



 **ORIGINAL**

**CITY AND COUNTY OF SAN FRANCISCO  
LONDON N. BREED, MAYOR**

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**LEASE NO. L-16274**

**BY AND BETWEEN**

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

**AND**

**GOLDEN GATE NATIONAL PARKS  
CONSERVANCY**

**ALCATRAZ ISLAND FERRY EMBARKATION  
PIERS 31 AND 33**

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**KIMBERLY BRANDON, PRESIDENT  
WILLIE ADAMS, VICE PRESIDENT  
GAIL GILMAN, COMMISSIONER  
VICTOR MAKRAS, COMMISSIONER  
DOREEN WOO HO, COMMISSIONER**

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**LEASE AGREEMENT  
BASIC LEASE INFORMATION**

<i>Lease Number:</i>	<b>L-16274</b>
<i>Landlord or Port:</i>	<b>CITY AND COUNTY OF SAN FRANCISCO</b> , a municipal corporation, operating by and through the <b>SAN FRANCISCO PORT COMMISSION</b>
<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>Port/National Park Service ("NPS") Agreement and Background:</i>	<p>In order to provide a stable location in San Francisco for the ferry embarkation site to Alcatraz Island, and to allow for long-term investment in the site, Port and NPS have entered or are about to enter into a long term General Agreement dated September 25, 2018 may be amended from time to time ("Port/NPS Agreement") that establishes portions of Piers 31, 31 ½ and 33 and the Pier 31/33 Water Basin as the ferry embarkation site for Alcatraz Island ("Embarkation Site") and sets forth various other agreements and timing between the Port and NPS. The Embarkation Site will provide a high quality welcome and orientation facility, significantly enhancing the visitor experience including introductions to Alcatraz Island, Golden Gate National Recreation Area, the National Park System, and the Port.</p> <p>The Embarkation Site will be constructed and operated by each successive Ferry Concessioner selected by NPS pursuant to a federal governmental process governed solely by applicable federal Laws including without limitation, the 1998 Concessions Act, and Tenant, NPS' nonprofit cooperating association, as to other visitor amenities including food service, under their respective leases with the Port.</p> <p>Tenant acknowledges and agrees that the Port/NPS Agreement includes provisions that affect and relate to certain provisions of this Lease, but Tenant is not a third party beneficiary of nor does it have any rights or obligations under the Port/NPS Agreement.</p>
<i>Tenant:</i>	Golden Gate National Parks Conservancy, a California not-for profit corporation



<i>Tenant's Main Contact Person and Mailing Address:</i>	Nicolas Elsishans 201 Fort Mason 3rd Floor San Francisco, CA 94123 General: (415) 561-3000 Direct: (415) 561-3086
<i>Tenant's Billing Contact and Address:</i>	J. Mark Jenkins 201 Fort Mason 3rd Floor San Francisco, CA 94123
<i>Tenant's Emergency Contact and Address:</i>	Nicolas Elsishans 201 Fort Mason 3rd Floor San Francisco, CA 94123 General: (415) 561-3000 Direct: (415) 561-3086
<i>Tenant's Insurance Contact and Address (not broker):</i>	J. Mark Jenkins 201 Fort Mason 3rd Floor San Francisco, CA 94123
<i>Contact Information for Tenant's Agent for Service of Process:</i>	Nicolas Elsishans 201 Fort Mason 3rd floor San Francisco, CA 94124
<i>Effective Date; Expiration Date; Term:</i>	This Lease shall become effective on the date of full execution and delivery of this Lease by the Parties. (the " <b>Effective Date</b> ") Promptly following the actual Effective Date, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as <b>Exhibit A</b> , confirming the actual Effective Date, but either party's failure to do so shall not affect the Effective Date.  Unless earlier terminated or extended this Lease shall expire on June 30, 2049 (" <b>Expiration Date</b> ").
<i>Premises; Commencement Dates and Delivery:</i>	Port will deliver possession of the Premises in two phases as described below. Tenant's delay in or failure to accept possession upon delivery by Port of the Phase I Premises on the Phase I Commencement Date or the Phase II Premises on the Phase II Commencement Date is a material breach of this Lease.  <b><u>Phase I Premises - Estimated Commencement Date: January 1, 2019:</u></b>  <b>Parcel A:</b> approximately 2,760 square feet of space in the <b>Pier 31 Bulkhead</b> as further described in <b>Exhibit B</b> .  <b>Parcel B Pier 31 Shed:</b> approximately 1,000 square feet of shed space in the <b>Pier 31 Shed</b> as further described in <b>Exhibit B</b> .  Promptly following delivery of the Phase I Premises, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as <b>Exhibit A</b> , confirming the actual delivery date



	<p>of the Phase I Premises (“<b>Phase I Commencement Date</b>”), but either party's failure to do so shall not affect the Phase I Commencement Date.</p> <p><b><u>Phase II Premises - Estimated Commencement Date:</u></b> <b><u>December 1, 2020:</u></b></p> <p>Port and Tenant acknowledge that the Initial Ferry Concessioner is required to perform certain “warm shell” improvements to the Phase II Premises as defined and described in the Initial Ferry Concessioner’s Lease (as modified from time to time by parties to that lease, and, for convenience, attached hereto as <i>Exhibit C</i> as it reads on the Commencement Date of this Lease) prior to Port’s delivery to Tenant. Upon the Initial Ferry Concessioner’s Completion of the required improvements and written notice by Port (“<b>Pier 33 South Bulkhead Building Completion Date</b>”), Port shall deliver the following additional parcels to Tenant as further described in <i>Exhibit B-1</i> with such date of delivery described herein as the “<b>Phase II Commencement Date</b>”:</p> <p><b>Parcel C:</b> approximately 3,230 sq. ft. on the first floor of the <b>Pier 33 South Bulkhead Building</b>;</p> <p><b>Parcel D:</b> approximately 992 sq. ft. of office space in the <b>Pier 33 South Bulkhead Building Mezzanine</b>; and</p> <p><b>Parcel E:</b> approximately 1,240 square feet of shed space in the <b>Pier 33 Shed</b>.</p> <p>As of the Phase II Commencement Date, <i>Exhibit B-1</i> showing the Phase II Premises will be added to this Lease as part of the Premises without further action by the parties. Tenant acknowledges and agrees that the Phase II Premises and delivery thereof will be made without representation or warranty by Port and subject to all provisions of this Lease including without limitation the “as-is” provisions in Section 3. Promptly following the delivery of the Phase II Premises, Port and Tenant shall execute a Memorandum substantially in the form attached hereto as <i>Exhibit A</i>, confirming the actual delivery date (“<b>Phase II Commencement Date</b>”), but either party's failure to do so shall not affect the Phase II Commencement Date.</p>
<p><i>Square Footage and Rent Adjustments:</i></p>	<p>Square footages for the parcels in the Phase I and Phase II Premises are approximate. If Port has not already done so, upon either party’s request, Port will re-measure the relevant parcel(s) and Base Rent will be recalculated for such parcel based on the rent per square foot as shown below. The parties will document such technical corrections, if any, by counter-signed addenda and replacement exhibits to this Lease which addenda and replacement exhibits shall be fully incorporated into this Lease.</p>

<p><i>Access to Embarkation Site Prior to Delivery of Parcels:</i></p>	<p>After the Effective Date and prior to the applicable Phase I and Phase II Commencement Date, Port will allow Tenant to access the Premises and other relevant areas of the Embarkation Site, at no cost to Tenant, for due diligence purposes under a Port license or other agreement subject to Port's standard terms and conditions for such access agreements and the rights of any existing tenants and users.</p>
<p><i>Permitted Use:</i></p>	<p>Tenant may use the Premises solely for the following uses and for no other purposes:</p> <p><b>Parcel A Pier 31 Bulkhead:</b> casual dining restaurant, including on site sale of alcoholic beverages</p> <p><b>Parcel B Pier 31 Shed:</b> restaurant storage</p> <p><b>Parcel C Pier 33 South Bulkhead Building 1st Floor:</b> visitor contact station and interpretive retail directly related to Alcatraz Island and the NPS mission.</p> <p><b>Parcel D Pier 33 South Bulkhead Building Mezzanine:</b> administrative office space or related interpretive exhibition space.</p> <p><b>Parcel E Pier 33 Shed:</b> restaurant storage</p> <p>All Permitted Uses must be consistent with the uses described in the Final Mitigated Negative Declaration for the project (2017-000188ENV) ("FMND"). Tenant may also use the Premises for ancillary occasional Special Events approved in writing by NPS. Tenant shall seek Port's prior written consent for any new or modified uses subject to further environmental review and approval by the Port Commission and Board of Supervisors, each in its sole discretion if required. If Port approves such new or modified uses, Port may impose reasonable conditions on such uses.</p>
<p><i>Additional Prohibited Uses:</i></p>	<p>In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:</p> <ul style="list-style-type: none"> <li>(a) Unless approved in advance in writing by Port in its sole discretion: (i) use of the Premises for raves, D. J. parties, or dances/events that use live or amplified music; (ii) activities that are managed by an outside promoter; (iii) charging a cover charge or requiring a donation to gain entry to the Premises or operation of a private club; (iv) operation of a formula restaurant as defined in Section 2;</li> <li>(b) Off site sale of alcoholic beverages;</li> <li>(c) Use of a garbage disposal or garbage grinder;</li> </ul>

	<p>(d) Disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drains leading to sewer laterals.</p> <p>(e) Discharge of any wash water to the Bay.</p> <p>(f) Use of vehicles on the Marginal Wharf, including for deliveries, loading and unloading.</p> <p>(g) Fueling or performing maintenance of vehicles or other machinery, fixtures or furniture, including fluid changes or transfers; painting; sanding; chipping; sandblasting; painting preparation work, and engine work.</p> <p>(h) Except to the extent Handled in full compliance with all Environmental Laws, the use or storage of Hazardous Materials, as defined in Section 2, including without limitation engine and hydraulic oils, diesel fuel, gasoline, compressed gases, such as propane, acetylene, oxygen, paints and paint-related products. No fuel tanks, temporary or otherwise, will be allowed on the Premises.</p> <p>(i) Conducting hot works and welding, except with all necessary Regulatory Approvals.</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>Rules and Regulations:</i>	Tenant shall comply with the Rules and Regulations attached hereto as <b>Exhibit D</b> .		
<b>BASE RENT</b>			
<b>PHASE I PREMISES</b>			
<b>Parcel A Pier 31 Bulkhead</b>	2,760	\$5.00	\$13,800
<b>Parcel B Pier 31 Shed</b>	1,000	\$1.50	\$1,500
<b>PHASE II PREMISES</b>			
<b>Parcel C Pier 33 South Bulkhead Building 1st Floor</b>	3,230	\$5.00	\$16,150



