



ORIGINAL

**CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR**

LEASE No. L-14630

BY AND BETWEEN

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

AND

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

PIER 47

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

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EXHIBIT B	COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM
EXHIBIT C	ESTOPPEL CERTIFICATE
EXHIBIT D	WORK LETTER
EXHIBIT E	RULES AND REGULATIONS

SCHEDULE 1	ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2	SUBSTRUCTURE REPORT(S)

BASIC LEASE INFORMATION

<i>Lease Date:</i>	December 1, 2008
<i>Lease Number:</i>	L-14630
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO , a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	D & G Company, a California Limited Liability Company doing business as Lou's Pier 47
<i>Tenant's Contact Person:</i>	Glenn Meyers
<i>Tenant's Address:</i>	300 Jefferson Street San Francisco, CA 94111 Telephone: (415) 243-8908 Facsimile: (415) 243-8695
<i>Contact Information for Tenant's Agent for Service of Process (if Tenant is a corporation):</i>	Glenn Meyers 133 Stillman Street San Francisco, CA 94017
<i>Premises:</i>	300 Jefferson Street
<i>Facility:</i>	SWL 302 San Francisco, CA 94111
<i>Premises Rentable Square Footage:</i>	Approx. 4,363 rentable square feet of Restaurant space
<i>Length of Term:</i>	Fifteen Years (15) and Six (6) Months

<i>Commencement Date:</i>	As defined in Section 4.1.			
<i>Rent Commencement Date:</i>	Commencement Date			
<i>Expiration Date:</i>	Fifteen (15) Years and Six (6) Months from the Commencement Date			
<i>Extension Option:</i>	As described in Section 38, Tenant shall have one (1) option to extend the term for a period of five (5) years ("Extension Option") with at least six months prior written notice to Port. Port shall determine Base Rent for the Extension Term based on the then Prevailing Market Rate, subject to Tenant's consent or arbitration.			
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	1-12	4,363	\$2.74	\$11,954.62
	13-24	4,363	\$2.80	\$12,172.77
	25-36	4,363	\$2.86	\$12,343.55
	37-48	4,363	\$2.92	\$12,652.70
	49-60	4,363	\$2.98	\$12,914.48
	61-72	4,363	\$3.04	\$13,307.15
	73-84	4,363	\$3.10	\$13,438.04
	85-96	4,363	\$3.17	\$13,699.82
	97-108	4,363	\$3.24	\$14,005.23
	109-120	4,363	\$3.31	\$14,267.01
	121-132	4,363	\$3.38	\$14,572.42

	133-144	4,363	\$3.45	\$14,834.20
	145-156	4,363	\$3.52	\$15,139.61
	157-168	4,363	\$3.59	\$15,445.02
	169-180	4,363	\$3.67	\$15,750.43
	181-186	4,363	\$3.68	\$16,065.43
<i>Percentage Rate:</i>	<p>Months 1 - 119: 6.75% of Gross Revenues as described in Section 5.2.</p> <p>Months 120 - Expiration Date (including any Extension Option): 7.0% of Gross Revenues as described in Section 5.2.</p>			
<i>Security Deposit</i>	Letter of Credit in the amount of Thirty Two Thousand One Hundred Thirty Dollars and Eighty Six Cents (\$32,130.86)			
<i>Permitted and Prohibited Uses:</i>	The Premises shall be used solely for a full service restaurant with service and consumption of alcoholic beverages under an ABC Type 47 license and entertainment venue including live music, associated office and storage uses and for no other purpose.			
<i>Additional Prohibited Uses:</i>	<p>In addition to, and without limiting, the Prohibited Uses specified in this Basic Lease Information or in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:</p> <p>(a) use of garbage disposal or garbage grinders;</p> <p>(b) disposal of fats, oil and grease ("FOG") or any food containing FOG into sinks or drains leading to the sewer system.</p> <p>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses.</p>			
<i>Environmental Oversight Deposit:</i>	Ten Thousand (\$10,000.00) Dollars			
<i>Maintenance and Repair:</i>	Tenant's sole responsibility, as further described in Section 11 below.			
<i>Utilities:</i>	Tenant's sole responsibility, as further described in Section 12 below.			

<i>Rules and Regulations:</i>	Exhibit E
<i>Location of Asbestos in Facility:</i>	See Schedule 1 attached hereto.
<i>Historic Resources:</i>	Fish Alley Historic District
<i>Prior Lease:</i>	The parties agree that as of the Commencement Date, Lease No. L-9798 dated as of February 1, 1977), between D&G Company and Port (the " Prior Lease ") is hereby terminated; provided, however, that the parties shall continue to be liable for any obligations under the Prior Lease which have accrued prior to the date of termination and any obligations which by their terms survive the termination or expiration of the Prior Lease.
<i>Initial Tenant Improvements</i>	<p>Tenant must complete the following Initial Tenant Improvements: upgrade accessibility to the Premises; add ADA-compliant bathrooms and other facilities; add a lift; replace fixtures in kitchen; decrease occupancy load; and make other cosmetic upgrades. Seating capacity may also be reduced. Tenant estimates the cost of the Initial Tenant Improvements to be \$750,000.</p> <p>Tenant must provide Port with written notice of the date it will begin construction of the Initial Tenant Improvements, which can be no later than January 1, 2011 ("Initial Tenant Improvements Start Date"). Such notice shall be provided no less than ten (10) business days prior to the Initial Tenant Improvements Start Date. Tenant shall have until the date that is One Hundred Eighty (180) days from the Initial Tenant Improvements Start Date to Complete the Initial Tenant Improvements ("Outside Completion Date"). No Rent is due during this 180-day period provided that there is no other existing Tenant default. Tenant shall resume Rent payments on the One Hundred Eighty First day after the Initial Tenant Improvements Start Date, regardless of whether the Initial Tenant Improvements have been Completed. By way of example only, if the Commencement Date is June 1, 2010 and the Initial Tenant Improvements Start Date is November 1, 2010, Tenant is relieved from paying Rent from November 1, 2010 through April 30, 2011 (Months 6-11 in the table above) and must resume paying Rent on May 1, 2011 (month 12 in the table above.) If the Commencement Date is June 1, 2010 and the Initial Tenant Improvements Start Date is January 1, 2011, Tenant is relieved from paying Rent from January 1, 2011 through June 30, 2011 (Months 8-13 in the table above) and must resume paying Rent on July 1, 2011 (month 14 in the table above.)</p> <p>All the required tenant improvements shall be constructed in accordance with Section 13 below and the Work Letter attached as Exhibit D.</p>

<i>Tenant Guaranty:</i>	In an amount equal to One Hundred Fifty percent 150% of the construction costs of the Initial Tenant Improvements in a form acceptable to Port as described in the Work Letter.
<i>Contractor's Bond:</i>	In an amount equal to One Hundred Fifty percent 150% the construction costs in a form acceptable to Port as described in the Work Letter.
<i>Lease Prepared By:</i>	Jeffrey A. Bauer, Senior Leasing Manager

LEASE AGREEMENT

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

1. DEMISE

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

2. DEFINITIONS

For purposes of this Lease, the following terms shall have the meanings ascribed to them in this Section:

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

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

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

"Affiliate Transfer" means a Transfer from Tenant to an Affiliate meeting the requirements of Section 20.1. "Agents" when used with reference to either party to this Lease or any other person, means the officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

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

"Anniversary Date" means the first anniversary of the Commencement Date and each anniversary of such date thereafter; provided, however, that if the Commencement Date is other than the first day of a month, then the first Anniversary Date shall be the first day of the thirteenth (13th) month thereafter.

"Annual Statement" is defined in Section 5.2(b) below.

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

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

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

"**Bona Fide Institutional Lender**" means a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, an investment banking or merchant banking firm licensed to do business in the United States, all of which, at the time a Mortgage is recorded in favor of such entity, has assets of at least Five Hundred Million U.S. Dollars (\$500,000,000) in the aggregate (or the equivalent in foreign currency)

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

"**Business Days**" means Monday through Friday of each week, not including federal and state holidays observed by the City.

"**Certificate of Completion**" is the temporary or final certificate of occupancy issued by Port allowing for commencement of the Permitted Use and opening of the restaurant to the public.

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

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

"**Commencement Date**" means the date on which the Term commences as specified in Section 4.1.

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

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

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

"**CPA**" means an independent certified public accounting firm acceptable to Port in its reasonable discretion. "**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, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

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

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

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

"Expiration Date" means the date on which the Term expires as specified in the Basic Lease or the last day of an Extension Term as described in Section 38.

"Event of Default" is defined in Section 23 below.

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

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

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

"Force Majeure" is defined in Section 39 below.

"Formula Restaurants" means a type of eating or drinking establishment that, along with eleven (11) or more other such establishments located in the United States, maintains two or more of the following features: a standardized menu, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized business signage, a trademark or a service mark. The following definitions shall be used for the definition of **"Formula Restaurant"**.

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

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

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

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

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

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

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

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

"**Gross Revenue**" means all payments, revenues, income, fees, rentals, receipts, proceeds and amounts of any kind whatsoever, whether for cash, credit or barter, received by Tenant or any other party from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on the Premises. Except as specified below, Gross Revenues shall include the entire amount of the price charged by Tenant or any other party for the sale of tickets, cover charges, beverages, merchandise and any other items and the operation of any special event, fundraising event, catering or food delivery business conducted by Tenant or any other party where the food or beverages are prepared or served at the Premises, irrespective of where the orders therefor originated or are accepted and irrespective of where the food or beverages are consumed. Gross Revenues shall be determined without reserve or deduction for failure or inability to collect and without deduction or allowance for cost of goods sold or other costs, charges or expenses of purchasing or selling incurred by Tenant, except as expressly set forth below. No value added tax, no franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Revenues. The following shall be excluded from Gross Revenues, provided that separate records are available to Port to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly Percentage Rent Statement:

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

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

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

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

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

(vi) Intra and inter-company transfers of inventory and supplies between and among Tenant and Tenant Affiliates (as defined in Section 20.1);

(vii) Bona fide promotional discounts to Tenant's customers for food, beverages and other sales, up to a maximum of five percent (5%) of Gross Revenues in any single month;

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

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

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

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

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

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

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

"**Investigate**" or "**Investigation**" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment, and includes, without limitation, preparation 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.

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

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

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

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

"Major Damage or Destruction" means damage to or destruction of all or any portion of the Initial Tenant Improvements (together with any Subsequent Alteration) on the Premises to the extent that the hard costs of Restoration will exceed fifty percent (50%) of the hard costs to replace such Improvements on the Premises in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

"Mortgage" means a mortgage, deed of trust, or similar security instrument of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

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

"Monthly Percentage Rent Statement" shall have the meaning described in Section 5.2(b) below.

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

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

"Permitted Mortgage" is a Mortgage in compliance with the provisions of Section 21 and approved by Port.

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

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

"Port" means the San Francisco Port Commission.

"Port program or project" shall mean (a) any development or renovation, by public and/or private parties, of the building, pier or seawall lot in or on which the Premises is located (including, but not limited to any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo

shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating).

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

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

"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, departments, offices and commissions of the City and County of San Francisco (each 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 Material means, any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment.

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

"Rent" means the Base Rent, Percentage Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge assessed pursuant to Section 5.7 below and any interest assessed pursuant to Section 5.9 below.

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

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

"Restoration" means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable (including code upgrades) to substantially the same condition they were in immediately before an event of damage or destruction, or in the case of Condemnation, the restoration, replacement, or rebuilding of the Improvements to an architectural whole. Notwithstanding the foregoing, Port may, in its sole and absolute discretion, in connection with any Restoration, allow the Improvements to be redesigned, reconfigured, or otherwise modified, provided that the Improvements as so redesigned complies with applicable requirements of the Public Trust, are of first-class quality affording similar public benefit as the original Initial Tenant Improvements, including any Subsequent Alteration, and are subject to the terms of this Lease and provided that the design of the modified Improvements be subject to approval in the same manner as the Initial Tenant Improvements or Subsequent Alteration, as the case may be. All Restoration shall be conducted in accordance with the provisions of Section 13 below. (**"Restore"** and **"Restored"** shall have correlative meanings.)

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

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

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

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

"Subsequent Alteration" means all alterations, installations, Improvements, repairs to and reconstruction, replacement, addition, expansion, restoration, alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Initial Tenant Improvements pursuant to the Work Letter.

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

"Tenant Affiliate" is defined in Section 20.1 below.

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

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

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

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

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

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

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

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

"Uninsured Casualty" means any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) exceeds One Hundred Thousand Dollars (\$100,000.00) and are not insurable under the policies of insurance that Tenant is required to carry under Section 16, or (2) an event of damage or destruction occurring at any time during the Term which is covered under Tenant's policies of insurance that Tenant is required to carry under Section 16, but where the cost of Restoration (including the cost of any required code upgrades) will exceed one hundred ten percent (110%) of the net proceeds of any insurance payable plus the amount of any applicable policy deductible. Any event of damage or destruction not insured due to Tenant's failure to maintain the requisite insurance policies under Section 16 (or Tenant's election to discontinue or omit earthquake insurance in accordance with Section 16.6 (b)) shall not be considered an Uninsured Casualty.

