.N.P.S.
L-XXXX

GIFT SHOP
RESTROOM

SMALL BOAT
WORKSHOP
OFFICE

MULTI-PURPOSE
BLDG.

HYDE ST

THE BAY COMPANY
L-8992 PARCEL 1

CAPURRO'S CORP.
L-8993

S.P. TARANTINO INS. CO.
L-13407

ALIOTO FISH CO.
L-8989

ALL GREEN

CIOPPINO'S L-9781

COAST MARINE
& INDUSTRIAL L-9184

BLUE SHED BLDG.

WHARF J-11

G.G.P. RESOURCES CORP.
L-11748 PARCEL 2

CALIF. SHELLFISH CO.
L-8988 (OVER WATER)

JEFFERSON ST

(FORMER) WHARF J-10

TONQUIN STREET

LEAVENWORTH ST

FRANK'S FISHERMAN SUPPLY
L-9179, L-9206

ALIOTO FISH CO.
L-9171

THE SILVER GALLERY
L-8984

PORT OF S.F.
(WHARFINGER'S OFFICE)

POMPEII'S GROTTO
L-8986

CRAB BOAT
OWNERS' ASSN.

SCOMA'S

WILLIAM ALBER
L-9277

GUARDINO'S L-9966

LOCKERS

SCOMA'S RESTAURANT
L-8996 PARCEL 3

GUARDINO'S L-9975

SCOMA'S RESTAURANT
L-8996 PARCEL 4

SCOMA'S RESTAURANT
L-8996 PARCEL 2

SCOMA'S RESTAURANT
L-8996 PARCEL 1

SCOMA'S RESTAURANT
L-9959

JONES ST

LOU'S PIER 47
RESTAURANT L-9795

Port:
Licensee:

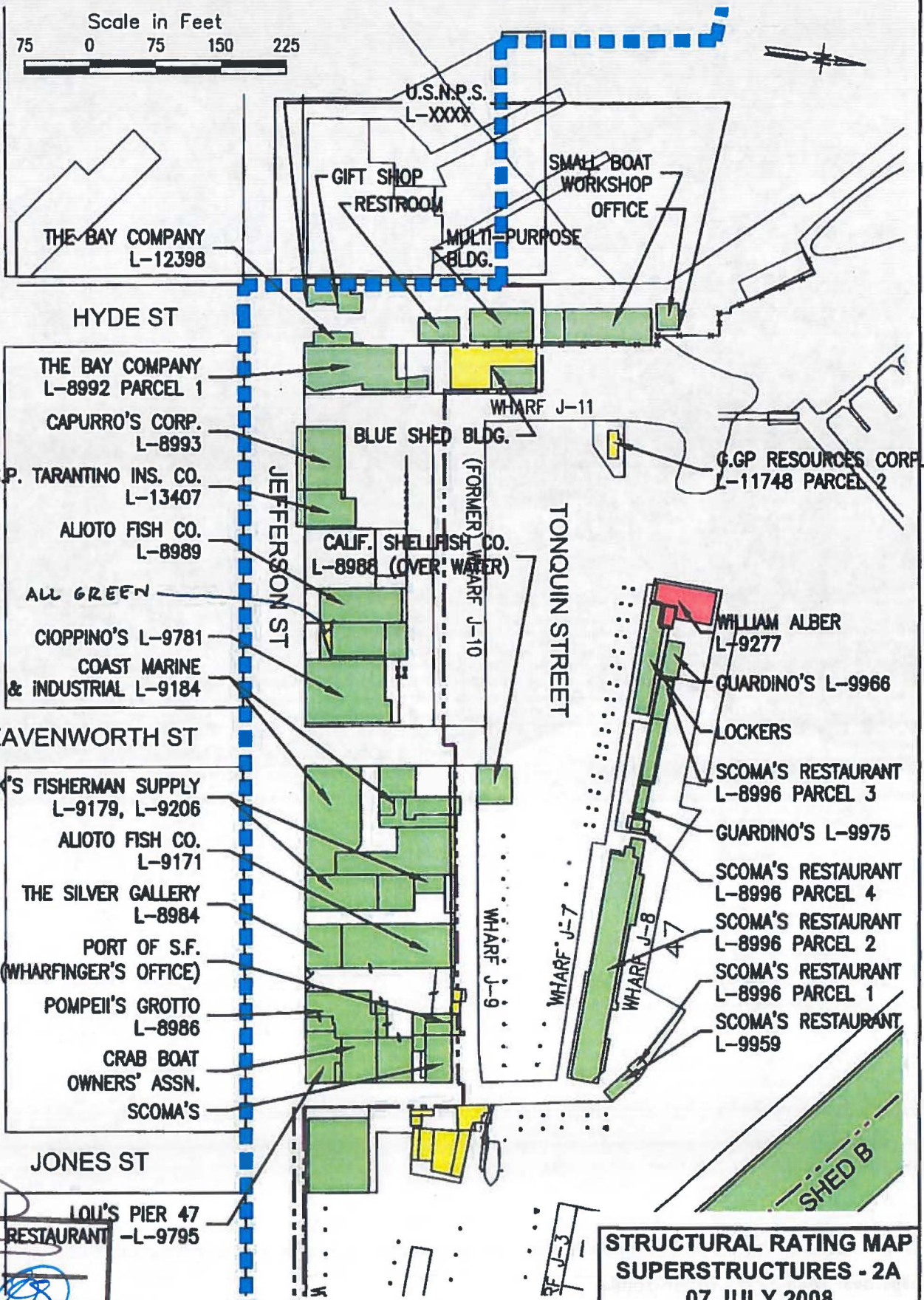
STRUCTURAL RATING MAP
SUPERSTRUCTURES - 2A
07 JULY 2008

BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM



Figure 5: Lower floor restaurant

Scale in Feet
75 0 75 150 225



Initial:
Port:
Tenant:

STRUCTURAL RATING MAP
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