<b>Parcel D Pier 33 South Bulkhead Building Mezzanine</b>	992	\$3.00	\$2,976
<b>Parcel E Pier 33 Shed</b>	1,240	\$1.50	\$1,860
<i>Annual Base Rent Adjustment:</i>	On each Anniversary Date, Base Rent shall increase by two and one-half percent (2.5%).		
<i>Construction Rent Abatement:</i>	Base Rent shall be waived for Two Hundred and Seventy (270) days beginning on each of the (i) Phase I Commencement Date and (ii) Phase II Commencement Date. No Base Rent is due for the respective 270-day period provided that there is no other existing Tenant default beyond any applicable notice and cure period. Tenant shall resume Base Rent payments on the respective Two Hundred Seventy First (271 <sup>st</sup> ) day after the Phase I Commencement Date (the " <b>Phase I Rent Commencement Date</b> ") and the Phase II Commencement Date (the " <b>Phase II Rent Commencement Date</b> ") regardless of whether the Initial Tenant Improvements have been Completed. The Phase I Rent Commencement Date and the Phase II Rent Commencement Date shall be stated in the respective Memorandum substantially in the form attached hereto as <i>Exhibit A</i> .		
<i>Base Rent Phase-in:</i>	<p>Base Rent will be phased in as follows:</p> <p>(a) From each of the Phase I Rent Commencement Date and Phase II Rent Commencement Date until the date that is three hundred and sixty five (365) days after the Phase I Rent Commencement Date and Phase II Rent Commencement Date, respectively, Base Rent will be seventy percent (70%) of the Base Rent due as shown above.</p> <p>(b) From the day after each of the last dates described in (a) until each of the dates that is three hundred and sixty five (365) days later, Base Rent will be eighty-five (85%) of the Base Rent due as shown above.</p> <p>(c) After the day after each of the last dates described in (b), there shall be no reduction in the Base Rent as shown above.</p>		
<i>Percentage Rent:</i>	<p>In addition to the monthly Base Rent specified above, beginning on each of the Phase I Rent Commencement Date and Phase II Rent Commencement Date, Tenant shall pay monthly Percentage Rent in an amount equal to the difference between (i) the percentage rent for such calendar month and (ii) the Base Rent for such calendar month in any month in which the percentage rent exceeds the Base Rent.</p> <p>"Percentage Rent" shall be equal to 7.50% of the total monthly Gross Revenue.</p>		

	During the Phase-in periods as described above, the reduced Base Rent will be used for all purposes, including for purposes of calculating percentage rent as shown in (ii) above.
<i>Rent Abatement During Alcatraz Island Shut down:</i>	Base Rent shall be suspended for the entire Premises during periods when Alcatraz Island closes to visitors for more than one (1) day for reasons outside NPS's or its Agent's (including Tenant's) control (such as weather, earthquake damage or a government shutdown, but not deferred maintenance) to the extent that such interruption is not covered by Tenant's business interruption insurance. Percentage Rent will continue to be due for any such period.
<i>Security Deposit:</i>	Seventy-Two Thousand Five Hundred Seventy Two dollars (\$72,572).
<i>Initial Tenant Improvements:</i>	<p>Tenant must Complete the following improvements as more particularly described in the Scope of Development including the Schematic Design and Drawings, attached as Attachment 1 to the Work Letter which is attached hereto as <b>Exhibit E</b> and incorporated herein (collectively, the “<b>Initial Tenant Improvements</b>”): (i) on Parcel A: Pier 31 interior bulkhead improvements including the build-out of the Pier 31 bulkhead restaurant; and (ii) on Parcel C: the Pier 33 visitor contact station/interpretive retail center. The Initial Tenant Improvements must achieve a Leadership in Energy and Environmental Design (“<b>LEED®</b>”) Gold rating, regardless of the applicable minimum square footage threshold under the Port Green Building Standards Code unless the Chief Harbor Engineer grants a waiver of such certification based on the circumstances listed in Section 101.12 of the Port Green Building Standards Code (as may be amended from time to time) and subject to any conditions the Chief Harbor Engineer imposes as a condition to such waiver.</p> <p>Tenant must Complete the Initial Tenant Improvements on Parcel A no later than the first (1<sup>st</sup>) Phase I Anniversary Date, (the “<b>Phase I Initial Tenant Improvements Outside Completion Date</b>” and Tenant must Complete the Initial Tenant Improvements on Parcel C no later than the first (1<sup>st</sup>) Phase II Anniversary Date (the “<b>Phase II Initial Tenant Improvements Outside Completion Date</b>”).</p> <p>Port and NPS estimate the costs of Initial Tenant Improvements to be approximately \$3.692 million.</p> <p>Tenant shall own and maintain the Initial Tenant Improvements during the Term of this Lease. The Initial Tenant Improvements will become part of the realty upon expiration or earlier termination of this Lease and shall remain on the Premises at no cost to Port.</p>



	All the Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with Section 13 of this Lease and the Work Letter.
<i>Rent Credits for Initial Tenant Improvements:</i>	<p>As described further below, Tenant shall be entitled to a rent credit in the maximum amount of Five Hundred and Fifty-Four Thousand dollars (\$554,000) for the Initial Tenant Improvements. For purposes of receiving rent credits under this Lease, the Initial Tenant Improvements shall be categorized as follows:</p> <p>Upon Completion of the Initial Tenant Improvements, and subject to the conditions of Section 5.3, Tenant shall be eligible for the rent credit amount shown above amortized on a straight line basis over a forty-eight (48) month period starting upon Completion of each phase yielding equal monthly amounts to be taken at a rate of seventy percent (70%) of the total monthly Rent due.</p> <p>Other than explicitly provided herein, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for the Initial Tenant Improvements and agrees that it will not seek additional term for the purpose of amortizing such improvements.</p>
<i>Contractor's Bond:</i>	In an amount equal to One Hundred percent (100%) the construction costs in a form acceptable to Port as described in the Work Letter.
<i>Maintenance and Repair</i>	<p>As further described in Section 11 below, the parties have the following maintenance and repair responsibilities:</p> <p>Consistent with its routine maintenance and repair regime for similar structures and subject to budgetary restrictions and appropriations, Port will (i) inspect the applicable Substructure (including the Seawall) and exterior of the Pier 31 and Pier 33 bulkhead buildings and Sheds 31 and 33 (including roof, but excluding exterior roll up doors, doors and windows) of the Premises on a periodic and as-needed basis, but no less frequently than every five (5) years, and (ii) will provide as-needed maintenance and repairs in compliance with applicable codes regarding protection of health and safety as determined in the sole discretion of the Chief Harbor Engineer in connection with the following:</p> <ul style="list-style-type: none"> <li>(a) Substructure of the Pier 31 Marginal Wharf;</li> <li>(b) Substructure of the Pier 31 and Pier 33 bulkhead buildings and Sheds 31 and 33;</li> <li>(c) Seawall;</li> <li>(d) exterior of the Pier 31 and Pier 33 bulkhead buildings and Sheds 31 and 33 (including roof, but excluding exterior roll up doors, doors and windows).</li> </ul> <p>If Port fails to perform its maintenance and repair obligations as set forth in this Lease and such failure materially impacts</p>



	<p>Tenant's ability to operate, then Tenant must provide written notice to Port specifying the nature of Port's default and actions needed to cure. If, after receipt of such written notice, Port's failure to perform its obligations continues without cure for more than one hundred eighty (180) days (or, if such cure cannot reasonably be completed within such 180-day period, Port fails to commence with due diligence and dispatch within such 180-day period the curing of such failure, or having so commenced, fails to diligently and with good faith prosecute such cure to completion within twelve (12) months), Tenant shall be entitled to seek an order for specific performance to compel Port to perform such obligations. Tenant agrees that, notwithstanding anything to the contrary in this Lease or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole right and remedy for Port's default under this Section. In no event shall Tenant be entitled to offset from all or any portion of Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages arising out of Port's default under this Section.</p> <p>Tenant shall be responsible for all other maintenance and repair obligations including without limitation: all Utilities; all interior improvements within the Premises and all interiors and exteriors of the Pier 31 bulkhead within the Premises including exterior windows and doors.</p> <p>Tenant shall inspect all improvements for which it is responsible on a periodic and as needed basis, but no less than every five (5) years and shall provide Port with a report on the status of such improvements.</p> <p>In the event any alterations or improvements to any part of the Facility outside of the Premises are required in order to comply with any Laws, Tenant shall not be required to make such changes, or be liable for the cost thereof, unless and only to the extent such changes are required solely due to Tenant's specific use of the Premises.</p> <p>Notwithstanding any provision of this Lease, Port shall have no maintenance and repair obligations or responsibility to address the effects or impacts of flooding or sea level rise on the Premises or Facility.</p>
<p><i>Port Pier 31½ Marginal Wharf Improvements:</i></p>	<p>Tenant acknowledges that Port intends to perform improvements to the substructure of the Pier 31½ Marginal Wharf ("<b>Pier 31½ Marginal Wharf Improvements</b>") as further described in <i>Exhibit F</i> during the Term. Tenant agrees that Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice to perform the Pier 31½ Marginal Wharf Improvements and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Port agrees to use its commercially reasonable efforts to minimize annoyance or</p>

	disturbance to Tenant, its Subtenants (if any), and their respective Invitees.
<i>Transfer, Assignment and Subleasing:</i>	As further described in Section 21, Tenant shall not without NPS's and Port's independent consent: (A) Transfer this Lease; (B) enter into a sublease or similar agreement allowing another person to use the Premises or any portion thereof including without limitation a manager, vendor or concessionaire; or (C) enter into a mortgage or similar agreement.
<i>Extension Options:</i>	<p>Subject to the terms and conditions set forth in this Section and Section 4.4, Tenant shall have two (2) options to extend the Term (each an "<b>Extension Option</b>") as to the entire Premises only for ten (10) years (each, an "<b>Extension Term</b>") provided that the Port/NPS Agreement is extended as to this Lease for the applicable period as provided under the Port/NPS Agreement. Port will provide Tenant with written notice that the Port/NPS Agreement has been extended for the relevant period ("<b>Extension Option Notice</b>"). Tenant must notify Port of its intent to exercise an Extension Option by providing Port with written notice that it intends to do so no later than ninety (90) days from the date of receipt of the Extension Option Notice. Except as provided below, Tenant's exercise of an extension option shall be non-revocable.</p> <p>With its Extension Option Notice, Tenant must submit to Port a capital investment and improvement plan ("<b>Capital Investment and Improvement Plan</b>") outlining its proposal for refurbishment of the restaurant and interpretive retail space (Parcels A and C) during the Extension Term. At a minimum, the Capital Investment and Improvement Plan shall include the scope of work for tenant improvements, a binding performance schedule, the estimated cost of such improvements, a financial projection pro-forma and evidence of adequate financing to implement the Plan. The Plan will be subject to Port's approval in its reasonable discretion. Tenant agrees that any of the following will be a reasonable basis for Port withhold its approval of a Capital Investment and Improvement Plan: (i) the Capital Investment and Improvement Plan does not reflect then-current market conditions for tenant investment as determined by policies adopted by the Port Commission (such as a retail leasing policy), other Port comparable retail tenant's renewal lease terms within the prior forty-eight (48) month period or any new Port comparable lease terms within the prior forty-eight (48) month period; (ii) Tenant's financial condition is or may become insufficient to support all of the financial and other obligations required by the Capital Investment and Improvement Plan; (iii) the Capital Investment and Improvement Plan would impair Tenant's ability to comply with its Management Covenants. If the parties are unable to agree on Tenant's Capital Investment and Improvement Plan within One Hundred Eighty (180) days following Port's receipt of Tenant's Extension Option Notice, Tenant may revoke its Extension</p>