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

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

"Work Letter" means the Work Letter described in *Exhibit D* attached hereto.

3. PREMISES; AS-IS CONDITION.

3.1. **Premises.** Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the real property in the City and County of San Francisco, California, as further described on *Exhibit A* attached hereto (the "Property"), together with all rights, privileges and licenses appurtenant to the Property and owned by Port, all other structures and substructures affixed thereto (the "Buildings"), and the Improvements to be hereafter constructed on the Property (subject to Section 13 below), for the Permitted Uses. The Property, Buildings and all other Improvements and appurtenances now and hereafter located on the Property by virtue of the construction or installation activities of Tenant or its Agents or by others upon the express written agreement of Tenant, are referred to in this Lease as the "Premises". Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises. Port and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

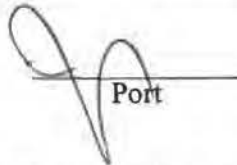
3.2. **No Right to Encroach.** In the event Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "Encroachment Area"), then upon written notice from Port ("Notice to Vacate"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "Encroachment Area Charge"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in the last paragraph of this Section 3.1), at law or in equity.

In addition to the foregoing amount, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section 3.1 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.

In addition to the rights and remedies of Port as set forth in the immediately foregoing two paragraphs of this Section 3.1, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify, Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.1 and the reasonableness of the amount of the charges described in this Section 3.1.

Initials:


Port


Tenant

3.3. As Is Condition.

TENANT ACKNOWLEDGES AND AGREES THAT TENANT IS FAMILIAR WITH THE PREMISES, THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS-IS" CONDITION, WITHOUT ANY IMPROVEMENTS OR ALTERATIONS BY PORT, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO PORT THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT NEITHER PORT NOR ANY OF ITS AGENTS HAVE MADE, AND PORT HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE FACILITY (INCLUDING, BUT NOT LIMITED TO THE SUBSTRUCTURE), THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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

3.5. Relocation Option. At any time up to the last twelve (12) months of the Term, Port may relocate Tenant from the Premises to reasonably comparable space ("Relocation Space") within the Facility or on Port property at Port's expense upon sixty (60) days' prior written notice to Tenant. Port shall use its best efforts to identify Relocation Space that is comparable to the Premises in location, foot traffic, size, seating capacity and outdoor space. From and after the date of the relocation, "Premises" shall refer to the Relocation Space into which Tenant has moved and the Base Rent shall be adjusted based on the rentable square footage of the Relocation Space. Port shall pay Tenant's reasonable costs for moving Tenant's Property and printing and distributing notices to Tenant's customers of Tenant's change of address and three (3) months supply of stationery showing the new address.

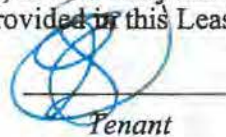
4. TERM OF LEASE; TERMINATION BY PORT.

4.1. Term The term of this Lease (the "Term") shall begin on the first day of the first calendar month following approval of this Lease by the Board of Supervisors and full execution by Port ("Commencement Date") and shall continue for the period of months specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date. Promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as *Exhibit B*, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

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

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

Initials:



Tenant

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

4.4. Termination Rights.

Port has the right to terminate the Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's substructure has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety if the Premises were occupied for the full Term, and Port has not budgeted for the required repairs. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Subsection.

Within sixty (60) days after Tenant's surrender under this Section, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements in any Port building permits for such work obtained by Tenant and which are approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial term of the Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

5. RENT.

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

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

5.2. Percentage Rent.

(a) Tenant agrees to pay to Port, in addition to the monthly Base Rent payable by Tenant pursuant to Section 5.1 above, a monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent.

(b) Percentage Rent shall be determined and paid by Tenant for each calendar month within twenty (20) days after the end of the prior calendar month, except that in the event this Lease expires or terminates on a day other than the last day of a calendar month, Percentage

Rent for such calendar month shall be determined and paid within twenty (20) days after such expiration or termination date. At the time of paying the Percentage Rent, Tenant shall furnish a complete statement (the "Monthly Percentage Rent Statement") in a form approved by Port. In addition, Tenant shall furnish to Port, within thirty (30) days after the expiration of each Lease Year, a complete statement, showing the computation of the Percentage Rent for the immediately preceding Lease Year ("Annual Statement") in a form approved by Port. The Annual Statement is for verification and certification of Monthly Percentage Rent Statements only and shall not result in any averaging of monthly Percentage Rent. Each Monthly Percentage Rent Statement and Annual Statement shall set forth in reasonable detail Gross Revenues for such immediately preceding calendar month or Lease Year, as applicable, including an itemized list of any and all deductions or exclusions from Gross Revenues that Tenant may claim and which are expressly permitted under this Lease, and a computation of the Percentage Rent for the immediately preceding calendar month or Lease Year, as applicable.

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

(d) If Port receives the Percentage Rent payment but does not receive the Monthly Percentage Rent Statement therewith, such failure, until cured, shall be treated as a late payment of Percentage Rent, subject to a Late Charge, until Port receives the applicable Monthly Percentage Rent Statement. Additionally, if Tenant shall fail to deliver any Monthly Percentage Rent Statement within the time period set forth in this Section 5.2 (irrespective of whether any Percentage Rent is actually paid by Tenant to Port) and such failure shall continue for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge.

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

5.3. Books and Records. Tenant agrees that the business of Tenant upon the Premises shall be operated with a non-resettable 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, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records for a period of the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should

arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is terminated (the "**Audit Period**").

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

5.5. Audit.

(a) Tenant agrees to make its Books and Records available to Port, or to any City auditor, or to any auditor or representative designated by Port or City (hereinafter collectively referred to as "**Port Representative**"), upon no less than fifteen (15) business days prior written notice to Tenant, for the purpose of examining said Books and Records to determine the accuracy of Tenant's reporting of Percentage Rent for a period not to exceed the Audit Period after a Percentage Statement is delivered to the Port. Tenant shall cooperate with the Port Representative during the course of any audit, provided however, such audit shall occur at Tenant's business office, 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 Tenant (provided, however, copies may be made by the Port Representative on site), and once commenced, with Tenant's cooperation, such audit shall be diligently pursued to completion by Port within a reasonable time of its commencement, provided that Tenant makes available to the Port Representative all the relevant Books and Records in a timely manner. If an audit is made of Tenant's Books and Records and Port claims that errors or omissions have occurred, the Books and Records shall be retained by Tenant and made available to the Port Representative until those matters are expeditiously resolved with Tenant's cooperation. If Tenant operates the Premises through one or more Subtenants or Agents (other than Port), Tenant shall require each such Subtenant or Agent to provide the Port with the foregoing audit right with respect to its Books and Records. Upon completion of the audit, Port shall promptly deliver a copy of the audit report to Tenant.

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

5.6. Manner of Payment. All payments due from Tenant to Port under this Lease shall be made to Port without abatement, deduction, setoff, prior notice or demand, in lawful money of the United States of America at Port's address for notices as set forth in the Basic Lease Information, or to such other person or at such other place as Port may from time to time designate in writing to Tenant. Additional Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "**upon demand**", "**promptly following notice**", "**upon receipt of invoice**", or the like, then such Additional Rent shall be due five (5) business days following the giving by Port of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

5.7. Late Charges. Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, a Late Charge will be paid by Tenant for (i) all Rent, or any portion thereof due and unpaid, and (ii) failure to deliver the applicable Monthly Percentage Rent Statement or Annual Statement when

due, which Late Charge will be assessed against the Base Rent, Percentage Rent or both which would be paid based on the applicable Monthly Percentage Rent Statement or Annual Statement which is late. In addition to the Late Charge, Tenant shall pay any attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or submit a Monthly Percentage Rent Statement or Annual Statement when due under this Lease. Such charges shall be computed from the date on which such Rent, Monthly Percentage Rent Statement or Annual Statement first became due. Additionally, in the event Port notifies Tenant that Tenant is considered to be a Habitual Late Payer, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The parties agree that the charges set forth in this Section 5.7 represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Except as provided above, such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Amounts due under this Section 5.7 are in addition to, not in lieu of, amounts due under Section 5.8 below.

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

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

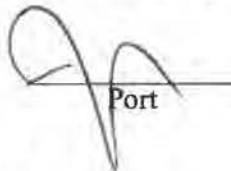
5.10. Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth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

5.11. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections 15.4(a), 15.8, 15.10, 30.1(d), and 36 below, or to provide evidence of the required insurance coverage described in Section 16 below, then upon

written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.11 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.11 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 5.11 and the reasonableness of the amount of the charges described in this Section 5.11.

Initials:


Port


Tenant

6. TAXES AND ASSESSMENTS.

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

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

within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the Port to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

7. SECURITY.

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

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section 7 shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

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

7.2. Letter of Credit. If Tenant provides the Security Deposit in a standby Letter of Credit, the following applies:

(a) The Letter of Credit must:

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

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

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

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

(b) Port may use any portion of the Letter of Credit for the purposes stated in Section 7.1. If Port makes a draw in any amount, Tenant must deliver to Port an amendment to the Letter of Credit or a replacement Letter of Credit providing Port with the full Letter of Credit value within five (5) business days after notice from Port to Tenant specifying the amount of the draw and the particular purpose to which the Letter of Credit were applied.

7.3. Environmental Oversight Deposit.

(a) Prior to the Effective Date, Tenant shall deliver to Port, in addition to the advance payment of the first month's Base Rent, and the Security Deposit, an environmental oversight deposit ("**Environmental Oversight Deposit**") in cash, in an amount equaling Ten Thousand Dollars (\$10,000.00), as security for the recovery of Port's costs and expenses related to the increased inspection, monitoring, enforcement and administration of this Lease; provided, however, that the Environmental Oversight Deposit shall not be deemed an advance rent deposit or an advance payment of any other kind, or a measure of Port's damages upon an Event of Default.

(b) If a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the Premises and/or Tenant's activities and operations (in each case, an "**Environmental Notice**") is delivered to Tenant and Tenant does not cure or is not actively working to cure such Environmental Notice within fourteen (14) calendar days after its delivery, Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for administrative costs and expenses incurred by Port while inspecting and monitoring the conditions of the Premises and enforcing and administering Tenant's Environmental Obligations (including, but not limited to staff time corresponding with and responding to regulatory agencies and collection and laboratory analysis of environmental samples).

(c) If an Environmental Notice is delivered to Tenant and such notice of violation is cured, or regulatory order is complied with, within fourteen (14) calendar days after delivery of such Environmental Notice, Port may use and apply from the Environmental Oversight Deposit an amount equaling Five Hundred Dollars (\$500.00) for each Environmental Notice delivered to Tenant to reimburse Port for its administrative cost and expense. The parties agree that the foregoing charge relating to each Environmental Notice delivered to Tenant represents a fair and reasonable estimate of the administrative cost and expense Port will incur by reason of Port staff time devoted to its response and action to each Environmental Notice.

(d) Tenant shall immediately upon demand pay Port a sum equal to the portion of the Environmental Oversight Deposit expended or applied by Port. If Tenant shall fail to replenish the amount used or applied by Port from the Environmental Oversight Deposit within three (3) business days after demand by Port, such failure shall constitute an Event of Default. Provided that there are no outstanding Environmental Notices and Tenant delivers the Premises to Port in compliance with the terms and conditions of Sections 15.3 (Requirement to Remove) and 25 below (Surrender and Quitclaim), Port shall return the balance of the Environmental Oversight Deposit, if any, to Tenant within thirty (30) days after Port takes full and complete possession of the Premises. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business. Tenant shall not be entitled to any interest on the Environmental Oversight Deposit. Nothing contained in this Section 7.2 shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

8. USE OF THE PREMISES.

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

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

- (a) any activity, or the maintaining of any object, which is not within the Permitted Use;
- (b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;
- (c) any activity or object which will overload or cause damage to the Premises;
- (d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;
- (e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;
- (f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;
- (g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;
- (h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;
- (i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;
- (j) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;
- (k) the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;
- (l) except during construction of the Initial Tenant Improvements, the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;
- (m) the washing of any vehicles or equipment;
- (n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the Load Restrictions, if any, described in the Basic Lease Information; or
- (o) operation of a Formula Restaurant or a Formula Restaurant that is also a Fast Food Restaurant as defined in Sections 890.90 and 890.01 of the San Francisco Planning Code
- (p) any other Prohibited Uses identified in the Basic Lease Information, if any.

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

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

Initials:

Port

Tenant

9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

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

payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

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

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

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

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

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

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

discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

Initials:



Tenant

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

11. MAINTENANCE AND REPAIRS.

11.1. Tenant Maintenance and Repair Obligations. Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, including any period of early entry if any under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with Port, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Initial Tenant Improvements and Subsequent Alteration thereon. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Initial Tenant Improvements or Subsequent Alteration now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law, now or hereafter in effect.