	<p>Option Notice or Port may reject Tenant's Extension Option Notice and this Lease will expire on the relevant Expiration Date as if the Extension Option Notice had not been given.</p> <p>Rent during an Extension Term shall be determined by Port and NPS as provided in the Port/NPS Agreement and shall consist of the then fair market value rent to be composed of a monthly rental base rent and percentage rate component subject to escalations as may be determined as described below in Section 4.4 ("<b>Extension Term FMV Rent</b>"). Tenant agrees that the Extension Term FMV Rent as so determined shall be binding upon Tenant. The Extension Term FMV Rent shall be effective on the start date of the relevant Extension Term regardless of when finally determined. In the event that the Extension Term FMV Rent is not finally determined on the first date of a relevant Extension Term, the Extension Term FMV Rent as proposed by Port pursuant to the Port/NPS Agreement shall take effect on the first date of an Extension Term and shall be adjusted with an invoice or credit once the Extension Term FMV Rent is finally determined.</p> <p>If, for any reason, the Port/NPS Agreement is not extended, Tenant fails to provide timely notice of its intent to extend or fails to satisfy the terms and conditions for an Extension Option, then this Lease will terminate as of the relevant Expiration Date.</p>
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<i>Embarkation Site Construction Coordination:</i>	Tenant and Port will cooperate with each other and with the Ferry Concessioner to coordinate construction, maintenance and repair and other activities at the Embarkation Site. If, despite the parties' diligent efforts, the Port's construction, maintenance and repair activities discussed above or under Sections 3.9, 13.10 or 14.3 result in a direct documented loss of Conservancy customers for a period of twenty (20) days or more in any month such that Tenant's Percentage Rent due is less than that Tenant's Base Rent due for such month, then, as the sole remedy under this Lease and upon satisfactory documentation where parties are making diligent efforts and there is still a documented loss, Port will provide rent abatement to Tenant in the form of a prorata reduction in Base Rent on a per square footage lost basis for up to a maximum of six (6) months. The Parties agree that, for purposes of this Section, diligent efforts shall include scheduling construction, maintenance and repair work in a manner that preserves Tenant's ability to provide food service and/or access to the visitor contact station and interpretive retail center.
<i>Utilities:</i>	Tenant's sole responsibility, as further described in Section 12 below. New or upgraded Utilities must be installed above the top surface of the pier deck.  As further described in <b>Exhibit G</b> , Port is currently installing a new utility core area which is located outside of the Premises. Tenant must use the new utility core area as the point of connection for all utilities.
<i>Local Hiring Requirements:</i>	Tenant shall comply with the Local Hire Plan attached hereto as <b>Exhibit H</b> which is hereby incorporated.
<i>Development Project:</i>	Pier 31½ Marginal Wharf Improvements; Successive Ferry Concessioner Leases; Seawall Earthquake Safety Program.
<i>Mitigation Measures and Improvement Measures Monitoring and Reporting Program (MMRP):</i>	In order to mitigate any potential significant environmental impacts of the project, Tenant agrees that its development and operation will be in accordance with the MMRP attached as <b>Exhibit I</b> and fully incorporated herein. Tenant is responsible for implementation and compliance with all required measures relating to Tenant's activities. As appropriate, in addition, Tenant will incorporate the MMRP into any contract for the development and/or operation of the Premises. Failure to comply with the requirements of this Section shall be a default of this Lease.
<i>Lease Prepared By:</i>	Jay Edwards, Senior Property Manager

## LEASE AGREEMENT

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

### 1. DEMISE.

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

### 2. DEFINITIONS.

Definitions used in this Lease are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"**1998 Concessions Act**" means the National Park Service Concessions Management Improvement Act of 1998 (54 U.S.C. §101911 et seq.) and its implementing regulations, as may be superseded or amended.

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

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

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

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

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

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

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



**"Anniversary Date"** means the first and each subsequent anniversary of the Phase I Commencement Date.

**"Approved Pier Flood Protection Plan"** is defined in Section 14.

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

**"Audit Period"** is defined in Section 5.4.

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

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

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

**"Books and Records"** means all of Tenant's books, records, and accounting reports or statements relating to its business, at the Premises, 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 day"** means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

**"CMD"** means the Contract Monitoring Division of the City's General Services Agency

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

**"Capital Investment and Improvement Plan"** is defined in the Basic Lease Information.

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

**"CEQA"** means the California Environmental Quality Act.

**"Certified Construction Costs"** are Construction Costs that Port has approved through the procedures described in Section 21.3.

**"Changes"** is defined in Section 10.1 below.

**"Chief Harbor Engineer"** or **"CHE"** means the Port's Chief Harbor Engineer acting in his/her regulatory capacity as the Port's chief building official in accordance with applicable Laws.

**"CHE Determination"** as defined in Section 14.

**"CHE Determination Notice"** as defined in Section 14.

**"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.

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



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

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

**"Completion"** or **"Completed"** means, as the case may be, completion by Tenant of all aspects of (i) the Initial Tenant Improvements in accordance with the Work Letter (including the Scope of Development), (ii) Subsequent Alterations, or (iii) any other improvements undertaken by Tenant under the provisions of this Lease; each in compliance with all Regulatory Approvals and Port's issuance of applicable certificates of occupancy, completion or other written evidence of Port's sign-off on a building permit or other documentation as required. Where this Lease specifies phased construction, Completion means Completion as to each specified phase.

**"concession"** is defined in Section 33.15 below.

**"Conduct Code"** is defined in Section 32.11 below.

**"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 E* (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.

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

**"Core Benefits"** is defined in Section 32.1(c) below.

**"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 21.3. Costs of Sale exclude rents, taxes, or other income or expense items customarily prorated in connection with sales of real property.

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

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

**"disturbed or removed"** is defined in Section 13.3(g).

**"Effective Date"** is defined in the Basic Lease Information.

**"Embarkation Site"** is defined in the Basic Lease Information.

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

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

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

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

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

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

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

**"Extension Option"** is defined in the Basic Lease Information.

**"Extension Option Notice"** is defined in the Basic Lease Information.

**"Extension Term"** is defined in the Basic Lease Information.

**"Extension Term FMV Rent"** is defined in the Basic Lease Information.

**"Facility"** means the piers, buildings or other structure in or on which the Premises is located including the entire Embarkation Site and Pier 31½ Facility No. 1315; Pier 33 Bulkhead



Facility No. 1330; Pier 33 Shed Facility No. 1300; Pier 31 Shed Facility No. 1310; and the Pier 31/33 Water Basin.

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

"**Ferry Concession Contract**" means a valid and effective contract entered into under authority of the 1998 Concessions Act between NPS and Tenant authorizing Tenant to provide passenger ferry and associated services between the Premises and a landing at Alcatraz Island.

"**Ferry Concessioner**" means the person(s) party to a Ferry Concession Contract. There will be successive Ferry Concessioners during the Term.

"**Ferry Concessioner's Lease**" means a lease of a portion of the Embarkation Site between Port and a Ferry Concessioner who has a Ferry Concession Contract.

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

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

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

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

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

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

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

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

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

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



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

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

The following amounts shall be excluded from Gross Revenues, provided that, Tenant provide to Port separate records to support such deductions or exclusions, as the case may be, and separate notations are made for same on Tenant's Monthly and Annual Statements:

(i) 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, merchandise or services, and collected from customers and in fact paid to the appropriate governmental entities for which they are collected;

(ii) 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;

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

(iv) 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

(v) 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;

(vi) 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

(vii) For purposes of clarity, Gross Revenues do not include revenues from audio and interpretive tours on Alcatraz Island.

**"Gross Sale Proceeds"** means all consideration in any form directly or indirectly received by or for the account of the Tenant in connection with a Sale, including: (a) Cash Consideration;

(b) the principal amount of any loan by Tenant to the Transferee to finance the Sale; and (c) the fair market value of any other non-cash consideration representing a portion of the purchase price.

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

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

**"Hard costs"** is defined in Section 11.4 below.

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

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

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

**"HEPA"** is defined in Section 13.3(g).

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

**"Improvement Costs"** is defined in Section 4.2 below.

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

**"Indemnified Parties"** means Port and City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents. **"Indemnify"** means to indemnify, protect, defend, and hold harmless forever. **"Indemnification"** and **"Indemnity"** have correlating meanings.



**"Initial Ferry Concessioner"** or **"Initial Ferry Concessioner Lease"** means (i) with regard to "Initial Ferry Concessioner," the first person awarded a Ferry Concession Contract after the effective date of the Port/NPS Agreement; and (ii) with regard to "Initial Ferry Concessioner Lease," means the tenant under Port Lease No. L-16723

**"Initial Tenant Improvements"** means the improvements more particularly described in the Basic Lease Information and Scope of Development attached as Attachment 1 to the Work Letter.

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

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

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

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

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

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

**"Lease Year"** means the twelve (12) month period starting on each Commencement Date and ending on the last day of the twelfth (12<sup>th</sup>) month after such date and each subsequent twelve month period.

**"Marginal Wharf"** means the approximately 43,000 square foot pile-supported wharf located between Pier 31 and Pier 33 commonly known as Pier 31½.

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

**"Notice of Removal"** is defined in Section 13.5.

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

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

**"NPS"** means the National Park Service.



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

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

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

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

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

**"Phase I Anniversary Date"** means the first and each subsequent anniversary of the Phase I Commencement Date.

**"Phase II Anniversary Date"** means the first and each subsequent anniversary of the Phase II Commencement Date.

**"Phase I Commencement Date"** is defined in the Basic Lease Information.

**"Phase II Commencement Date"** is defined in the Basic Lease Information.

**"Phase I Initial Tenant Improvements Outside Completion Date"** is defined in the Basic Lease Information.

**"Phase II Initial Tenant Improvements Outside Completion Date"** is defined in the Basic Lease Information.

**"Phase I Premises"** means that portion of the Premises that is delivered on the Phase I Commencement Date.

**"Phase II Premises"** means that portion of the Premises that is delivered on the Phase II Commencement Date.

**"Phase I Rent Commencement Date"** the date on which the payment of Rent commences for the Phase I Premises as specified in the Basic Lease Information.

**"Phase II Rent Commencement Date"** the date on which the payment of Rent commences for the Phase II Premises as specified in the Basic Lease Information.

**"Pier 31½ Marginal Wharf Improvements"** is defined in the Basic Lease Information.

**"Pier 33 South Bulkhead Building Completion Date"** is defined in the Basic Lease Information.

**"Pier Flood Protection Measures"** is defined in Section 14.

**"Pier Flood Protection Plan"** is defined in Section 14.

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

**"Port program or project"** shall mean (a) any development, removal or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises and any Development Project described in the Basic Lease Information, (b) the Seawall Resiliency Project; and (c) the Pier 31½ Marginal Wharf Improvements.

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

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

**"Port Work"** is defined in Section 13.9.

**"Premises"** means the real property described in Section 3 below and depicted on *Exhibit A*.

**"preservative-treated wood containing arsenic"** is defined in Section 32.10 below.

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

**"Prohibited Use(s)"** is defined in Section 8.1 below.

**"Project Requirements"** is defined in the Work Letter.

**"Proof of Expenditures"** documentation, certified by a financial officer or other accountant employed by Tenant who is authorized and competent to make such statements, as accurate, complete and current, satisfactory to Port evidencing expenditures for improvements. Proof of Expenditures shall include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, and contracts and receipts for services marked "Paid", (iv) and such other proofs of expenditure as may be reasonable approved by Port, and (v) as applicable, unconditional lien waivers from all contractors and subcontractors.

**"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 BCDC, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commissions of the City and County of San Francisco (each in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

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

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

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

**"Renewable Energy System"** is defined in Section 12.3 below.

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

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

**"Retention for Reinvestment"** is defined Section 21.4(h)

**"Rules and Regulations"** means the Rules and Regulations applicable to the Facility as may be amended from time to time.

**"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 the business assets of Tenant.



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

"**saltwater immersion**" is defined in Section 32.10 below.

"**Scope of Development**" means schematic design and drawings, the Schedule of Performance, the preliminary plans and any narrative description which is attached to the Work Letter (*Exhibit E*) as Attachment 1. The Scope of Development includes the Schematic Design and Drawings prepared by NPS and approved by Port prior to the Effective Date.

"**Seawall**" is defined in Section 3.7 and shown on *Exhibit B-3* in relation to the Premises.

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

"**Special Event**" means use of the Premises for the following types of activities, which, in each case, have been approved in writing by NPS: concerts, musical and theatrical performances and other forms of live entertainment, public ceremonies, art or historical exhibitions or other public or private exhibitions and activities related thereto related to programming on Alcatraz Island or other NPS sites or programs.

"**Sublease**" means the following events or proposed events: (a) a proposed or actual sublease, sublicense or agreement of similar effect with a subtenant, sublicensee, manager, vendor, concessionaire, food truck or food cart operator for all or any part of the premises as defined in a lease or similar agreement; (b) any person other than Tenant occupies or claims a right of possession to any part of the Premises; or (c) any further sublease, sublicense or agreement of similar effect with a subtenant of any of its interest in its sublease or premises.

"**Subleasing Expenses**" means verifiable and reasonable: (i) subleasing commissions paid to licensed real estate brokers; (ii) attorneys fees incurred in connection with a Sublease; (iii) subtenant improvements or allowances provided by Tenant that are in addition to the Initial Tenant Improvements, improvements in the Capital Investment and Improvement Plan or any other improvements required under this Lease (there shall be no exclusion or deduction for any required costs or obligations); and (iv) a subtenant management fee not to exceed five percent (5%) of the base rent paid by a Subtenant. Costs for furniture, fixtures and equipment and other items of Tenant's Property or Subtenant's Property shall be not allowable as a Subleasing Expense.

"**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.

"**Substructure**" means that portion of the pier that includes all the load bearing structural elements that are at or below the top surface of the pier deck. The load bearing structural elements of the substructure include but are not limited to slab/deck, beams and piles. For purposes of this Lease, "Substructure" does not include the asphalt covering the apron or the wooden decking or any utilities located within or under the Substructure.

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

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

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

"**Tenant's 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. "Subtenant's Property" has an equivalent meaning.

"Term" is defined in Section 4.1 below.

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

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

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

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

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

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

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

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

"Waiving Party" is defined in Section 17.5 below.

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

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

### **3. PREMISES; AS-IS CONDITION.**

#### **3.1. Premises.**

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on **Exhibit B** attached hereto and incorporated herein by reference. Except as otherwise set forth in the Basic Lease Information regarding re-measurement, Port and Tenant agree and acknowledge that (i) 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; (ii) 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 (iii) neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

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

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

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

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

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

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



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

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

**3.6. 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) the Facility is located along adjacent to, or on top of, and/or bayward of the Seawall that is in need of repair and presents increased risk of damage to property and injury or death to persons from seismic events, as further described in Section 3.7; and (c) 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; (d) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; (e) there is a risk that sea level rise will increase the cost of substructure repairs and/or prevent or limit the ability to make repairs to the substructure; and (f) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of this Lease.

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

**3.8. As-Is Condition.** Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises is being leased and accepted in phases in their "as-is" condition, without any preparation, improvements or alterations by Port except for the Pier 31½ Marginal Wharf Improvements, without representation or warranty of any kind, and subject to all applicable Laws governing their use, occupancy and possession. Tenant acknowledges that it has been afforded a full opportunity to inspect Port's records relating to conditions of the Facility. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records and Tenant is not relying on any such information. All information contained in such records is subject to the limitations set forth in this Section. Tenant represents and warrants to Port that Tenant has received and reviewed the disclosures regarding the Seawall in Section 3.7 including *The Seawall Earthquake Vulnerability Study of*



the Northern Waterfront Seawall, San Francisco, California July 2016 and information on the Port's website; the FEMA disclosure notice attached as **Schedule 3** and a copy of the report(s) relating to the Substructure and/or superstructure of the Facility, as further described in **Schedule 2** attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Facility and its suitability for Tenant's business and intended use including (i) its quality, nature, adequacy and physical condition including the structural elements, foundation, and the condition and load-bearing capacity of the piles, and all other physical and functional aspects; (ii) its quality, nature, adequacy, and physical, geotechnical and environmental conditions (including Hazardous Materials conditions, including the presence of asbestos or lead, with regard to the buildings, soils, sediments and any groundwater); (iii) its suitability for the Improvements; (iv) its zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction on the Site; and (v) all other matters of material significance affecting the Facility and its use and development under this Lease. Tenant specifically acknowledges and agrees that neither City, Port nor any of their agents have made, and Port hereby disclaims, any representations or warranties, express or implied of any kind, concerning the rentable area of the Premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure and/or the Seawall), the present or future suitability of the Premises for Tenant's business, any compliance with laws or applicable land use or zoning regulations, any matter affecting the use, value, occupancy or enjoyment of the site, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**3.9. Reserved Rights Regarding Seawall.** Port has the right to use the Premises on an extended basis, without charge, and Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port and permit Port and its Agents to enter the Premises upon reasonable prior notice but not less than ten (10) business days (except in the event of an emergency which poses an imminent danger to public health or safety as determined by Port in its sole discretion) for the purpose of inspecting, repairing and rebuilding the Seawall as Port reasonably deems necessary. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform or place upon Port any obligation, or liability, for the care, supervision or repair of the Premises or Seawall. If Port elects to perform work on the Seawall within the Premises pursuant to this Section, Port shall not be liable for and Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any disturbance, inconvenience, nuisance, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided Port uses commercially reasonable efforts to minimize inconvenience or disturbance to the activities of Tenant, its Subtenants (if any), and their respective Invitees. Except as provided in the Basic Lease Information in the section entitled "*Embarkation Site Construction Coordination*," in no event will inconvenience or disturbance caused by Port's activities under this Section 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. If such use of the Premises is required by Port or its Agents, then the Parties will coordinate their use of the Premises and use their good faith efforts to minimize adverse impacts to each of their respective needs. Port will have the absolute right to use the Premises without charge in the event of an emergency involving the Seawall.

**3.10. 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 and Tenant agrees to be bound by any Rules and Regulations Port imposes on the Facility. Port agrees to provide reasonable notice to Tenant of any new or amended Rules and Regulations and to enforce all Rules and Regulations in a reasonable and non-discriminatory manner. Such new or amended Rules and Regulations shall not materially reduce Tenant's rights or materially increase Tenant's



obligations under this Lease, or materially interfere with Tenant's ability to use the Premises for the Permitted Uses. In case of any conflict between the Rules and Regulations (whether existing, amended or new) and this Lease, the Lease shall control. 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.

**3.11. *Flags.*** Throughout the Term, a Port flag will fly on each flagpole within the Premises ("**Flagpoles**"). Port will provide the Port flags to Tenant. The dimensions of Port flags will be similar to the dimensions of Port flags flown on the roofs of Port buildings in the Central Waterfront. Tenant will promptly, at no charge, install, raise, lower and remove Port flags at Port's request. Tenant also may use the Flagpoles to fly other flags on each Flagpole, provided that such other flags, other than the flags of the United States and the State of California, must be placed beneath the Port flag.

**3.12. *Use of Intellectual Property; Music Broadcasting Rights/Port logo.*** Tenant is solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property owned by third parties, including musical or other performance rights.