Notwithstanding any maintenance obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. Tenant shall not make, nor cause or suffer to be made any repairs or other work for which a permit is required by an applicable building code, standard or regulation, including, without limitation, the Port Building Code, the Port Facility Code, or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

11.2. Port's Right to Inspect. In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence. Without limiting Section 26 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. Port's Right to Repair. In the event Tenant fails to maintain the Premises in accordance with Sections 11.1 and 11.2 above, or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. If the cost (including, but not limited to, mobilization, materials and salaries of Port staff) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. "Hard" costs shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural and attorneys' fees.

With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("Maintenance Notice"). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section 11.3 shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

Initials:


Tenant

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

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

For purposes of this Section 11, the term "Commencement Date" shall mean the commencement date (including any early entry period, if any) of the Prior Leases.

12. UTILITIES AND SERVICES.

12.1. Utilities.

Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant. Except as may be otherwise provided in the Basic Lease Information, Tenant shall pay all charges for said Utilities, including charges for the connection and installation of the Utilities as may be specified in the Basic Lease Information, from the location points specified therein.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

Tenant will not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises, including without limitation, electronic data processing machines and machines using current in excess of 110 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises. If Tenant shall require electric current in excess of that

usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by said meter, at the rates charged for such service by the City and County of San Francisco or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

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

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

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

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

12.3. Antennae and Telecommunications Dishes. No antennae or telecommunications dish or other similar facilities on the exterior of the Premises may be installed on the Premises without the prior written approval of Port, which may be given or withheld in its sole and absolute discretion. Any wireless telecommunications systems installed on the exterior of the Premises shall be subject to Port's approval pursuant to the Port Commission's adopted policy on the siting and requirements for wireless telecommunications, as the same may be amended or modified from time to time. No such antennae shall interfere with the City's emergency and non-emergency communications facilities or the transmission facilities of Port.

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required. Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Subsequent Alteration which affect the structural portions of the Premises, or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port, and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises. As a further condition to giving consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more of the following a financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as (i) a standby letter of credit or bond; and (ii) a payment and performance bond in form acceptable to Port from Tenant's Contractors naming Port as co-obligee, each in a principal amount no less than one and one-half (1.5) times the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

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

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

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

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

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

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

(c) Tenant, while performing any Subsequent Alteration or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision

for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(d) At the Completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Subsequent Alteration made in the Premises.

(e) Tenant expressly acknowledges that the Facility is part of the Fish Alley Historic District and that interior and exterior Alterations (including but not limited to any repair, alteration, improvement, or construction to the interior or exterior of the Facility) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element. In addition, Tenant expressly acknowledges that for any proposed interior or exterior Alteration of Port properties that more than fifty (50) years of age, Tenant may be required to prepare a Historic Resources Evaluation Report ("HRER") to determine whether the property is eligible or potentially eligible for listing as a historic resource. The HRER must be prepared by a qualified historic preservation professional and submitted to Port for review and must include sufficient research and documentation to substantiate whether the property is an eligible or a potentially eligible historic resource or of no historical value or significance. For proposed interior or exterior Alterations to Port properties determined to be eligible or potentially eligible for listing as historic resources, the HRER must also analyze the proposed Alterations for consistency with the Secretary of the Interior's Standards for the Treatment of Historic Properties which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm>. Port reserves the right to disapprove Alterations that are found to be inconsistent with the Secretary of the Interior's Standards or to work with Tenant to modify the proposed Alterations to achieve greater consistency with the Secretary's Standards. Tenant also expressly acknowledges that Alterations that are inconsistent with the Secretary's Standards may require additional regulatory review and approval by Port or other Regulatory Agencies with jurisdiction over the Facility.

(f) Without limiting Section 15 below (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Subsequent Alteration and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3423, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without

containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3423 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.3(g), lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.4. Improvements Part of Realty. Other than Tenant's Property and as set forth in Section 13.5 below, all Alterations or Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender) below.

13.5. Removal of Improvements. Prior to the Expiration Date or earlier termination of this Lease, Port shall give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property or as may be provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. In all events, Tenant shall be entitled to remove Tenant's Property and Tenant's trade fixtures, on expiration or earlier termination of this Lease. Any such removal is subject to the requirements of Section 13, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver said Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

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

13.7. Port's Alterations. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Facility, or the Facility Systems, or adjacent Port property ("**Port Work**"). Port shall use its commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant

from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

14. LIENS.

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

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

15. HAZARDOUS MATERIALS.

15.1. Requirements for Handling. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial, kitchen and office supplies in limited amounts customarily used for restaurant purposes.

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

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

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

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

15.3. Tenant's Environmental Condition Notification Requirements.

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its

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

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

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

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

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

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

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

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

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

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

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

15.4. Requirement to Remediate.

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

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

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

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

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

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

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

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

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

Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises.

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

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

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

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

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

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

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

15.10. Storm Water Pollution Prevention.

(a) 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

the Improvements for their intended purposes for a period of ten (10) days or longer or (ii) exceeds in an individual instance the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) or aggregate amount of One Hundred Thousand and No/100 Dollars (\$100,000.00), Tenant shall promptly, but not more than five (5) business days after the occurrence of any such damage or destruction, give written notice thereof to Port describing with as much specificity as is reasonable, given the five (5) day time constraint, the nature and extent of such damage or destruction.

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

17.2. Rent after Damage or Destruction. If there is any damage to or destruction of the Premises, including the Improvements thereon, this Lease shall not terminate except as otherwise specifically provided in Section 17.4 below. In the event of any damage or destruction to the Improvements, whether or not such damage or destruction results in a termination of this Lease, Tenant shall continue to pay to Port all Rent at the times and in the manner described in this Lease during any period of Restoration by Tenant or until Tenant or Port terminates this Lease pursuant to Section 17.4 below.

17.3. Tenant's Obligation to Restore. Except in the event Tenant elects to terminate this Lease pursuant to Section 17.4 below due to an Uninsured Casualty or Major Damage or Destruction, subject to Section 17.4 below, Tenant shall within a reasonable period of time, commence and diligently, subject to Force Majeure, Restore the Improvements to substantially the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades). All Restoration performed by Tenant shall be in accordance with the procedures set forth in Section 13 relating to Subsequent Alteration and shall be at Tenant's sole cost and expense.

17.4. Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term, then Tenant shall provide Port with a written notice (the "Casualty Notice") either (1) electing to commence and complete Restoration of the Improvements to substantially the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Law (including any required code upgrades); or (2) electing to terminate this Lease (subject to Section 17.4(b) below). Tenant shall provide Port with the Casualty Notice no later than forty-five (45) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. Failure to provide the Casualty Notice within such forty-five (45) day period shall be deemed to an election by Tenant to terminate this Lease. If Tenant elects to Restore the Improvements, all of the provisions of Section 13 that are applicable to Subsequent Alteration of the Improvements shall apply to such Restoration of the Improvements to substantially the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Alteration.

(b) Condition to Termination; Payment of Insurance Proceeds. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 17.4(a) above, Tenant, in its election to terminate described in Section 17.4(a) above, shall state the cost of Restoration, and the amount by which the cost of Restoration exceeds insurance proceeds payable plus the amount of any applicable policy deductible. Upon receipt by Tenant of any insurance proceeds paid on account of such casualty, Tenant shall promptly pay or cause to be paid the following amounts, in the following order of priority:

(i) first, to Port (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the actual costs incurred for any work required to alleviate any conditions caused by such event of damage or destruction that could cause an immediate or imminent threat to the public safety and welfare or damage to the environment, including without limitation, any demolition or hauling of rubble or debris;

(ii) the balance of the proceeds to Port.

Upon termination of the Lease, Tenant shall deliver possession of the Premises to Port and quitclaim to Port all right, title and interest in the Premises and any remaining Improvements. Port's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease.

17.5. *Effect of Termination.* If Tenant elects to terminate the Lease under Section 17.4(a) above, then this Lease shall terminate on the date set forth in the Casualty Notice, which termination date shall be no earlier than thirty (30) days after Tenant shall have delivered to Port notice of Tenant's election to terminate and the statement of cost of Restoration as described in the first sentence of Section 17.4(b) above, or if Tenant has not provided Port with the Casualty Notice within forty-five (45) days following the occurrence of a Major Damage or Destruction or Uninsured Casualty, then this Lease shall terminate ninety (90) days following the occurrence of a Major Damage or Destruction or Uninsured Casualty. Upon such termination, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination subject to payment to Port of accrued and unpaid Rent, up to the effective date of such termination and all insurance proceeds; provided, however, that the indemnification provisions hereof and any other provisions that expressly survive the earlier termination or expiration of this Lease shall survive any such termination. At Port's request following any termination, Tenant shall deliver to Port a duly executed and acknowledged quitclaim deed suitable for recordation and in form and content satisfactory to Port.

17.6. *Distribution Upon Lease Termination.* If Tenant is obligated to Restore the Improvements as provided herein and commits an Event of Default in failing to so Restore the Improvements, and this Lease is thereafter terminated due to such Event of Default, all insurance proceeds shall be paid to and retained by Port.

17.7. *Use of Insurance Proceeds.*

(a) Restoration. Except in the event of termination of this Lease, all all-risk coverage insurance proceeds, premises insurance proceeds, flood and earthquake insurance proceeds, if any, and boiler and machinery insurance proceeds paid to Port and/or Tenant by reason of damage to or destruction of any Improvements, if any, must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Section 17.

(b) Payment to Trustee. If Tenant does not terminate this Lease in accordance with Section 17.4 above and Restores the Improvements, then Tenant shall pay the insurance proceeds to a trustee (which shall be a bank or trust company) designated by Port within twenty (20) days after written request, having an office in San Francisco. Unless agreed otherwise by the Parties, the insurer shall pay insurance proceeds of Fifty Thousand and No/100 Dollars (\$50,000.00) or less directly to Tenant for purposes of Restoration in accordance with this Lease. The trustee shall hold all insurance proceeds in an interest-bearing federally insured account (with interest added to the proceeds). However, such trustee shall pay to Tenant, from time to time as the work of rebuilding, Restoration and repair shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such repairs, rebuilding and Restoration. Port shall instruct the trustee to pay Tenant the cost of any emergency repairs necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee shall be required to make such payments upon satisfaction that the amount

necessary to provide for Restoration or repair of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured. Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Provided that no uncured Event of Default (or unmatured Event of Default) that has not been waived by Port shall exist on the date such damage is repaired, the Improvements shall have been Restored in accordance with the provisions of this Section 17 and all sums due under this Lease shall have then been paid in full, any excess of monies received from insurance remaining with the trustee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

17.8. No Release of Tenant's Obligations. No damage to or destruction of the Premises or Improvements or any part thereof for fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent.

17.9. Arbitration of Disputes.

(a) Procedure. If Port and Tenant cannot mutually agree upon the cost of Restoration or the cost of replacing the Improvements under Section 17.4(a) above, or if the Parties cannot agree upon the amount of Rent abatement under Sections 18.3 below, or if the Port disputes Tenant's Construction Costs Report under Section 20.4(c), such disputes shall be determined in the manner provided in this Section 17.9. Either Party may invoke the provisions of this Section 17.9 at any time after such Party has made a good faith effort to resolve the disputed matter with the other Party, by delivering written notice to the other Party. Port and Tenant, within twenty (20) business days after delivery of notice invoking the provisions of this Section, shall each simultaneously submit to the other, in a sealed envelope, its good faith estimate of the determination ("Estimates"). If the higher of such Estimates is not more than one hundred five percent (105%) of the lower of such Estimates, then the determination shall be the average of the two Estimates. If the determination is not resolved by the exchange of Estimates, then, within seven (7) days after the exchange of Estimates, Port and Tenant shall each select an Estimator to determine which of the two Estimates most closely reflects the determination. If the two Estimators cannot agree upon which of the two Estimates most closely reflects the determination within twenty (20) days after their appointment, then, within ten (10) days after the expiration of such twenty (20) day period, the two Estimators shall select a third Estimator.

(b) Each Party shall have the opportunity to question the proposed third Estimator, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the dispute. Either Party may, by written notice to the other Party and the two initial Estimators, raise a good faith objection to the selection of the third Estimator based on his or her failure to meet the requirements of Section 17.9(e). In such event, if the two initial Estimators determine that the objection was made in good faith, the two initial Estimators shall promptly select another third Estimator, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third Estimator within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third Estimator or any other matter relating to the selection of the third Estimator under this Lease. If for any reason the two initial Estimators do not appoint such third Estimator within such fifteen (15) day period (or within a reasonable period thereafter not to exceed twenty-five (25) days in the event a good faith objection is made as provided above), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third Estimator meeting the qualifications in Section 17.9(e). If the Court denies or otherwise refuses to act upon such application within thirty (30) days from the date on which the Party first applies to the Court for appointment of the third Estimator, either Party may apply to

J.A.M./ENDISPUTE, for appointment of an independent third Estimator meeting the qualifications in Section 17.9(e).