**3.13. *No Right to Encroach.***

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "**Encroachment Area**"), then upon written notice from Port ("**Notice to Vacate**"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "**Encroachment Area Charge**"). If Tenant demonstrates that its use of the Encroachment Area was unintentional, the Encroachment Area Charge will be calculated from the date of Tenant's receipt of the Notice to Vacate. If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in the last paragraph of this Section 3.13, at law or in equity).

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

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 20 (Indemnity and Exculpation) shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the



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

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

#### **4. TERM OF LEASE; TERMINATION BY PORT.**

**4.1. Term.** The term of this Lease (the "**Term**") shall be for the period commencing on the Effective Date and expiring on the Expiration Date.

**4.2. Existing Leases.** Tenant acknowledges the following existing leases as of the Effective Date:

(i) Port Amendment to and Restatement of Lease No. L- 12501, as amended, with Hornblower Yachts, Inc. for portions of the Facility.

(ii) Port Lease No. L-15837 with San Francisco Pier 33 LLC for the Pier 33 South Bulkhead Building.

**4.3. Delivery of Premises.** If Port is unable to deliver possession of the Premises or any portion thereof to Tenant, 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 or any portion thereof. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises or any portion thereof on an estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then 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.

#### **4.4. Extension Options.**

(a) Option to Extend Term. Provided all the terms and conditions in the Basic Lease Information and this Section 4.4 are satisfied by Tenant, Port grants to Tenant two (2) options for an additional ten (10) year term ("an **Extension Option** ") as to the entire Premises only ("**Extension Term**") commencing upon the first day after the Expiration Date. 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.

(b) 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, including the payment of Percentage Rent, except that the Expiration Date shall mean the last day of the Extension Term and the Base Rent hereunder shall be determined as set forth in the Basic Lease Information.



**4.5. Port's Termination Rights.** Notwithstanding any other provision of this Lease,

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

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

(b) 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 this 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 Effective Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial Term of this Lease. In no event shall Port be responsible for paying any moving or relocation expense or other expense incurred by Tenant due to any termination under this Section.

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

**5. RENT.**

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

**5.1. Base Rent.** Tenant shall pay the monthly Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If necessary, Base Rent shall be apportioned based on a thirty (30) day month. Except as otherwise specifically set forth in this Lease, under no circumstances shall Tenant's obligation to pay Rent be delayed due to failure to complete the Initial Tenant Improvements, Force Majeure, Port delays or other reasons.



## **5.2. Percentage Rent.**

(a) As further described in the Basic Lease Information, 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 taking into consideration any rent credits that may be applicable.

(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 CPA. 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.

If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Monthly Percentage Rent Statement or Annual Statement within the time period set forth in this Section 5.2 (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for 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 reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent and Annual Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.



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

### **5.3. Rent Credits.**

(a) Rent Credits for Initial Tenant Improvements. As described in this Section, and subject to subsection (b), Tenant shall be entitled to a rent credit for Initial Tenant Improvements that are so designated in the Work Letter Attachment 1 in an amount not to exceed Five Hundred Fifty-Four Thousand dollars (\$554,000) to be taken monthly against all Rent due in the manner described in the Basic Lease Information. The following example demonstrates how the rent credit shall be applied.

Total Rent Credit Available \$554,000 divided by 48 months = \$11,542  
Monthly Revenues Subject to Percentage Rent: \$800,000  
Percentage rent: \$60,000  
Less Monthly Base Rent: \$50,000  
Percent Rent Due: \$10,000  
Total Rent due: \$60,000

(b) Additional Conditions for Rent Credits. In addition to the requirements set forth in the Basic Lease Information and the requirements set forth above in Subsection (a), the following requirements apply regarding rent credits:

(1) Within thirty (30) days after final Completion of the Initial Tenant Improvements, Tenant shall deliver to Port an itemized statement of the actual costs expended by Tenant accompanied by Proof of Expenditures for such work reasonably satisfactory to Port. Costs expended for improvements that are eligible for rent credits shall not include any items other than those identified in the Work Letter Attachment 1 for the Initial Tenant Improvements or items pre-approved by Port for any other scope of work and shall not include items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities or any other items of personalty not intended to be affixed to or become a part of the Facility or Facility Systems, nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the improvements, the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall the cost of any construction management fees, general administrative costs or other forms of mark-up be eligible for rent credits unless clearly identified in the scope of work approved. Furthermore, in no event shall maintenance, repair and/or replacement costs for the Initial Tenant Improvements be eligible for rent credits. Upon receipt of Proof of Expenditures, Port in its reasonable discretion shall determine in writing the costs eligible for rent credits and Tenant may apply such rent credits in accordance with the provisions of the Basic Lease Information and this Section.

(2) Rent credits cannot be applied retroactively.

(3) Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive any rent credit in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default. Upon the occurrence of a Tenant Event of Default during period Tenant is eligible for rent credits, Tenant's right to apply any rent credit shall cease and shall not be reinstated until the Tenant Event of Default is cured. If a Tenant Event of Default occurs on a day other than the first day of the calendar month or a Tenant Event of Default is cured on a day other than the last day of the calendar month, Base Rent due to Port shall be apportioned based on a thirty (30) day

month. In no event shall the cessation in the application of the rent credit against any Base Rent extend the rent credit period.

(4) In the event all or any portion of the rent credit available to Tenant exceeds seventy percent (70%) of the monthly installment of Rent due, the remaining portion of the rent credit shall be carried forward to the next installment of monthly Rent until the earlier to occur of (i) the rent credit being fully applied, (ii) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), or (iii) an uncured default by Tenant of any term or condition of this Lease.

(5) Tenant agrees and acknowledges that any right or claim Tenant may have to any form of rent credit that has not yet been actually applied ("**unused rent credit**") shall, upon the earlier to occur of (a) an uncured default by Tenant of any term or condition of this Lease, (b) Tenant's failure to submit to Port within thirty (30) days following completion of the work, Proof of Expenditures related to such improvements or (c) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), be immediately tolled in the case of (a) or (b) until the default is cured or the Proof of Expenditures is submitted, or in the case of (c), terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.

**5.4. 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 with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records until the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is concluded even if such audit period extends beyond the expiration or earlier termination of the Lease (the "**Audit Period**").

**5.5. 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.

**5.6. 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.

**5.7. Default Interest.** Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant. Tenant shall also pay any costs, including attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

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

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

**5.10. Net Lease.** It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, 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: 12.1(Utilities), 16.3 (Tenant's Environmental Condition Notification Requirements), 16.8 (Storm Water Pollution Prevention), 32.1(d)(CMD Form), and below or to provide evidence of the required insurance coverage described in Section 17 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 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 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity. By signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

## **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 further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any 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 Port, City, and their Agents from and against all Claims resulting therefrom.

**6.2. Possessory Interest Tax.** Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands



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

## **7. REQUIRED FINANCIAL ASSURANCES .**

**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 cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. The parties agree that the Security Deposit shall, at all times during the Term, be an amount equal to two (2) months of the then-current Base Rent. Any increase in the Security Deposit to maintain the same ratio of Security Deposit to Base Rent shall be delivered to Port on the same date that such increase in Base Rent is first due.

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

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same. Subject to the foregoing, Port will return any balance to Tenant within ninety (90) days of the expiration or earlier termination of this Lease.

## **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 or Subsequent Alterations, 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; or
- (n) 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 signing this Lease, each party specifically confirms the accuracy of the statements made in this Section and the reasonableness of the amount of the charges described in this Section.

#### **9. COMPLIANCE WITH LAWS AND REGULATIONS.**

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

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

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

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



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

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if: (1) conditions and/or restrictions under such permit or other entitlement could affect use or occupancy of the Facility or other Port property or Port's interest therein or would create obligations on the part of Port or could otherwise encumber, restrict or change the use of Port property (other than the Premises), unless in each instance Port has previously approved, in Port's sole discretion, such conditions or restrictions; or (2) conditions and/or restrictions under such permit or other entitlement could affect use or occupancy of the Premises or Port's interest therein or would create obligations on the part of Port on the Premises or could otherwise encumber, restrict or change the use of the Premises, unless in each instance Port has previously approved, in Port's reasonable discretion, such conditions and/or restrictions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to Indemnify City, Port and their Agents from and against any Claim which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

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

**10.3. Compliance with City's Risk Manager's Requirements.** Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of or access to the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

## **11. MAINTENANCE AND REPAIRS.**

**11.1. Port's Obligations.** Port's obligations to maintain and repair the Premises are strictly limited to those explicitly stated in the Basic Lease Information and nothing in this Lease shall imply any greater duty upon the part of Port to perform any other repair or maintenance work and under any provision of this Lease. Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will



minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant when such 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's maintenance and repair 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. 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 or its authorized Agents entry onto the Premises to perform its maintenance and repair obligations or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

If Port fails to perform its maintenance and repair obligations as set forth in this Lease and such failure materially impacts Tenant's ability to operate, then Tenant must provide written notice to Port specifying the nature of Port's default and actions needed to cure. If, after receipt of such written notice, Port's failure to perform its obligations continues without cure for more than one hundred eighty (180) days (or, if such cure cannot reasonably be completed within such 180day period, Port fails to commence with due diligence and dispatch within such ninety-day period the curing of such failure, or having so commenced, fails to diligently and with good faith prosecute such cure to completion within twelve (12) months), Tenant shall be entitled to seek an order for specific performance to compel Port to perform such obligations. Tenant agrees that, notwithstanding anything to the contrary in this Lease or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole right and remedy for Port's default under this Section. In no event shall Tenant be entitled to offset from all or any portion of Rent becoming due hereunder or to otherwise recover or obtain from Port or its Agents any damages arising out of Port's default under this Section.

**11.2. Tenant Maintenance and Repair Obligations.** Unless otherwise set forth in the Basic Lease Information: (i) beginning on the relevant Commencement Date for each parcel, Tenant shall at all times during the Term, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing; and (ii) except as provided in Section 11.1, Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect. Notwithstanding any maintenance and repair obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Tenant shall be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant shall promptly reimburse Port therefor.

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

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



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

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

In addition, upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"), Tenant shall pay, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. By signing this Lease, each party specifically agrees that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section shall be due promptly following delivery of the applicable Maintenance Notice.

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

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

## **12. UTILITIES AND SERVICES.**

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

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report



the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements. 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.

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, and as may be further described in this Lease. If Port consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to Port, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Port and otherwise in compliance with Section 13 below, to the extent necessary to assure that no damage to the Premises or the Facility or weakening of any structural or substructural supports, as the case may be, will be occasioned thereby.

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

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



### **13. IMPROVEMENTS AND ALTERATIONS.**

#### **13.1. *Port Consent Required.***

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its CHE in the exercise of its jurisdiction with respect to the Premises.

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

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

(d) None of the following will constitute Alterations or Improvements requiring Port's consent, unless the installation will affect Facility Systems or the structure of any building: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; (ii) painting the interior of any of the buildings within the Premises; and (iii) carpeting any of the buildings within 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 of this Section 13 and the Work Letter. Any Subsequent Alteration shall be performed in accordance with this Section 13.

**13.3. *Construction Requirements; Subsequent Alterations.*** All Alterations and Improvements to the Premises including without limitation all Subsequent Alterations made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

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

(b) All Alterations and Improvements shall be performed at the sole cost and 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 construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), shall undertake



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

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

(e) Tenant expressly acknowledges that the Embarkation Site is a contributing resource to the Port of San Francisco Embarcadero Historic District on the National Register. Accordingly, all interior and exterior Alterations (including but not limited to, any repair, alteration, improvement, or construction to the interior or exterior of the Embarkation Site) 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, 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> (the "Secretary's Standards") and summarized in the attached *Exhibit J*, and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as *Exhibit K* ("Port's Guidelines"). Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction. Additionally, Tenant expressly agrees to comply with Port's Guidelines as applicable.

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

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the Port Building Code, Section 3424, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees,



when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3424 of the Port Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.3(g), lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

**13.4. Improvements Part of Realty.** Except as set forth in Section 13.5, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall become part of the realty owned by Port upon expiration or earlier termination of this Lease, and, shall, at the end of the Term, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 26 (Surrender).

**13.5. Removal of Improvements.** Prior to the Expiration Date or earlier termination of this Lease, Port may give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 26. In no event shall Tenant be required to remove from the Premises improvements constructed by the Initial Ferry Concessioner or the Initial Tenant Improvements performed by Tenant. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall promptly reimburse Port after demand therefor.

**13.6. Removal of Non-Permitted Improvements.** If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with Section 13.1, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of Section 13 shall survive the expiration or earlier termination of this Lease.

**13.7. All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Premises, where extensive renovations are made. An "**all-gender toilet facility**" means a toilet that is not restricted to use by persons of a specific sex or gender identity by



means of signage, design, or the installation of fixtures, and “**extensive renovations**” means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Port's Property Manager for guidance.

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

**13.9. Improvements on Roof.** Tenant shall not install any equipment on the roof of any building within the Premises or on any other part of the Facility the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or to other areas necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.6, 9-11, 13, 16, 17, 20 and 26 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any other commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's Property Manager at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts if possible to notify Port in advance of such entry.

**13.10. Port's Work.** Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Facility, the Facility Systems, or adjacent Port property (“**Port Work**”) upon reasonable prior notice but not less than ten (10) business days (except in the event of an emergency which poses an imminent danger to public health or safety as determined by Port in its sole discretion). If the Port causes any damage while using the Premises for the activities performed by Port in accordance with this Section 13.9, upon satisfactory documentation of such damage, Port shall promptly restore the Premises to a mutually acceptable condition at its cost. Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. Except as provided in the Basic Lease Information in the section entitled “*Embarkation Site Construction Coordination*,” 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; provided that Port's uses commercially reasonable efforts



to conduct its activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant except when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition.

#### **14. FLOOD RISK AND SEA LEVEL RISE.**

**14.1. Pier Flood Protection Measures.** In addition to Tenant's obligations to comply with Laws and to repair and maintain the Premises if, at any time during the Term of this Lease, and subject to compliance with CEQA, CHE determines that there is a need for **Pier Flood Protection Measures** (as defined below) at the Premises or proximate to the Premises to protect the Premises from a significant risk of flooding or other damage resulting from climate change or sea level rise, in order to protect public health and safety ("**CHE Determination**"), Tenant shall be responsible at no cost to Port for permitting, constructing and implementing any such Pier Flood Protection Measures in the manner described in this Section. Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any Pier Flood Protection Measures. Port and Tenant agree that neither a CHE Determination nor a Threat Determination (as defined below) under this Section 14 shall be a Taking for purposes of this Lease.

"**Pier Flood Protection Measures**" may include without limitation (1) temporary public access closures, sandbagging or similar temporary measures to minimize the risks associated with wave overtopping of the pier apron; (2) waterproofing or relocation of utility infrastructure from underneath the pier to minimize the risk of water or wastewater discharges to San Francisco Bay; and/or (3) short perimeter flood walls or similar measures to address more frequent and serious flooding associated with stillwater levels at or above the elevation of the pier deck. For purposes of this section, and without affecting Tenant's other obligations under this Lease, Pier Flood Protection Measures do not include substantial repairs, maintenance or improvements to the Substructure, raising first floor elevations or regional improvements such as breakwater or levee improvements which the parties acknowledge may be necessary to protect the City from sea level rise, but are beyond the scope of this Lease.

(a) **CHE Determination Notice.** Promptly following a CHE Determination, Port will deliver to Tenant notice of the CHE Determination ("**CHE Determination Notice**"). The CHE Determination Notice will include a description of the need for required Pier Flood Protection Measures and a timeline for Tenant to submit for the CHE's approval, in his or her sole discretion, a conceptual level scheme of the required measures along with a schedule for completing design, securing all Regulatory Approvals and completing construction ("**Pier Flood Protection Plan**"). The CHE has the sole discretion to approve or disapprove the final designs and implementation of any Pier Flood Protection Measures to be constructed within Port's jurisdiction (including the Premises). Within sixty (60) days of receiving such plan, the CHE will review and either approve the plan or request revisions to the plan. If revisions are required, Tenant will promptly revise the Pier Flood Protection Plan and re-submit to the CHE for his or her review and approval. Tenant will continue to revise and re-submit until the CHE approves the Pier Flood Protection Plan, as revised; provided, however, Tenant must have obtained the CHE's approval of a Pier Flood Protection Plan (the "**Approved Pier Flood Protection Plan**") within the time period set forth in the CHE Determination Notice.

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



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

**14.3. Required Flood Protection Improvements for Other Port Property.** If the CHE determines that there is a need to install flood protection measures within the Premises to protect other Port property, Tenant shall cooperate by providing access and other reasonably requested assistance at no cost to Port. Nothing herein shall imply any duty upon the part of Port to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon Port any obligation, or liability, for the care, supervision or repair of Port property outside the Premises; provided that, if the Port causes any damage while using the Premises for the activities performed by Port in accordance with this Section 14.3, upon satisfactory documentation of such damage, Port shall promptly restore the Premises to a mutually acceptable condition at its cost. If Port elects to perform flood protection measures for other Port property, Port shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course of such work, provided Port uses commercially reasonable efforts to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees. Except as provided in the Basic Lease Information in the section entitled "*Embarkation Site Construction Coordination*," in no event will inconvenience or disturbance caused by Port's activities under this Section 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.

**14.4. Limitations; Waiver.**

(a) Tenant's obligation hereunder in connection with the Pier Flood Protection Measures shall include, without limitation, the obligation 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 curative action may interfere with Tenant's use or enjoyment of the Premises, or the likelihood that the Parties contemplated the particular Pier Flood Protection Measures involved. Further, no occurrence or situation arising during the Term, nor any present or future Law or circumstance, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against Port except with respect to Tenant's right to terminate under the terms and conditions specified in Section 18 (Damage and Destruction) and Section 19 (Eminent Domain). Without waiving the right to terminate as provided in Section 18 (Damage and Destruction) and Section 19 (Eminent Domain), 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 or on account of any such occurrence or situation.

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



#### **14.5. *Additional Improvements To Address Sea Level Rise .***

At any time during the Term, Port or Tenant may propose optional additional improvements to be performed by Tenant, at its option and at its cost that (i) are beyond the scope of the potential Pier Flood Protection Measures contemplated in this Section; and (ii) are not otherwise Tenant's obligation under this Lease (including under Section 9 (Compliance with Laws) and Section 11 (Maintenance and Repair)). Tenant acknowledges that additional Regulatory Approvals will be required for such improvements.

#### **15. LIENS.**

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

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

#### **16. HAZARDOUS MATERIALS.**

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

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

(a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property except as permitted under Section 16.1;

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

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



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

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 16.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

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

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

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

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

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

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

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

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

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

of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

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

**16.4. Requirement to Remediate.**

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

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

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

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

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

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

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

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



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

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

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 16.6 hereof and the notice or report attached as *Schedule 1* hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

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

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

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



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

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

(b) 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.

**16.9. Presence of Hazardous Materials.** California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in *Schedule 1* attached hereto, naturally occurring asbestos, contamination commonly found in fill, petroleum contamination, lead-based paint, etc. and the Hazardous Materials described in the reports listed in *Schedule 4* attached hereto, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 16.9 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

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

### **17. INSURANCE**

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

(a) **Commercial General Liability Insurance.** Tenant will maintain "Commercial General Liability" insurance with coverage at least as broad as Insurance Services Office form CG 00 01 10 93 (or its replacement) insuring against claims for bodily injury (including death), property damage, personal injury and advertising injury, including coverage for premises operations, blanket contractual liability (to the extent possible under the above-referenced policy form or under a separate policy form) which includes coverage extending to the Indemnity in broad form property damage, explosion, collapse and underground hazards, independent contractors, products and completed operations, with such insurance to afford protection in an amount not less than One Million Dollars (\$1,000,000) per occurrence and annual aggregate, and Five Million Dollars (\$5,000,000) products and completed operations aggregate, and deleting any exclusions for care, custody and control of real property. All such insurance may be provided under a combination of primary and umbrella excess policies and may be provided under policies with a "claims made" trigger as provided in Section 17.2.

(b) **Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance.** Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less



than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 17.1(b), 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.

(c) Comprehensive or Business 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 coverage for owned, non-owned and hired automobiles, as applicable, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on, in or around the License Area. If parking is a Permitted Activity under this License, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Tenant's Agents and Invitees.

(d) Contractor's Pollution Legal Liability Insurance. Tenant, at its sole cost and expense, shall procure and maintain Contractor's Pollution Legal Liability Insurance with a combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

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

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

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

(iii) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability



(errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(f) Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 95 ("Causes of Loss – Special Form", or its replacement), including earthquake, subject to provisions of Section 17.6(b), and flood, subject to the provisions of Section 17.6(c), in an amount not less than one hundred percent (100%) of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage).