(c) Once the third Estimator has been selected as provided for above, then, as soon thereafter as practicable but in any case within fourteen (14) days, the third Estimator shall make his/her determination of which of the two Estimates most closely reflects the determination and such Estimate shall be conclusive and binding on both Port and Tenant. Such third Estimator shall consider the Estimate submitted by the first two initial Estimators as well as any other relevant written evidence which the third Estimator may request of either or both of the first two initial Estimators. If either of the first two initial Estimators submit any such evidence to the third Estimator, he or she shall do so only at the request of the third Estimator and shall deliver a complete and accurate copy to the other Party and the Estimator such Party selected at the same time it submits the same to the third Estimator. Neither Party, nor either of the Estimators they appoint, shall conduct any ex parte communications with the third Estimator regarding the subject matter of the dispute. The determination of the third Estimator shall be limited solely to the issue of deciding which of the appraisals of the two Estimates is closest to the actual determination. The third Estimator shall have no right to propose a middle ground or to modify either of the two Estimates, or any provision of this Lease.

(d) The determination by the third Estimator shall be conclusive, final and binding on the Parties. Neither of the first two Estimators nor the third Estimator shall have any power to modify any of the provisions of this Lease and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. The Parties will cooperate to provide all appropriate information to the Estimators. The Estimators will each produce their determination in writing, supported by the reasons for the determination.

(e) Each Party shall bear the fees, costs and expenses of the Estimators it selects. The fees, costs and expenses of the third Estimator above shall be shared equally by Port and Tenant. Each Party waives any claims against the Estimator appointed by the other Party, and against the third Estimator, for negligence, malpractice or similar claims in the performance of the actions contemplated by this Section 17.9.

(f) Qualifications of Estimator. As used herein, the term "Estimator" shall mean a licensed general contractor having at least ten (10) years experience in estimating construction costs of major construction projects in the City to estimate the cost or amount in dispute, and for disputes regarding time to complete Restoration under Section 17.4(a) above, also having at least the equivalent amount of experience in commercial real estate development matters. Each such Estimator shall be competent, licensed, qualified by training and experience in the City, disinterested and independent.

18. EMINENT DOMAIN.

18.1. *General; Notice; Waiver.*

(a) General. If, at any time during the Term, there is any condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Section 18.

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

(c) Waiver. Except as otherwise provided in this Section 18, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event

of a condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Section 18, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure, as such Section may from time to time be amended, replaced or restated.

18.2. Total Condemnation. If there is a condemnation of the entire Premises or Tenant's leasehold interest therein (a "Total Condemnation"), this Lease shall terminate as of the Condemnation Date.

18.3. Substantial Condemnation, Partial Condemnation. If there is a condemnation of any portion but less than all of the Premises for the balance of the Term, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation (as defined below) of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Section 18, a Condemnation of less than the entire Premises or of less than Tenant's leasehold estate shall be a "Substantial Condemnation" if Tenant and Port reasonably determine that such Condemnation renders the Premises untenable, unsuitable or economically infeasible for the Permitted Uses. Upon a Substantial Condemnation, this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to Port). In any such case, however, Base Rent shall be adjusted in accordance with the provisions of Section 18.3(b) below, and in addition, Base Rent shall be abated during the period necessary for the performance of any Restoration in an equitable amount to reflect the diminution in fair market rent for the Premises during the period of such Restoration, as mutually determined by the Parties, or in the absence of an agreement between the Parties, in accordance with the dispute resolution procedures provided under Section 17.9 above.

(b) Partial Condemnation. If there is a condemnation of any portion of the Premises or Tenant's leasehold estate that does not result in a termination of this Lease under Sections 18.2 or 18.3(a) above (a "Partial Condemnation"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, or in the case of a Substantial Condemnation that does not result in a termination of this Lease, the Base Rent and other charges based on the size of the Premises for the remainder of the Premises shall be adjusted to reflect the diminution in value of the remaining portion of the Premises as of the Condemnation Date. Such Base Rent adjustment shall be separately computed with respect to (i) the temporary period during which any necessary Restoration will be performed; and (ii) the period following completion of any necessary Restoration. The Parties shall first negotiate in good faith in an attempt to determine by agreement the appropriate adjustment. If the Parties do not reach agreement within thirty (30) days following the Condemnation Date, the adjustment(s) shall be resolved pursuant to the dispute resolution procedures provided under Section 17.9 above. In the case of a Partial Condemnation (or a Substantial Condemnation in the event Tenant elects not to terminate this Lease in accordance with Section 18.3(a) above) this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to Port. Any such Restoration shall be performed in accordance with the provisions of Section 13.

18.4. Awards. Except as provided in Section 18.5 below, Awards and other payments to either Port or Tenant on account of a Condemnation, less costs, fees and expenses of either Port or Tenant (including, without limitation, reasonable Attorneys' Fees and Costs) incurred in

the collection thereof ("Net Awards and Payments") shall be allocated between Port and Tenant as follows:

(a) First, to Port for the value of the condemned land, considered as improved and encumbered by this Lease and subject to the particular uses of the Premises existing immediately prior to the Condemnation Date, and with reference to, or inclusion of, Port's reversionary interest in the value of the Improvements;

(b) Second, to Port for the value of lost Rent that would have accrued to Port from and after the Condemnation Date until the Expiration Date had the Condemnation not occurred;

(c) Third, to Port from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Base Rent and Percentage Rent (including all accrued interest and late fees) owed by Tenant to Port under this Lease for periods prior to the Condemnation Date;

(d) Fourth, to pay costs of Restoration incurred by Tenant, in which case, the portion of the Net Awards and Payments allocable to Restoration shall be payable to Tenant or trustee in accordance with the requirements governing payment of insurance proceeds set forth in Section 17.7(b) above;

(e) The balance of the Net Payment and Award to Port.

Notwithstanding the foregoing, to the extent that the same shall not diminish Port's recovery from the Condemnation, Tenant shall have the right to make a claim, and to receive any award specifically made to Tenant, for moving expenses and for loss or damage to Tenant's Property, trade fixtures, equipment and movable furniture or for the diminution in value of or damage to Tenant's business.

18.5. Temporary Condemnation. If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant.

19. INDEMNITY AND EXCULPATION.

19.1. General Indemnity. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "Indemnified Parties") from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all Claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

19.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under **Section 19.1** (Indemnity), Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material Condition, except where caused by the Indemnified Parties' sole negligence or willful misconduct; and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

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

19.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. The Indemnification obligations of Tenant set forth in this Lease includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter.

The Indemnification obligations of Tenant set forth in this Lease shall include without limitation, Indemnification from all Claims. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

19.4. Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims against the Indemnified Parties, and agrees to Indemnify the Indemnified Parties from any Claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about the Premises, the Facility or any other Port property 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 the Indemnified Parties.

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

Indemnified Parties from liability caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.


19.5. Effect of Waivers

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

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

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

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

Initials: Tenant: 

20. ASSIGNMENT AND SUBLETTING.

20.1. Transfer to Affiliate.

(a) Tenant may make an Affiliate Transfer without obtaining Port's consent, but only if Tenant gives Port: (i) prior written notice at least 20 business days before the Transfer Date; and (ii) copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within 5 days after the actual Transfer Date.

(b) Port will have the right to: (i) request additional documentation and information relating to Tenant's relationship with the Transferee for 3 months after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Affiliate Transfer on the grounds that the Transferee is not an Affiliate as defined in this Lease, if written notice is delivered to Tenant within 3 months after Port's receipt of all required and requested information.

20.2. Transfer to Non-Affiliate.

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

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would

involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured.

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

(b) At least 60 days before any Transfer to a Non-Affiliate, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the 3 years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

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

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

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

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

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

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

pay to Port in connection with the Sublease is \$1,500 per month, as shown in the calculation below.

Term of Sublease:	5 years x 12 months = 60 months
Subletting Expenses:	\$15,000 + \$15,000 = \$30,000
Amortized Subletting Expenses:	\$30,000/60 months = \$500/month
Excess Rent:	\$5,000/month - \$3,000/month = \$2,000/month
Additional Rent:	\$2,000/month - \$500/month = \$1,500/month

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

(a) Tenant must pay to Port 10% of Tenant's Net Sale Proceeds as Port's Sale Participation, concurrently with and as a condition to the Sale Closing. If Tenant operates at multiple locations, then Port's Sale Participation will be calculated using only the Gross Sale Proceeds, Net Sale Proceeds, and Costs of Sale reasonably attributable to the Premises.

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

(c) If Tenant constructed Initial Tenant Improvements at the Premises, Net Sale Proceeds will be reduced by Tenant's Adjusted Basis, but only if Port previously approved Tenant's Certified Construction Costs as follows.

(i) Within 90 days after Completion of the Initial Tenant Improvements, Tenant must deliver to Port a Construction Costs Report in form and content acceptable to Port in its reasonable discretion, accompanied by a CPA's agreed-upon procedures report prepared in accordance with AICPA standards for compliance attestation and specifying Port as an intended user. Port will notify Tenant in writing whether Port agrees or disagrees with Tenant's Construction Costs Report within 90 days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Construction Costs Report. Tenant must keep accurate Books and Records of all Construction until the later of 2 years after Tenant's submission of its Construction Costs Report or 6 months after any dispute regarding the Construction Costs has been resolved. Tenant's failure to submit a Construction Costs Report as and when required under this Section will be deemed a waiver of its right to make an Adjusted Basis reduction to Net Sale Proceeds.

For example, if: (i) Initial Tenant Improvements have a Class Life of 15 years; (ii) Certified Construction Costs are \$3 million; (iii) Gross Sale Proceeds are \$10 million; (iv) Costs of Sale are \$200,000, leaving Net Sale Proceeds of \$9.8 million; and (v) the Closing Date is the 6th anniversary of the "placed in service" date of the Initial Tenant Improvements, then Port's Sale Participation is \$780,000, as shown in the calculation below.

Gross Sale Proceeds: \$10,000,000

Costs of Sale: \$200,000

Net Sales Proceeds before Adjusted Basis reduction: \$9,800,000

Certified Construction Costs of Initial Tenant Improvements: \$3,000,000

Adjusted Basis (10/15 years unamortized): \$2,000,000

Net Sales Proceeds less Adjusted Basis: \$7,800,000

Port's Sale Participation @ 10% of adjusted Net Sales Proceeds: \$780,000

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

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

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

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

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

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

20.6. Transfer Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer for a period of no less than one year after the Expiration Date. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Tenant Affiliates where applicable.

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

20.8 Interpretation and Definitions. For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer. In addition, the following definitions apply.

"Adjusted Basis" means the value of the Certified Construction Costs of the Initial Tenant Improvements, to the extent unamortized on the Transfer Date.

"AICPA" means the American Institute of Certified Public Accountants.

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

"Certified Construction Costs" are Construction Costs that Port has approved through the procedures described in Section 20.4.

"Class Life" means the classification of and amortization period applicable to the Initial Tenant Improvements under Internal Revenue Code section 168(e).

"Construction Costs" means actual costs paid by Tenant for all categories of costs for Initial Tenant Improvements, without interest, and subject to the limitations set forth in Exhibit D, Work Letter, and amortized on a straight line basis over the Class Life of the Initial Tenant Improvements.

"Construction Costs Report" means a report prepared by a CPA specifying the Class Life of and verifying Tenant's actual Construction Costs for the Initial Tenant Improvements, accompanied by copies of documentation substantiating all expenditures, such as: (a) executed contracts; (b) invoices for labor, services, goods, and materials, bills of lading, and other bills or receipts marked "Paid" or similarly indicating payment in full; (c) canceled checks or other written evidence of payment; and (d) other documents reasonably requested by Port.

"Costs of Sale" means the following costs, but only to the extent Tenant actually incurred them in connection with a Sale: (a) reasonable (as determined by the Port in its reasonable discretion) brokerage commissions; (b) customary closing fees and costs, including title insurance premiums, survey fees, escrow fees, recording charges, and transfer taxes; (c) reasonable attorneys' fees; and (d) new tenant improvements to be made solely in connection with the Sale and performed in compliance with Section 13. Costs of Sale exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

"goodwill" means the value assigned to Tenant's intangible business assets in connection with a Transfer, but only if the Transferee will continue to operate the same business that Tenant operated at the Premises and Port reasonably agrees with the valuation.

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

"Net Sale Proceeds" means Gross Sale Proceeds less Costs of Sale and goodwill. If Tenant made Initial Tenant Improvements at the Premises, Tenant's Adjusted Basis may be deducted if Tenant previously complied with Section 20.4(c).

"Port's Sale Participation" means the portion of Net Sale Proceeds that Tenant must pay to Port.

"Sale" means: (a) Tenant's Transfer of its entire interest in this Lease or the entire leasehold estate, including the sale of Tenant's Property at the Premises and Tenant's goodwill to any other Person or entity; or (b) a Transfer affecting ownership of the beneficial interests in or business assets of Tenant.

"Sale Closing" means the date that any Sale closes.

21. LEASEHOLD MORTGAGE

21.1. *No Mortgage Except as Set Forth Herein.*

(a) Restrictions on Financing. Except as expressly permitted in this Section 21, Tenant shall not:

(i) Engage in any financing or other transaction creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease; or

(ii) Place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrance.

(iii) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's interest in this Lease, Port's fee interest in the Premises, or Port's personal and other property in, on, under, or about the Premises, in connection with any financing permitted hereunder, or otherwise. Port shall not subordinate its interest in this Lease, the Premises, or Port's personal and other property in, on, under, or about the Premises, nor its right to receive Rent, to any Mortgagee.