(g) Builders Risk Insurance. At all times prior to Completion of the Initial Tenant 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 17.6(c)).

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

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

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

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

(l) Liquor Liability. Coverage must be provided for bodily injury or property damage including damages for care, loss of service, or loss of support arising out of the selling or serving of any alcoholic beverages. Coverage for any "package" store as well as lounge facility must be specifically included. The following minimum limits of liability are required: Each Common Cause Limit One Million Dollars (\$1,000,000.00); Aggregate Limit Five Million Dollars (\$5,000,000.00).

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



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

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

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

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

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

**17.6. General Insurance Matters.**

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

(b) As to earthquake insurance:

(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, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

(c) As to flood insurance only:

(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 Initial Tenant 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, but only at rates that are commercially reasonable for owners or operators of comparable restaurants located in the City and County of San Francisco.

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

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

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

## **18. DAMAGE AND DESTRUCTION.**

### **18.1. *Prior to Delivery.***

(a) If, prior to Phase I Commencement Date as to the Phase I Premises or any part thereof or prior to the Phase II Commencement Date as to the Phase II Premises or any part thereof, the Facility or the Phase I Premises or the Phase II Premises, as the case may be suffers any damage from fire or other casualty in an amount of less than One Million Dollars (\$1,000,000), Tenant agrees that it shall take delivery in accordance with this Lease and all of Port's right, title and interest in and to the proceeds of any insurance covering such damage shall be assigned to Tenant upon delivery of such parcel(s).

(b) If prior to Phase I Commencement Date as to the Phase I Premises or any part thereof or prior to the Phase II Commencement Date as to the Phase II Premises or any part thereof, the Facility or the Phase I Premises or the Phase II Premises, as the case may be suffers any damage from fire or other casualty in excess of One Million Dollars (\$1,000,000), then either Party may elect to terminate this Lease, by written notice to the other Party delivered not less than one hundred twenty (120) days following the event that caused such damage. If



neither Party so terminates this Lease, all of Port's right, title and interest in and to the proceeds of any insurance covering such damage shall be assigned to Tenant and this Lease shall remain in effect. Tenant shall not be entitled to any additional rent credit, abatement or allowance under the Lease as a result of such casualty. Tenant shall, to the extent reasonably practicable, restore or secure the damaged property to the condition it was in immediately preceding the casualty.

(c) Following a termination pursuant to this Section 18.1, neither Party shall have any further right or obligation hereunder other than those that survive the termination of this Lease.

(d) Port will maintain its existing property insurance until the Phase I Commencement Date as to the Phase I Premises and the Phase II Commencement Date as to the Phase II Premises.

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

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

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

Within thirty (30) days after receipt of Port's notice to terminate, Tenant shall have the right (but not the obligation) to notify Port that Tenant will provide the funds and perform such repair, and shall provide Port with such reasonable assurances as Port may require that such funds are available to Tenant. If Tenant exercises the foregoing option, Port's election to terminate shall be deemed rescinded and of no further force or effect and Tenant shall promptly (allowing for securing necessary Regulatory Approvals), commence and diligently repair and restore the damaged Premises and/or the Facility to the condition they were in immediately before such casualty in accordance with then applicable Laws (including any required code upgrades, the Secretary's Standards and Port's Guidelines), without regard to the amount of



availability of insurance proceeds. All repair and restoration shall be performed in accordance with Section 13 and shall be at Tenant's sole cost and expense. In no event will Tenant be entitled to any reimbursement from Port or any rent credit, offset, or abatement in connection with any cost and expense incurred by Tenant for the repair and restoration of the damaged Premises and/or the Facility.

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

Except for the rights to terminate as set forth in this Section, no damage to or destruction of the Premises or any part thereof from any casualty event shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including the obligation to pay Rent. Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, and (ii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. Proceeds of rental interruption or business interruption insurance, if any, will be applied first to unpaid Rent due or coming due.

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

## **19. EMINENT DOMAIN.**

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

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

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

**19.4. Temporary Takings.** Notwithstanding anything to the contrary contained in this Section 19, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to



perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for its occupancy of the Premises up to the total Rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

**19.5. Award; Waiver; Termination of Lease; Rent.** Upon termination of this Lease in its entirety pursuant to Section 19.3, or pursuant to an election under Section 19.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 19 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

## **20. INDEMNITY AND EXCULPATION.**

**20.1. Indemnity Prior to Delivery.** After the Effective Date and before the Phase I Commencement Date as to the Phase I Premises and before the Phase II Commencement Date as to the Phase II Premises, and without limiting any indemnity provisions contained in any other agreement between Port and Tenant or under Law, Tenant shall Indemnify the Indemnified Parties from and shall defend them, without cost to the Indemnified Parties against any and all Claims arising directly or indirectly, out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, caused or permitted by any acts or omissions of Tenant, its Agents or Invitees, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, or (c) the use, occupancy, manner of use or occupancy or the activities therein by Tenant, its Agents or Invitees, or (d) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property, or (e) Claims by NPS or a Ferry Concessioner against Port if arising directly or indirectly out of Tenant's acts or omissions under this Lease, including without limitation any default or breach of Tenant's obligations under this Lease.

**20.2. Indemnity After Delivery.** Tenant shall Indemnify the Indemnified Parties from, and shall defend them, without cost to the Indemnified Parties, against any and all Claims arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 21, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term (including without limitation, failure to construct the Initial Tenant Improvements in compliance with this Lease), (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, or (f) Claims by NPS or a Ferry Concessioner against Port if arising directly or indirectly out of Tenant's acts or omissions under this Lease, including without limitation any default or breach of Tenant's obligations under this Lease.



### **20.3. Hazardous Materials Indemnity.**

(a) In addition to its obligations under Sections 20.1 and 20.2, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Material Claims that arise as a result of: (i) any Hazardous Material Condition, and (ii) Tenant's Exacerbation of any Hazardous Material Condition. Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant's indemnity obligations do not include Claims arising as a result of 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 Phase I Commencement Date as to the Phase I Premises and before the Phase II Commencement Date as to the Phase II Premises.

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

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

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to 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. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made and shall continue at all times thereafter.

Without limiting Tenant's Indemnity obligations with respect to the Premises or the Facility, Port agrees that Tenant's Indemnity for Claims relating to "other Port property" as set forth above in Subsection 20.1 and 20.2 applies only if such Claims arise directly or indirectly out of Tenant's, its Agent's or Invitee's acts, omissions or negligence.

**20.5. Exculpation and Waiver.** Tenant, as a material part of the consideration to be rendered to Port, hereby waives and 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 any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, 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 or Embarkation Site 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; (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities; (vii) Claims by persons in, upon or about the Premises, the Facility or any other Port property for any cause arising at any time; (viii) alleged facts or circumstances of the process or negotiations leading to this Lease prior to the Effective Date including without limitation, claims under the Port/NPS Agreement; (ix) Claims by NPS or a Ferry Concessioner against Port if arising directly or indirectly out of Tenant's acts or omissions under this Lease, including without limitation any default or breach of Tenant's obligations under this Lease; (x) Claims arising directly or indirectly out of a Ferry Concessioner's acts or omissions including without limitation, the Initial Ferry Concessioner's failure to complete required improvements to the bulkhead; (xi) inability to use all or any portion of the Premises due to flood risk, sea level rise, a CHE Determination Notice, Threat Determination or other conditions more fully described in Section 14; and (xii) any other acts, omissions or causes, but excluding from the above (A) any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence and (B) any Claims caused by Port's failure to perform its maintenance and repair obligations as set forth in this Lease subject to the limitations of Section 11.1.

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.

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

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

## **21. MORTGAGE, ASSIGNMENT AND SUBLEASING.**

**21.1. *Mortgage.*** Except with NPS's and Port's express prior written consent, each independently and in its sole and absolute discretion, Tenant shall not (i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security instrument 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. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Port's fee interest in the land in connection with any financing permitted hereunder, or otherwise. Port shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant. Any mortgage, deed of trust, encumbrance or lien not permitted by Port 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. Tenant may seek Port's consent to any transaction subject to this Section only upon receipt of NPS's written consent to such transaction.

**21.2. Transfer.** This Lease is non-Transferable except as provided herein.

(a) 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) NPS has not agreed to a Transfer.

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

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

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

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

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



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

(f) Transfer Agreement Requirements. Any Transfer Agreement must include the provisions set forth below.

(i) 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;

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

(iii) 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;

(iv) 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

(v) 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.

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

(a) Tenant must pay to Port fifteen percent (15%) 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 Completed the Initial Tenant Improvements as of the Sale Closing, 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 ninety (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 ninety (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 two (2) years after Tenant's submission of its Construction Costs Report or six (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 a 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 \$1,170,000, 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 the 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 @ 15% of adjusted Net Sales Proceeds:	\$1,170,000

#### **21.4. *Subleasing by Tenant.***

(a) Subleases. Tenant will not Sublease any portion of the Premises without the prior written consent of Port which will not be unreasonably withheld. All Subleases must be in full compliance with all of the terms and provisions of this Section 21.4. A Sublease without Port's consent will be voidable by Port, in its sole discretion. Tenant may seek Port's consent to a Sublease subject to this Section only upon receipt of NPS's written consent to such transaction.

(b) Request for Sublease. Tenant must give Port at least thirty (30) days written notice before entering into a proposed Sublease (herein "Notice of Request to Sublease") and provide Port with the following information in writing: (a) the name, address, legal composition and ownership of the proposed Subtenant, (b) reasonably adequate evidence that the proposed Subtenant's financial condition and prospects are sufficient to support all of the financial and other obligations of the proposed Sublease, (c) a full description of the terms and conditions of the proposed Sublease, including copies of any and all proposed agreements concerning the proposed Sublease, (d) a description of the proposed use by the proposed Subtenant, (e) the material terms of any proposed Sublease, including all payments to be made or other consideration to be given in connection with the Sublease, and (f) evidence of NPS's prior written consent to such Sublease. Until such time as Tenant has provided to Port all information set forth hereinabove, Tenant's Notice of Request to Sublease will not be deemed to have been served or given. Tenant will immediately notify Port of any modifications to the proposed terms of the Sublease.