(b) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Section shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

21.2. *Leasehold Liens.*

(a) Tenant's Right to Mortgage Leasehold. Subject to compliance with this Section, at any time and from time to time during the Term, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate by way of a Mortgage and security instruments directly related to such Mortgage, with the prior consent of Port, which consent shall not be unreasonably withheld.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted in this Lease to a Mortgagee, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one (1) Mortgagee at any one time.

(d) Type of Mortgagee. A Mortgage may be given only to a Bona Fide Institutional Lender.

21.3. *Purpose of Mortgage.*

(a) Purpose. A Mortgage may be made only for the purposes of financing construction of the Initial Tenant Improvements.

(b) Mortgage Statement. Port agrees after request by Tenant to give to any proposed Mortgagee a statement in recordable form as to whether a proposed Mortgage is permitted hereunder ("Mortgage Statement"). In making a request for such Mortgage Statement, Tenant shall furnish Port with true, accurate and complete copies of such of the financing documents as are reasonably required by Port to permit Port to make the determination whether the proposed Mortgage is permitted. Except as set forth in the Mortgage Statement, the Mortgage Statement shall stop Port from asserting against either Tenant or the prospective Mortgagee that the proposed Mortgage (if done in the way described in the Mortgage Statement) is not permitted hereunder, but shall create no liability on Port, and shall conclusively establish that the proposed Mortgage is permitted hereunder and does not constitute a default by Tenant. Port shall deliver to Tenant the Mortgage Statement within thirty (30) days following receipt by Port of all the applicable financing documents and payment of Port's costs for all Attorneys' Fees and Costs incurred, including Port staff time spent, in connection with reviewing the financing documents and preparing the Mortgage Statement.

21.4. *Interest Covered by Mortgage.* A Mortgage may attach to any or all of the following interests: (i) Tenant's leasehold interest in the Premises and Improvements, (ii) Tenant's interest in any permitted Subleases, (iii) any Personal Property, (iv) products and proceeds of the foregoing, and (v) any other rights and interests of Tenant arising under this Lease.

21.5. *Rights Subject to Lease.*

(a) Subject to Lease. Except as otherwise expressly provided herein, all rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Port hereunder. None of such covenants, conditions and restrictions is or shall be waived by Port by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Port in writing.

(b) Construction and Restoration Obligations. No Mortgagee, including any Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or an action in lieu thereof but excluding (i) any other Person who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or (ii) any other purchaser at a foreclosure sale, shall be obligated by the provisions of this Lease to Complete or Restore the Initial Tenant Improvements, as applicable; provided, however, that (i) nothing in this section or any other provision of this Lease shall be deemed or construed to permit or authorize any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than the Permitted Uses or the Initial Tenant Improvements, as hereafter amended or extended from time to time, and (ii) in the event that Mortgagee obtains title to the leasehold and chooses not to Complete or Restore the Initial Tenant Improvements, as applicable, it shall so notify Port in writing of its election within thirty (30) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser acceptable to the Port in its reasonable discretion that shall be obligated to Complete or Restore the Initial Tenant Improvements, as applicable, but in any event Mortgagee shall use good faith efforts to cause such sale to occur within six (6) months following Mortgagee's written notice to Port of its election not to Complete or Restore the Initial Tenant Improvements, as applicable. If Mortgagee fails to sell its tenancy interest within such six (6) month period, such failure shall not constitute a default hereunder but Mortgagee shall be obligated to Complete the Initial Tenant Improvements as applicable. In the event Mortgagee agrees to or is obligated to Complete or Restore the Initial Tenant Improvements, as applicable, all such work shall be performed in accordance with all the of requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligations.

21.6. *Required Provisions in every Mortgage.* Each Mortgage permitted under this Lease must provide for all of the following: (a) that the Mortgagee shall give written notice to Port of the occurrence of any event of default under the Mortgage; (b) that Port shall be given notice at the time any foreclosure action is initiated; and (c) that the disposition and application of insurance and condemnation awards shall be consistent with the provisions of this Lease.

21.7. *Notices to Mortgagee.*

(a) Copies of Notices. Subject to Mortgagee's compliance with Section 21.7(c), Port shall give to Mortgagee a copy of each notice that Port gives to Tenant from time to time of the occurrence of a default, a Tenant Event of Default, or of Port's consent to any Transfer. Copies of such notices shall be given to Mortgagee at the address last furnished to Port at the same time as Port gives notices to Tenant. Port's failure to give such notice to Mortgagee shall not constitute a default by Port under this Lease, but such failure shall extend for the number of days until such notice is given, the time allowed to Mortgagee for cure. Any such notices to Mortgagee shall be given in the same manner as provided in Section 31.

(b) Notice From Mortgagee to Port. Mortgagee shall provide Port with written notice at any time that Tenant is more than sixty (60) days delinquent in Mortgage payments.

(c) Notice From Port to Mortgagee. Mortgagee shall be entitled to receive notices from time to time given to Tenant by Port under this Lease in accordance with

Section 21.7 above provided such Mortgagee shall have delivered a notice to Port in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, acting through the San Francisco Port Commission, as landlord, and DIG Company, a California LLC, as tenant (the "Lease"), of tenant's interest in the Lease demising the property, a legal description of which is attached hereto as Exhibit A and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to tenant by Port be sent to the undersigned at the following address:

21.8. Mortgagee's Right to Cure. So long as there remains an outstanding balance on the loan secured by a Permitted Mortgage, the following provisions shall apply:

(a) Cure Periods. Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, and to do any other act or thing required of Tenant hereunder; provided that all such acts shall be performed in compliance with the terms of this Lease. Except after Mortgagee acquires Tenant's interest under this Lease, no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Subject to compliance with the applicable terms of this Lease, Mortgagee and its Agents shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant. In the case of any notice of default given by Port to Tenant, the Mortgagee shall have the same concurrent cure periods as are given to Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of ten (10) days for monetary defaults and thirty (30) days for non-monetary defaults after the later to occur of (i) the expiration of such cure period, or (ii) the date that Port has served such notice of default upon Mortgagee. Port shall accept such performance by or at the instance of the Mortgagee as if Tenant had done the same. If a non-monetary default cannot reasonably be cured or remedied within such additional thirty (30) day period, such cure period shall be extended at Mortgagee's request so long as Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure, or if such default cannot be reasonably commenced or cured by Mortgagee within such thirty (30) day period without obtaining possession of the Premises (if possession is required to commence or cure) the cure period shall be extended so long as Mortgagee is diligently seeking to obtain possession and thereafter commences the cure or remedy within such period as is reasonable.

(b) Foreclosure. Notwithstanding anything to the contrary, upon the occurrence of a Tenant Event of Default, other than a monetary Tenant Event of Default or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, Port shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Tenant Event of Default is given to Mortgagee, Mortgagee (i) obtains possession of the Premises (including possession by a receiver), or (ii) notifies Port of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of such proceedings and Force Majeure. Mortgagee, upon acquiring Tenant's interest in this Lease, shall be required promptly to cure all monetary defaults and all other defaults then susceptible of being cured by such Mortgagee to the extent not cured prior to the completion of foreclosure proceedings. The foregoing provisions of this Section 21.8(b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after a Tenant Event of Default is cured; (ii) nothing shall preclude Port, subject to the provisions of this Section 21.8(b), from exercising any rights or remedies under this Lease (other than a

termination of this Lease to the extent otherwise permitted hereunder) with respect to Tenant Events of Default during the pendency of such foreclosure proceedings; and (iii) Mortgagee shall agree with Port in writing to comply with the Lease during the period Port forebears from terminating this Lease with its terms, conditions and covenants as such are susceptible of being complied with by Mortgagee, including without limitation, the payment of all sums due and owing hereunder (including all penalties, fees and interest), evidence of insurance as required by Section 16 and the use restrictions set forth in Section 8.2. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (iii) of the preceding sentence, Mortgagee shall have the right at any time to notify Port that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, Mortgagee shall have no further liability and no further rights to the Lease, Premises or Initial Tenant Improvements under such agreement from and after the date it delivers such notice to Port, and, thereupon, Port shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of Section 21.8(d) shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any monetary Tenant Event of Default, (ii) continue to pay currently such Rent and other monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that such obligations are capable of being performed by Mortgagee, including at anytime Mortgagee is in possession of the Premises (which Mortgagee shall be obligated to use reasonable efforts to obtain), the use restrictions set forth in Section 8.2, the operating covenants set forth in Section 41, and the maintenance and repair obligations set forth in Section 11.

(c) Construction.

(i) Subject to Section 21.5(b), if a Tenant Event of Default occurs following any damage or destruction but prior to Restoration, Mortgagee, before foreclosure or action in lieu thereof, shall not be obligated to Restore beyond the extent necessary to preserve or protect the Improvements already made, to remove any debris and to perform other reasonable measures to protect the public, unless such Mortgagee expressly assumes the Tenant's obligations to Restore by written agreement reasonably satisfactory to Port and submits evidence satisfactory to Port that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) If Mortgagee assumes Tenant's obligation to Restore in accordance with Section 21.8(c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date Tenant stopped work on the Restoration to the date of such assumption plus an additional sixty (60) days.

(d) New Lease. In the event this Lease is terminated prior to the Expiration Date, except by Total Condemnation or Major Casualty, Port shall deliver to Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Port. Mortgagee shall thereupon have the option to obtain a new lease of the Premises ("New Lease"), which option must be exercised by written notice to Port within thirty (30) days after service of such notice that this Lease has been terminated, in accordance with and upon the following terms and conditions:

(i) Port shall enter into a New Lease with Mortgagee, subject to the provisions set forth in this Section 21.8(d) and provided that Mortgagee assumes Tenant's obligations as Sublandlord under any Subleases then in effect; and

(ii) The New Lease shall be effective as of the date of termination of this Lease, shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease (provided the New Lease shall include any new or amended ordinances or policies adopted by Port or the City applicable to real property leases). The New Lease shall have the same priority as this Lease, including priority over any other mortgage, lien, charge or encumbrance on the title to the Premises. The New Lease shall require Mortgagee to perform as soon as reasonably practicable any unfulfilled non-monetary obligation that is susceptible of being performed by Mortgagee. Upon the execution of the New Lease, Mortgagee shall pay to Port any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by Port in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

(e) Nominee. The rights of Mortgagee under Section 21.8 above may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee.

(f) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of a Permitted Mortgage.

(g) Consent of Mortgagee. No material modification, termination or cancellation of this Lease shall be effective against Mortgagee unless a copy of the proposed modification shall have been delivered to such Mortgagee and such Mortgagee shall have approved the modification in writing, which approval shall not be unreasonably withheld, conditioned, or delayed. Mortgagee shall either approve or disapprove the proposed modification with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain Mortgagee's approval, in writing, within thirty (30) days after delivery of a copy thereof. Mortgagee shall be deemed to have approved the proposed modification if Mortgagee fails to notify Port of Mortgagee's disapproval within such thirty (30) day period. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(h) Limitation on Liability of Mortgagee. No Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes the owner of the leasehold estate created hereby.

21.9. Assignment by Mortgagee. Foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings, shall not require the consent of Port or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Port shall recognize Mortgagee or other transferee in connection therewith as tenant hereunder. The right of Mortgagee's transferee (but not the right of Mortgagee) to assign or transfer this Lease or such New Lease shall be subject to the restrictions of Section 8.2. In addition, none of the provisions of Section 20, including Port's right to consent to a Transfer or to participate in Transfer Proceeds, shall apply to a foreclosure, but such provisions shall be applicable to all Transfers made thereafter, unless such subsequent Transfer is also a foreclosure. In the event Mortgagee subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently Transfers its interest under any New Lease and in connection with any such Transfer, Mortgagee takes back a mortgage or

deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such Transfer, then such mortgage or deed of trust shall be considered a Permitted Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Section 21 and any other provisions of this Lease intended for the benefit of a Mortgagee who holds a Permitted Mortgage.

21.10. *Transfer of Mortgage.* Port hereby consents to a Transfer by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such Transfer the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

21.11. *Appointment of Receiver.* In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

22. REPRESENTATIONS AND WARRANTIES OF TENANT

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

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

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

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

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

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

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

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

23. DEFAULT BY TENANT.

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

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

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

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

(d) failure to comply with Tenant's management covenants set forth in Section 39, as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

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

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

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

(h) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 36 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

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

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

(k) failure by Tenant to comply with the provisions of Section 15 above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(l) without limiting the provisions of Sections 23(f) or 23(k) above, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port; or

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

(n) delivery to Tenant of three (3) or more notices of default, irrespective of whether Tenant actually cures such default within the specified time period, may, at the sole and absolute discretion of Port, be deemed an incurable breach of this Lease allowing Port to immediately terminate this Lease without further notice or demand to Tenant; or

(o) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

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

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

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

(s) Tenant has been notified by Port that Tenant is considered a Habitual Late Payer.

24. PORT'S REMEDIES.

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

24.1. *Tenant's Right to Possession Not Terminated.*

Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as City deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Port, as soon as ascertained, any costs and expenses incurred by Port in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. No act by Port allowed by this Section 24.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

24.2. *Termination of Tenant's Right to Possession.*

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

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

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

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

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

The "worth at the time of award" of the amounts referred to in Sections 24.2(a) and 24.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "worth at the time of award" of the amount referred to in Section 24.2(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

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

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

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

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

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

(c) Port may deem Tenant to have held over, and Tenant will be required to pay Rent as increased under Section 26.2 below until the Premises are Remediated. If Port elects this remedy, only Port's notice to Tenant confirming termination of this Lease and accepting Tenant's surrender of the Premises will terminate this Lease or any holdover tenancy. No other Port acts or conduct, such as accepting the keys to the Premises, will constitute an acceptance of Tenant's surrender of the Premises.

24.6. No Accord and Satisfaction. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of

the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

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

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

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

25. LITIGATION EXPENSES; ATTORNEYS' FEES.

25.1. Litigation Expenses. The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section 25 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.

25.2. Appeals. Attorneys' fees under this Section 25 shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

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

26. PORT'S ENTRY ON PREMISES.

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

26.2. General Entry.

In addition to its rights pursuant to Section 26.1 above, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

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

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

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

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

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

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

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

26.4. No Liability. Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 26 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

26.5. Non Disturbance. Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in Section 26 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

27. SURRENDER AND QUITCLAIM.

27.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises, and all improvements thereon in good order, condition, and repair (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises and repair any damage caused by removal of Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as the property of Port.

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 27 and Section 15.3, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 28.1 (Holdover) until the Premises are so surrendered in accordance with said Sections,

and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any cost of Port to obtain possession of the Premises, or any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

27.3. *Abandoned Property.* Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Sections 1980-1981, the benefits of which Tenant waives.

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

28. HOLDING OVER.

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

28.2. *With Consent.* If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the higher

of the: (a) Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

28.3. Without Consent. If Tenant holds over without the prior written consent of Port, monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.

28.4. Renewal Letter of Credit. During any holding over period after the expiration of the original Term (whether with or without the consent of Port), Tenant shall deliver to Port, a new Letter of Credit or certificate of renewal or extension (collectively, "Renewal LC") at least ninety (90) days prior to the then current LC Expiration Date, without any action whatsoever on the part of Port, extending the then current LC Expiration Date by an additional year. Failure to provide such Renewal LC shall entitle Port to draw on the Letter of Credit and Port shall hold the proceeds of such draw as Letter of Credit Proceeds pursuant to Section 7.2 above.

29. MINERAL RESERVATION.

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of said Statutes, Port and Tenant 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 such area.

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

30. CITY AND PORT REQUIREMENTS.

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

30.1. Non Discrimination.

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

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 30.1(a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a),

12B.2 (c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other contractors to comply such provisions.

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

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

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

30.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.sfgov.org. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

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

(b) Notwithstanding the above, if Tenant meets the requirements of a "**small business**" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 30.2(a) above.

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

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

the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

30.5. Resource-Efficient Facilities and Green Building Requirements. Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 710 relating to resource-efficient buildings and green building design requirements. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

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

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

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

30.8. Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Port an integrated pest management (IPM) plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (B) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (C) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

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

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

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

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

30.12. Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco 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.

30.13. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the San Francisco 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.

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

30.15. *Charter Provisions.* This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

30.16. *Drug-Free Workplace.* Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act 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.

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

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

30.19. *Food Service Waste Reduction Ordinance.* Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by

reference and made a part of this Lease as though fully set forth herein. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

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

30.21. Prevailing Wages for Theatrical Workers.

Pursuant to San Francisco Administrative Code Section 21.25-3, unless accepted, Leases with the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this section that are not defined in this Lease shall have the meanings provided in San Francisco Administrative Code Section 21.25-3.

Tenant agrees to comply with and be fully bound by, and to require its Subtenants to comply with and be fully bound by, the provisions of Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance and other remedies available to the City. The provisions of Administrative Code Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. Tenant shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.25-3, including, without limitation, any investigation of noncompliance by Tenant or its Subtenants. Tenant agrees that the City may inspect and/or audit any workplace or job site involved in or Tenant to the performance of this Lease, including, without limitation, interviewing Tenant's and any Subtenant's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection.

Tenant may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Tenant acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Tenant and any Subtenants shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

31. NOTICES.

Except as otherwise expressly provided in this Lease or by Law, all notices (including notice of consent or non-consent) required or permitted by this Lease or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United State Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in

the Basic Lease Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by Lease information in Tenant's written response to Port's written request.

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

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

32. SIGNS.

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

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

34. MISCELLANEOUS PROVISIONS.

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

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

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

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

34.5. Interpretation of Lease.

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

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

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

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

34.10. 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."

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

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

34.13. 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.).

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

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

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

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

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

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

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

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

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

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

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

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

35. LIMITATION ON DAMAGES.

35.1. No Recourse Beyond Value of Facility. Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee

interest in the Facility (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

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

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

36. TENANT ESTOPPEL CERTIFICATES.

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

37. NON-COMPETITION.

As a material inducement for Port agreeing to enter into this Lease, Tenant agrees that it shall constitute a default under this Lease if Tenant or the Guarantor or any of Tenant's or Guarantor's affiliates, owners or subsidiaries (where "owners, subsidiaries, or affiliates" means any person or entity that controls, is controlled by, or is under common control with Tenant and where "control" means the ownership of 50% or more of the ownership interests of an entity or the power to direct the management of its affairs) at any time during the period commencing as of the Commencement Date and continuing throughout the Term, either (i) use or permit the use of the Trade Name, or (ii) operate a restaurant business with the same restaurant concept as the restaurant business then-currently operating at the Premises in the area bordered on the east by Powell Street, on the south by Bay Street, on the West by Van Ness Avenue and on the north by the water's edge of the San Francisco Bay). Any business that violates the restriction set forth in the previous sentence is referred to herein as an "Unpermitted Business"; provided, however, that any Tenant operation which, as of the date of execution and delivery of this Lease, is in existence and is an Unpermitted Business shall be permitted. The Parties agree that this Section 37 goes to the essence of the parties' agreement hereunder, and that any default under this Section 37 will result in damages to Port that are extremely difficult and impractical to determine and for which Port's remedies at law will not be adequate. Accordingly, as a fair and reasonable estimate and liquidation of Port's damages and not a penalty, if Tenant defaults under the provisions of this Section 37, "Gross Revenues" as defined in this Lease, shall include the Gross Revenues from the Premises as well as the Gross Revenues from each Unpermitted Business and Tenant shall have the same reporting obligations, and Port shall have the same audit rights, with respect to each such Unpermitted Business as apply to the business conducted at the Premises and Tenant shall cooperate in providing to Port such information as Port may request; to the extent that Tenant

fails to provide any such information in a timely manner, Port shall have the right, in addition to and not in limitation of its other rights and remedies hereunder, to make a reasonable estimate of the amount of Gross Revenues made by Tenant at the applicable Unpermitted Business and Tenant shall pay Percentage Rent accordingly. Acceptance by Port of such liquidated damages shall not be deemed permission for Tenant to continue such violation, and shall not preclude Port from seeking any other remedy (other than damages) for such violation including, without limitation, specific performance or termination of this Lease or Port's right to possession as described in Section 24 (Port's Remedies) above.

38. EXTENSION OPTION.

38.1. Option to Extend Term. Provided all the terms and conditions of this Section 38 are satisfied by Tenant, Port grants to Tenant one (1) option ("**Extension Option**") for five (5) years to extend the Term as to the entire Premises only ("**Extension Term**") commencing upon the first day after the Expiration Date. Tenant may exercise the Extension Option no earlier than Four Hundred and Fifty (450) days prior to the Expiration Date and no later than six (6) months prior to the Expiration Date by providing Port with written notice of its intent to exercise the Extension Option. Any such notice by Tenant shall be irrevocable by Tenant. If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Tenant never exercised the Extension Option.

38.2. Base Rent and Other Terms. If Tenant elects to exercise the Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the last day of the Extension Term and the Base Rent hereunder shall be the greater of the then current Base Rent or adjusted to the Prevailing Market Rate as follows:

(a) No later than one hundred twenty (120) days prior to commencement of the applicable Extension Term, Port shall notify Tenant in writing of Port's determination made in good faith of the Prevailing Market Rate for the Premises to be used to calculate the Base Rent for the Extension Term. As used herein, the term "**Prevailing Market Rate**" for the Premises shall mean the arms length fair market annual rental rate per rentable square foot under comparable restaurant renewal leases and amendments entered into on or about the date on which the Prevailing Market Rate is being determined hereunder for space comparable to the Premises in Comparable Buildings as of the date the Extension Term is to commence, taking into account the specific provisions of this Lease which will remain constant. The determination of Prevailing Market Rate shall take into account the existence and quality of improvements within the space, any material economic differences between the terms of this Lease and any comparison lease or amendment, such as rent abatements, construction costs and other concessions and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes. The determination of Prevailing Market Rate shall also take into consideration any reasonably anticipated changes in the Prevailing Market Rate from the time such Prevailing Market Rate is being determined and the time such Prevailing Market Rate will become effective under this Lease and shall take into consideration any adjustment for multi-story retail buildings warranted by the market. As used herein, "**Comparable Buildings**" shall mean retail/restaurant buildings (other than the Premises) that are of comparable size and quality as the Premises and are located in the Fisherman's Wharf area of San Francisco, California.

(b) If Port fails to notify Tenant of the Prevailing Market Rate and Base Rent for the Extension Term by the date set forth in Subsection 38.2(a) above, the Base Rent shall be equal to the higher of the: (a) Base Rent payable in the immediately preceding month, or (b) the

then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease until Port provides Tenant with the Prevailing Market Rate and the Base Rate for the Extension Term.

(c) Within fifteen (15) days after receipt of Port's determination of the Prevailing Market Rate, Tenant shall notify Port in writing either of (i) Tenant's acceptance of such determination, in which case such determination shall constitute the new Base Rent as of the commencement of the applicable Extension Term, or (ii) Tenant's own good faith determination of the Prevailing Market Rate, including written justification for its determination.

(d) If Tenant provides Port with its determination of the Prevailing Market Rate pursuant to Section 38.2(c) above, then within forty-five (45) days following Tenant's notice to Port, the Parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve in good faith any such disagreement as to the Prevailing Market Rate. The Parties may, by an instrument in writing, mutually agree to extend such forty-five (45) day consultation period for a reasonable period to resolve their disagreement if the Parties are negotiating in good faith and would be unable to resolve their differences within such forty-five (45) day period.

(e) If within such consultation period Port and Tenant cannot reach agreement as to the Prevailing Market Rate, then promptly after the end of such consultation period, Port and Tenant shall submit the matter to arbitration as set forth in Section 38.3 below.

(f) If, either by agreement of the Parties or by the arbitration procedure set forth in Section 38.3 below, the Prevailing Market Rate is not finally determined by the commencement of the Extension Term, then Tenant shall pay the Prevailing Market Rate determined by Port under Subsection 38.2(a), or if Port failed to provide notice of the Prevailing Market Rate and new Base Rent by the deadline specified in Subsection 38.2(a) the Base Rent as determined under Subsection 38.2(b) until such time as the Prevailing Market Rate is finally determined by agreement of the Parties or by the appraisal procedure set forth in Section 38.3 below, at which time Port shall refund any excess amount to Tenant or Tenant shall pay any shortage to Port, as the case may be. No delay in the determination of Prevailing Market Rate shall be deemed to constitute a waiver by either Party of the adjustment of Prevailing Market Rate as provided in this Section 38.

38.3. Arbitration.

(a) Each Party shall appoint one (1) appraiser within thirty (30) days after the final date for agreement on the Prevailing Market Rate in accordance with Section 38.2(d) above. Upon selecting its appraiser, each Party shall promptly notify the other Party in writing of the name of the appraiser selected. Each such appraiser shall be competent, licensed, qualified by training and experience in the City and County of San Francisco, and shall be a member in good standing of the Appraisal Institute and designated as a MAI, or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding such professional designations. Each such MAI appraiser may have a prior working relationship with either or both of the Parties, provided that such working relationship shall be disclosed to both Parties. Without limiting the foregoing, each appraiser shall have at least ten (10) years' experience valuing retail/restaurant space in the City and County of San Francisco. If either Party fails to appoint its appraiser within such thirty (30) day period, the appraiser appointed by the other Party shall individually determine the Prevailing Market Rate in accordance with the provisions hereof.

(b) Each appraiser will make an independent determination of the Prevailing Market Rate. The appraisers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information in their determination of the Prevailing Market Rate. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the

appraisals are submitted in accordance with the provisions of this Section 38.3(b). Neither Party shall communicate with the appraiser appointed by the other Party regarding the instructions contained in this Section 38.3(b) before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section 38.3(b) or the interpretation of the Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the Party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section 38.3(b). Each appraiser shall complete, sign and submit its written appraisal setting forth the Prevailing Market Rate (to the nearest half percentage point) to the Parties within thirty (30) days after the appointment of the last of such appraisers. If the higher appraised Prevailing Market Rate is not more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the Prevailing Market Rate shall be the average of such two (2) Prevailing Market Rate figures (to the nearest half percentage point).

(c) If the higher appraised Prevailing Market Rate is more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the first two appraisers shall agree upon and appoint an independent third appraiser within fifteen (15) days after both of the first two (2) appraisals have been submitted to the Parties, in accordance with the following procedure. The third appraiser shall have the minimum qualifications as required of an appraiser pursuant to Section 38.3(a) above, and shall also have experience acting as a third appraiser of disputes involving retail/restaurant space, including rental valuation. The two appraisers shall inform the Parties of their appointment at or before the end of such fifteen (15) day appointment period. Each Party shall have the opportunity to question the proposed third appraiser, in writing only, as to his or her qualifications, experience, past working relationships with the Parties, and any other matters relevant to the appraisal set forth in this Lease. Either Party may, by written notice to the other Party and the two appraisers, raise a good faith objection to the selection of the third appraiser based on his or her failure to meet the requirements of this Section 38.3(c). In such event, if the two (2) appraisers determine that the objection was made in good faith, the two (2) appraisers shall promptly select another third appraiser, subject again to the same process for the raising of objections. If neither Party raises a good faith objection to the appointment of the third appraiser within ten (10) days after notice of his or her appointment is given, each such Party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third appraiser or any other matter relating to the selection of the third appraiser under this Lease. If for any reason the two appraisers do not appoint such third appraiser within such fifteen (15) day period (or within a reasonable period thereafter not to exceed fifteen (15) days in the event a good faith objection is made as provided above), then either Party may apply to the Writs and Receivers Department of the Superior Court of the State of California in and for the County of San Francisco for appointment of a third appraiser meeting the foregoing qualifications. If the Court denies or otherwise refuses to act upon such application within thirty (30) days from the date on which the Party first applies to the Court for appointment of the third appraiser, either Party may apply to J.A.M./ENDISPUTE, for appointment of an independent third appraiser meeting the foregoing qualifications.

Such third appraiser shall consider the appraisals submitted by the first two appraisers as well as any other relevant written evidence which the third appraiser may request of either or both of the first two appraisers. If either of the first two appraisers submit any such evidence to the third appraiser, he or she shall do so only at the request of the third appraiser and shall deliver a complete and accurate copy to the other Party and the appraiser such Party selected, at the same time it submits the same to the third appraiser. Neither Party, nor either of the appraisers they appoint, shall conduct any ex parte communications with the third appraiser regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third appraiser shall select the appraised Prevailing Market Rate determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual Prevailing Market Rate. The determination of the third appraiser shall be limited solely to the issue of

deciding which of the appraisals of the two appraisers is closest to the actual Prevailing Market Rate. The third appraiser shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of this Lease.

(d) The determination of the Prevailing Market Rate by the accepted appraisal shall be conclusive, final and binding on the Parties. Neither of the first two (2) appraisers nor the third appraiser shall have any power to modify any of the provisions of this Lease and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Lease. Subject to the provisions of this Section 38.3, the Parties will cooperate to provide all appropriate information to the appraisers and the third appraiser. The appraisers (but not the third appraiser) can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters. The appraisers and the third appraiser will each produce their determination in writing, supported by the reasons for the determination.

Each Party shall bear the fees, costs and expenses of the appraiser it selects under Section 38.3(a) above and of any experts and consultants used by that appraiser. The fees, costs and expenses of the third appraiser under Section 38.3(c) above shall be shared equally by Port and Tenant. Each Party waives any claims against the appraiser appointed by the other Party, and against the third appraiser, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section 38.3.

39. FORCE MAJEURE.

Whenever a period of time is prescribed for the taking of an action by Port or Tenant, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, civil disturbances and other causes beyond the reasonable control of the performing party ("Force Majeure"). However, events of Force Majeure shall not extend any period of time for the payment of Rent or other sums payable by either party or any period of time for delivery of any required documentation (including, but not limited to, environmental notices, insurance certificates and estoppel certificates) the written exercise of an option or right by either party. Force Majeure does not include failure to obtain financing or have adequate funds (unless such lack results from some other event of Force Majeure such as failure of a bank's accounting or computers which is caused by Force Majeure) nor will Force Majeure be permitted to delay any Remediation of Hazardous Materials required of Tenant under the Lease.

40. TENANT'S MANAGEMENT COVENANTS.

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

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

in the following circumstances: (a) if the Premises become untenable due to Force Majeure, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

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

Initials:


Tenant

42. FEMA DISCLOSURE NOTICE.

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("FIRMs") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new buildings and reconstructing or repairing existing buildings on certain parts of the San Francisco waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to the flood plain that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA").

Because FEMA has not previously published a FIRM for the City and County of San Francisco, there are no identified SFHAs within San Francisco's geographic boundaries. FEMA has completed the initial phases of a study of the San Francisco Bay. On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco for review and comment by the City. FEMA has tentatively identified SFHAs along the City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the City of San Francisco and other areas of the San Francisco waterfront, including, but not limited to, parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands and an area adjacent to Islais Creek. Port has submitted comments on the preliminary FIRM to FEMA. FEMA anticipates publishing a revised preliminary FIRM in 2009.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("NFIP"), a Federal program that enables property owners, businesses and residents in participating communities to purchase flood insurance backed by the Federal government. Participation in the NFIP is based on an agreement between the local government and the Federal government, which requires the local government to adopt and enforce a floodplain management ordinance to reduce future flood risks. As part of such a floodplain management ordinance, the local jurisdiction must impose significant restrictions on construction of new or substantially improved structures located in SFHAs and ban construction of certain new structures seaward of the mean high tide line, unless appropriate variances can be granted. Federally backed lenders must require the purchase of flood insurance for residential and commercial structures located in SFHAs. Otherwise, purchase of flood insurance is voluntary.

In August 2008, the San Francisco Board of Supervisors adopted Ordinance No. 188-08, a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP. In accordance with the ordinance, the City Administrator's Office has issued maps of flood prone

areas. Specifically, the ordinance requires that any new construction or substantial improvement of structures in city-designated flood zones be constructed in accordance with specified requirements intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

The legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq; 44 C.F.R. Parts 59-78, §§ 59.1-78.14.

In addition, FEMA publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines."

Additional information about the San Francisco legislation can be found on the City's website (<http://sfgov.org>), File Nos. 080823 (floodplain management ordinance) and 08024 (NFIP participation resolution).

This disclosure is provided for information purposes only, and without representation or warranty of any kind by the City, including, without limitation, Port, with regard to any of the matters discussed in this notice. Tenant is entirely responsible for investigating on its own the consequences of the potential inclusion of the Premises in any future FEMA designated SFHA and the consequences of the City's decision to participate or to not participate in the NFIP.

Tenant acknowledges and agrees that the City's participation or failure to participate in the NFIP shall not give rise to any rights, causes of action, or remedies under this Lease/Agreement, including, but not limited to any termination or rent abatement right.

43. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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



Name: Susan Reynolds
Title: Deputy Director, Real Estate

Date Signed: 7/15/10

TENANT: D&G COMPANY, A CALIFORNIA LIMITED LIABILITY
COMPANY dba LOU'S PIER 47



By: _____
Name: Elean Meyers
Title: Managing Member

Date Signed: 1-28-2010

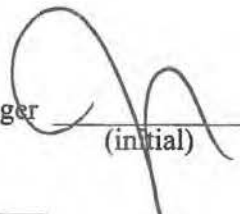


By: _____
Name: GARRET MEDALS
Title: MANAGING MEMBER

Date Signed: 1-28-2010

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

By: 
Rona H. Sandler
Deputy City Attorney

Lease Prepared By: Jeffrey A Bauer, Senior Leasing Manager 
(initial)

Port Commission Resolution No. 10.13

Board of Supervisors Resolution No. 196-10

EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

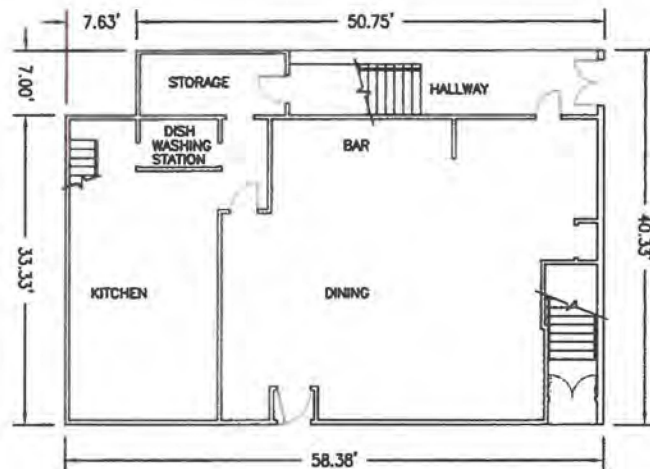
INITIALS: PORT:

TENANT:

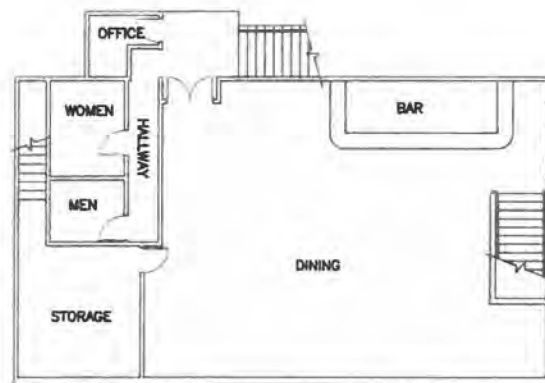
DATE:

EXHIBIT A

1-28-2010

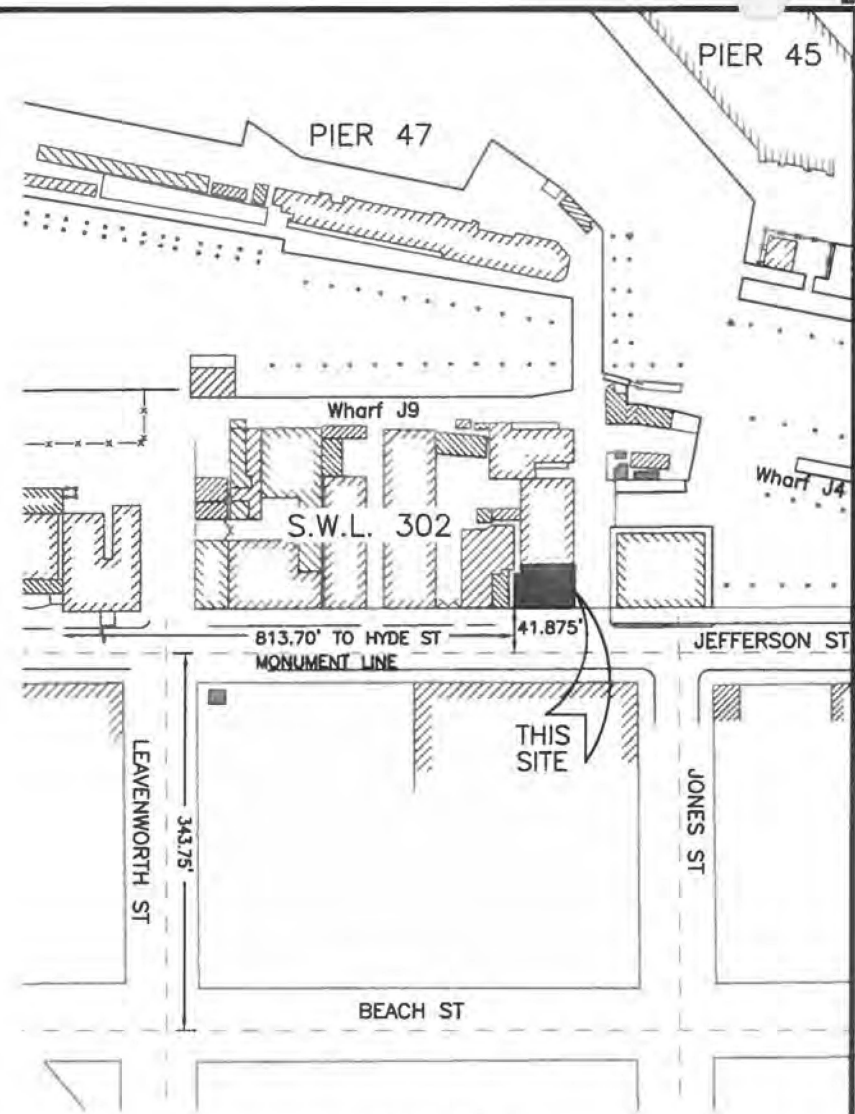


GROUND FLOOR PLAN
AREA = 2,300 Sq Ft



SECOND FLOOR PLAN
AREA = 2,063 Sq Ft

TOTAL AREA = 4,363 Sq Ft



LOCATION PLAN

LEASE NO.

L-14630



SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

D&G LLC
dba LOU'S AT PIER 47

DRAWN BY: ECC

DATE: SEPT 18, 2008

CHECKED BY: J. BAUER

SCALE: 1" = 20'

PLACE CODE NO.

3020-BL01-360

SHEET NO.

OF SHEETS

EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant: D&G company, dba Lou's Pier 47

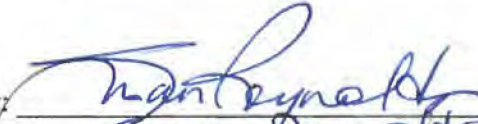
Lease Number: L-14630

Lease Date: July 1, 2010

Premises: 300 Jefferson, Suite ☐
San Francisco, California

The Commencement Date of the Lease is hereby established as July 1, 2010 and
the Expiration Date as June 30, 2025

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

By: 
Name: Susan Reynolds
Title: Deputy Director, Real Estate
Date Signed: 7/15/10

Tenant:


By: 
Name: Brian Meyers
Title: Managing Member
Date Signed: 1-28-2010

EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

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

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

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

Dated: _____, 20__.

[Name of Tenant]

By:
Name:
Title:


Glenn M
Manoyas Member

**EXHIBIT D
WORK LETTER**

This Work Letter sets forth Tenant's obligation to construct the Initial Tenant Improvements and shall be deemed part of the Lease. The "Initial Tenant Improvements" are described in "Alterations to Lou's Restaurant & Blues Club Pier 47 Fisherman's Wharf 300 Jefferson Street San Francisco, CA" Drawings A-1.1 and A-1.2 by Tecta Associates Issue Date: 6/30/08 and associated Port Building Permits and any amendments thereto and include without limitation, those improvements listed in the Basic Lease Information.

1. GENERAL TERMS

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

1.2. Relationship between Work Letter and the Lease. This Work Letter governs Tenant's obligations to construct the Initial Tenant Improvements or, in the event Tenant fails to complete such improvements by the Outside Completion Date, as defined in the Basic Lease Information, to such later date Port issues a Certificate of Completion for the Initial Tenant Improvements. This Work Letter addresses, among other matters, the scope of Tenant's obligations to design and construct the Initial Tenant Improvements, Tenant's obligations to obtain final approvals for the Initial Tenant Improvements, and the Schedule of Performance. Before the termination of this Work Letter, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiry of this Work Letter, the Lease alone will govern the rights and obligations of the parties with respect to use and occupancy of the Premises.

1.3. Term. This Work Letter shall commence and become effective as of the Initial Tenant Improvements Start Date as defined in the Basic Lease Information and shall expire on the date that Port issues a Certificate of Completion for the Initial Tenant Improvements.

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

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

2. CONSTRUCTION OF THE INITIAL TENANT IMPROVEMENTS

2.1. Tenant's Construction Obligations.

(a) Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to complete for the benefit of the Port the construction of the Initial Tenant Improvements within One Hundred Eighty (180) days of the Initial Tenant Improvements Start Date. Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning

Code; and (vii) the Lease including without limitation Section 16 thereof. All such requirements are sometimes referred to collectively as the "**Project Requirements.**"

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

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

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

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

2.4. Insurance. At all times during the construction of the Initial Tenant Improvements, in addition to the insurance required to be maintained by Tenant under the Lease, Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One

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

2.5. Performance Bond. At least five (5) business days prior the Initial Tenant Improvements Start Date, Tenant shall provide Port, at Tenant's sole cost and expense, a corporate surety payment bond and a performance bond substantially in the form attached hereto as *Attachment 2* obtained by each of Tenant's contractors performing work on the Initial Tenant Improvements. Each bond shall be in an amount equal to one hundred fifty percent (150%) of the estimated costs of such work on the Initial Tenant Improvements. Each performance bond shall guarantee the contractor's faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor's payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each corporate surety bond shall obligate the surety to Tenant and the City and County of San Francisco as co-obligees.

2.6. Tenant Guarantee. At least five (5) business days prior to the Initial Tenant Improvements Start Date, Tenant shall provide Port, at Tenant's sole cost and expense, a corporate surety bond, in an amount equal to one hundred fifty percent (150%) of the estimated costs of such Initial Tenant Improvements to ensure adequate Completion of the work. Tenant's bond shall be substantially in the form attached hereto as *Attachment 3*. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII.

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

2.8. Port and Other Governmental Permits. Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the Initial Tenant Improvements

and shall make application for such permits directly to the applicable Regulatory Agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with Section 10.2 of the Lease.

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

2.10. Construction Signs and Barriers. Tenant shall provide appropriate construction barriers, construction signs and a project sign or banner describing the Initial Tenant Improvements, and shall post the signs on the Premises during the period of construction. The size, design, text and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably. Failure by Port to disapprove any such submission within forty-five (45) days after submittal of all documents required or requested by Port, will be deemed to be an approval.

3. PREPARATION AND APPROVAL OF PLANS

3.1. The Construction Documents.

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

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

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

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

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

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

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

(1) Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All

Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

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

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

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

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

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

3.3. Construction Document Review Procedures.

(a) Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule

of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) business days after Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

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

3.4. Changes in Construction Documents.

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

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

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

4. NO FORCE MAJEURE

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

4.2. No Force Majeure. Tenant's obligation to Complete construction of the Initial Tenant Improvements as set forth in Section 4.1 above shall be final and absolute and shall not be subject to Force Majeure, Port delays, Regulatory Approval delays or any other delays.

4.3. Port's Remedy for Tenant's Failure to Timely Complete Construction. In the event Tenant fails to complete the Initial Tenant Improvements in a manner sufficient to cause Port to issue a Certificate of Completion for the Initial Tenant Improvements by the Outside Completion Date, Tenant shall pay to Port an amount equaling Three Hundred Dollars (\$300.00) per day commencing on the Outside Completion Date and shall continue at such rate until Port

has issued a Certificate of Completion for the Initial Tenant Improvements in addition to the Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Force Majeure, Port delays or other reasons.

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

TENANT ES

PORT 9

5. CERTIFICATE OF COMPLETION

5.1. *Certificate of Completion.*

(a) Issuance Process.

(i) Before issuance by Port of a Certificate of Completion for the Initial Tenant Improvements, Tenant may not occupy the Premises except for construction purposes under this Work Letter or the Lease.

(ii) After Tenant has completed the construction of the Initial Tenant Improvements in accordance with all the provisions of this Work Letter, including, but not limited to, the Project Requirements, Tenant may request a Certificate of Completion for the Initial Tenant Improvements in writing. Port shall act on Tenant's request within sixty (60) days of receipt.

(iii) Port's issuance of any Certificate of Completion does not relieve Tenant or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including Port) that may be required for the occupancy or operation of the Initial Tenant Improvements.

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

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

6. TERMINATION OF LEASE

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

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

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

ATTACHMENTS

ATTACHMENT 1	SCOPE OF DEVELOPMENT
ATTACHMENT 2	FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND
ATTACHMENT 3	FORM OF TENANT'S SURETY BOND

ATTACHMENT 1
SCOPE OF DEVELOPMENT
[TO BE ATTACHED]

ATTACHMENT 3

[SURETY]

KNOW ALL MEN BY THESE PRESENTS, That we [Tenant] as Principal (hereinafter called Principal), and [Surety], as Surety (hereinafter called Surety), are held and firmly bound unto the City and County of San Francisco and The Port of San Francisco, of San Francisco, California, as Obligee, in the full and just sum of [] (\$) Dollars, lawful money of the United States of America to be paid to the said Obligee, successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal and Port have entered into a written Lease No. [] dated [] for reference purposes for [], San Francisco, California (the "Lease") with the Obligee for Completion of the Initial Tenant Improvements as defined in the Lease as more specifically set forth in said Lease, to which reference is hereby made.

WHEREAS, in no event shall Surety's liability under this bond exceed the bond penalty stated above.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well and truly perform and carry out the covenants, terms, and conditions of said Agreement, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this ____ day of ____ 2008.

Witness:

PRINCIPAL (SEAL)

SURETY (SEAL)

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By _____
Deputy City Attorney



EXHIBIT E
RULES AND REGULATIONS

RESTAURANTS RULES AND REGULATIONS

(Revised December 2009)

The following are parameters within which the Tenant and all Subtenants on the Premises shall use commercially reasonable efforts to perform and to conduct all operations within.

1. Noise. Sound levels emanating from indoor and/or outdoor activities on the Premises between 10:00 P.M. and 6:00 A.M. daily may not exceed the acceptable noise levels established by the San Francisco Noise Ordinance Police Code, Article 29, except as may be specifically authorized under any special event permit issued by the San Francisco Police Department. Tenant shall post signs inside the restaurant at appropriate places requesting that patrons leaving the Premises after 10:00 P.M. depart in a quiet, peaceful and orderly fashion and not litter or block driveways in the neighborhood. The Tenant shall alert the San Francisco Police Department if exiting patrons cause any disturbance.
2. Garbage/Recycling/Composting. All garbage dumpsters and main recycling containers shall be enclosed within an appropriate closet so that such dumpsters and containers are not visible from outside of the buildings, unless directed otherwise by the Port. Garbage dumpsters and recycling containers shall not be moved outside the building in advance of actual collection by a refuse or recycling company. Garbage and recycling pickup shall be arranged such that garbage dumpsters and recycling containers are removed directly from the enclosure, emptied, and replaced at the same time. No garbage and recycling pickup may occur after 8:00 A.M. or before 10:00 P.M.

Tenant must provide source separated collection of recyclables, compostables and trash to their employees, contractors and customers. Tenant must supply appropriate containers, placed in appropriate locations, to make source separation of recyclables, compostables, and trash convenient for the employees, contractors, and customers

The containers must:

- (1) Be of appropriate number and size in light of the recyclable, compostable, and trash quantities reasonably anticipated to be generated at the location;
- (2) Bear appropriate signage and be color coded to identify the type of refuse to be deposited—blue for recyclables, green for compostables, and black for trash—and meet any additional design criteria established by regulation; and,
- (3) Be placed as close together as possible to provide equally convenient access to users.

Tenant shall not put any fats, oils or grease in trash collection containers. Tenant must provide information and/or training for new employees, and contractors, including custodians, on how to source separate recyclables, compostables, and

trash, and must re-educate existing employees, and contractors at least once a year.

3. Litter. Tenant shall be responsible for undertaking the following measures within the exterior portions of the Premises: (i) keep all hardscape areas and sidewalks between the Premises and Jefferson Street and between the Premises and all adjacent properties reasonably clean of debris and litter; (ii) once each day between thirty minutes after closing and 8:00 A.M. the following morning, collect and dispose of any discarded trash and litter; (iii) remove trash and litter from any landscaped areas within the Premises; and (iv) with the permission of adjacent Port tenants enter upon adjacent properties to remove litter thereon originating on the Premises.
4. Landscaped Areas. Take reasonable precautions to minimize any damage to landscaping from restaurant vendors, service people and patrons.
5. Traffic. Coordinate all vehicular deliveries and pickups to occur at times and in a manner that will not unreasonably impede the flow of traffic on Jefferson Street or interfere with the safe operation of the "F" Line railway.
6. Advertising/Signage. Tenant shall place no temporary or promotional advertising, banners or signs on the interior of the windows on the Premises intended to be seen from the adjacent streets or properties except as may be previously approved in writing by the Executive Director or his representative.
7. Compliance with Rules. Tenant and its Subtenants shall take commercially reasonable efforts to cause all vendors, service persons and patrons to comply with the foregoing rules.
8. Changes. These Operational Parameters may be changed from time to time to reflect changing circumstances upon mutual consent of the Tenant and the Executive Director of the Port.
9. Plumbing System and FOG. It is the Tenant's responsibility to maintain plumbing system.

Tenant shall be prohibited from :

- installing or using a garbage disposal or garbage grinder.
- disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drain that is plumbed to the sewer.

Tenant shall be required to:

- use an Automatic Grease Removal Device (AGRD) on all sinks.
- ensure that all grease removal devices are cleaned at least every 90 days by a grease hauler certified by the California Department of Food and Agriculture.

Port of San Francisco

- maintain documentation of service and maintenance records.
- develop and implement a written maintenance program for the sewer lines.
- reimburse the Port for any and all costs related to the maintenance of plumbing and sewer lines.

MASTER FORMS & DOCS\Rules & Regu.-Exhibit B\Restaurants – Rules and Regulations

SCHEDULE 1

ASBESTOS NOTIFICATION AND INFORMATION

(To be attached.)



**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 specifications which include work practice procedures, removal techniques, clean up 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, or release or disturb asbestos containing building materials, it is required that the area be posted 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.)

① General

Purpose of Inspection-Periodic Insp.

Red:

Page 1 of 8

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

Scale in Feet
75 0 75 150 225

THE BAY COMPANY
L-12398

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

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 GROTO
L-8986

CRAB BOAT
OWNERS' ASSN.
SCOMA'S

JONES ST

LOU'S PIER 47

RESTAURANT L-9795

Port:

Tenant:

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

GIFT SHOP
RESTROOM

SMALL BOAT
WORKSHOP
OFFICE

MULTI-PURPOSE
BLDG.

WHARF J-11

BLUE SHED BLDG.

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

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

(FORMER WHARF J-10)

TONQUIN STREET

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

WHARF J-7

WHARF J-8

WHARF J-9

SHED B

STRUCTURAL RATING MAP
SUPERSTRUCTURES - 2A
07 JULY 2008