(c) Port's Options. Upon receiving a Notice of Request to Sublease, Port will have the right to either (1) consent to the proposed Sublease, which consent shall not be unreasonably withheld, subject to any reasonable conditions upon such Sublease or (2) deny its consent to the proposed Sublease on the following reasonable grounds: (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) that the proposed Subtenant's financial condition and prospects are or could become insufficient to support all of the financial and other obligations of the proposed Sublease; (3) that the use to which the Premises will be put by the proposed Subtenant is inconsistent with



the terms of this Lease or otherwise will affect any Port interest materially and adversely; (4) the business reputation or character of the proposed Subtenant is not reasonably acceptable to Port or the proposed Subtenant is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; (5) that the nature of the proposed Subtenant's intended or likely use of the Premises would involve an unmitigated risk of the Handling, Release or mishandling of Hazardous Materials and Port reasonably believes that the measures proposed by Subtenant are insufficient to mitigate the risk of Handling or Release of Hazardous Materials by Subtenant, or otherwise materially increase the risk of fire or other casualty; (5) that the Sublease rental rate does not reflect an arm's length transaction; (6) that the Sublease rental rate is below the fair market rent for similar use and type of premises; (7) failure of the Sublease to contain provisions specified in this Lease; or (8) NPS has not consented to the Sublease.

**(d) Required Provisions in Subleases.** Each and every Sublease must contain all the following provisions:

(i) the Indemnification clause and waiver of claims provisions in Section 19 (Indemnity and Exculpation);

(ii) insurance provisions requiring that all of the Subtenant'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 Subtenant's are conducted;

(iii) a provision stating that if this Lease is terminated for any reason, the Subtenant's right to possession under the Sublease will terminate;

(iv) an express waiver of any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;

(v) a requirement that the Subtenant must 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.

(vi) a provision stating that in the event of termination, reentry or dispossession by Port under this Lease Port may, at its option, take over all of the right, title and interest of Tenant under such Sublease, and such Subtenant shall, at Port's option, attorn to Port pursuant to the then executory provisions of such Sublease;

(vii) a statement that the Sublease is subject to and subordinate to this Lease;

(viii) a prohibition on assignment or further subleasing, in whole or in part, without Port's consent, which may be given or withheld in Port's sole discretion;

(ix) a provision similar to Section 25 (Port's Entry) requiring Subtenant to permit Port to enter its subleased space for the purposes specified in that Section; and

(x) a provision similar to Section 35 (Tenant Estoppel) requiring Subtenant, from time to time, to provide Port an estoppel certificate substantially similar to the form attached hereto as **Exhibit L**; and

**(e)** Any Sublease that does not comply with this Section fully including without limitation Tenant's failure to seek or obtain Port's consent when such consent is required, will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Sublease will have no effect with respect to any other Sublease.

(f) Copy of Executed Sublease. Tenant shall provide Port a true and complete copy of each executed Sublease within thirty (30) days after the execution thereof. Each executed Sublease must contain substantially the same (or more favorable to the landlord) business terms as set forth in the applicable Notice of Request to Sublease.

(g) Excess Rent. Tenant agrees to pay to Port immediately upon receipt all Excess Rent, less Subleasing Expenses, as Additional Rent. In calculating Excess Rent, Subleasing 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 Subleasing Expenses are \$30,000, 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
Subleasing Expenses:	\$30,000
Amortized Subleasing 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

(h) Retention for Reinvestment. Subject to the requirements of this Section, Tenant shall be entitled to retain from the payment of Excess Rent an amount of up to one percent (1%) of its Gross Revenues from a Sublease for the sole purpose of re-investing in future tenant improvements (including hard and soft costs) other than the Initial Tenant Improvements, improvements in the Capital Investment and Improvement Plan or any other maintenance and repair obligations or improvements required under this Lease (the retention cannot be used for any required costs or obligations) ("**Retention for Reinvestment**"). The Retention for Reinvestment amount shall not exceed Fifty thousand dollars (\$50,000) in any twelve (12) month period or a total of Two Hundred Fifty thousand dollars (\$250,000) at any one time. All Retention for Reinvestment amounts must be reinvested in tenant improvements within five (5) years of the date of retention accrual. Port is entitled to any Retention for Reinvestment amounts that exceed the maximum amounts specified in this Section, any amounts that are not properly used for the purposes specified in this Section and all unexpended amounts upon expiration or earlier termination of this Lease.

Nothing in this Section is intended to affect Tenant's obligation to pay Percentage Rent in the amount shown in the Basic Lease Information. For purposes of clarity, the 1% retention from Gross Revenues must be over and above the 7.5% of Gross Revenues payable to Port as Percentage Rent.

(i) In each Monthly Percentage Rent Statement and Annual Statement, Tenant shall report in reasonable detail and with supporting documentation requested by Port: Subleasing Expenses, Excess Rent, and the amounts, balance and expenditures of any Retention for Reinvestment for such immediately preceding calendar month or Lease Year, as applicable.

**21.5. Assignment of Sublease Rents.** Tenant immediately and irrevocably assigns to Port, as security for Tenant's obligations under this Lease, all of Tenant's interest in any rent from any Sublease, except that, until the occurrence of a Tenant Event of Default, Tenant has the right to receive, collect and enjoy such rents. Subtenant will pay the rent and other sums due under any Sublease directly to Port upon receiving written notice from Port that Tenant is in default under this Lease with respect to the payment of Rent. In the event that, notwithstanding the giving of such notice, Tenant collects any rent or other sums from any Subtenant, then



Tenant will hold such sums in trust for the benefit of Port and will immediately forward the same to Port. Port's collection of such rent and other sums will not constitute an acceptance by Port or attornment by such Subtenant.

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

**21.7. *Fees for Review.*** Tenant will reimburse Port for its reasonable costs in connection with the review, investigation, processing, documentation, disapproval and/or approval of any proposed Mortgage, Assignment or Sublease including without limitation reasonable attorneys' fees and costs.

**21.8. *No Release of Tenant.*** The acceptance by Port of Rent or other payment from any other person will not be deemed to be a waiver by Port of any provision of this Lease or to be a release of Tenant from any obligation under this Lease.

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

**21.10. *Transfer/Sublease Audit.*** Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit under the terms and conditions described in Section 5.3 of the accuracy of Tenant's financial reporting on a Transfer or Sublease during the Audit Period. If an audit reveals that Tenant has understated any amounts owed to Port during 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 amounts owed to Port for said Audit Period, Tenant shall be entitled to a credit against Base 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 amounts owed to Port 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.

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

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

## **22. DEFAULT BY TENANT.**

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

(a) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any 12-month period, and any such failure by Tenant after Tenant has received

two (2) such notices in such 12-month period shall constitute an Event of Default by Tenant hereunder without any further action by Port or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

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

(c) a second understatement by Tenant of its Gross Revenues or any Assignment/Sublease proceeds owed to Port for any Audit Period 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 30, as determined by Port in its sole and absolute discretion and such failure continues for a period of two (2) days following written notice from Port; or

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

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

(g) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; or

(h) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 35 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

(i) failure by Tenant to submit a Pier Flood Protection Plan within the time period set forth in the CHE Determination Notice; failure to implement any required Pier Flood Protection Measures or the Approved Pier Flood Protection Plan within the time required in the CHE Determination or failure to otherwise comply with the provisions of Section 14 within the time specified for such task in Section 14; or

(j) a Mortgage, Transfer or Sublease, or attempted Mortgage, Transfer, or Sublease of the leasehold, this Lease or the Premises by Tenant contrary to the provisions of Section 21; or

(k) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 17 above, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease, and Tenant's or Tenant's broker's failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

(l) failure by Tenant to comply with the provisions of Section 16 above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the



default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(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 (the timeframes in this subsection will be extended by Port provided Tenant promptly undertakes action to cure such default within such 10 or 15-day period and thereafter diligently prosecutes the same to completion); or

(n) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant and not specifically enumerated in this Section 22, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

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

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

(q) 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

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

## **23. PORT'S REMEDIES.**

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

**23.1. *Tenant's Right to Possession Not Terminated.*** Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions,



expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as Port deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering, repairing and preparing the Premises for reletting, the other costs of reletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. No act by Port allowed by this Section 23.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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

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

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

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

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

The "worth at the time of award" of the amounts referred to in Sections 23.2(a) and 23.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "**worth at the**



*time of award*" of the amount referred to in Section 23.2(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

**23.3. Appointment of Receiver.** 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.

**23.4. Port's Right to Cure Tenant's Default.** Port, at any time after Tenant commits an Event of Default, may, at Port's sole option, cure the default at Tenant's 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.

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

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

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

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

## **24. LITIGATION EXPENSES; ATTORNEYS' FEES.**

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

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

**24.3. City Attorney.** For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private

attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

## **25. PORT'S ENTRY ON PREMISES.**

**25.1. Entry for Inspection.** NPS, Port and their 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 is in good condition and whether Tenant is complying with its obligations under this Lease.

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

(a) To perform any necessary maintenance, repairs or restoration to the Premises or Seawall, to perform Port Work 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; or "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; or

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

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

**25.4. No Liability.** Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of NPS's, Port's or their authorized Agents entry onto the Premises as provided in this Section 25 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives.

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



## **26. SURRENDER AND QUITCLAIM.**

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

If the Premises is not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 26 and Section 13.5, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 27.1 or 27.2 below as applicable) until the Premises is surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

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

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

**26.3. Abandoned Property.** Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993 et seq., the benefits of which Tenant waives.



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

## **27. HOLDING OVER.**

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

**27.2. With Consent.** If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred 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: (a) the Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease plus any Percentage Rent which would be otherwise due.

**27.3. 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 plus any Percentage Rent which would be otherwise due.

## **28. NOTICES.**

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

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

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

## **29. REPRESENTATIONS AND WARRANTIES OF TENANT**

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

**(a) Valid Existence, Good Standing.** Tenant is a corporation duly formed and validly existing under the laws of the State of California. Tenant has the requisite power and



authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

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

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

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

(f) Financial Matters. Except to the extent disclosed to Port in writing, (i) Tenant is not in default under, and has not received 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.

### **30. TENANT'S MANAGEMENT COVENANTS.**

**30.1. 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 restaurants providing casual dining, take-out, and catering services located on Port property. Tenant shall be exclusively responsible, at no cost to Port, for the management and operation of the Improvements in addition to all other aspects of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others to provide) services as necessary and appropriate to the uses to which the Premises are put, including, but not limited to, (a) repair and maintenance of the Improvements, as more fully described in Section 11, (b) utility and telecommunications services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and grounds keeping and (e) security services for the Premises.

**30.2. Continuous Operations.** Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously beginning on the relevant Commencement Date for each parcel 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 fire or other casualty, (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.

### **31. MINERAL RESERVATION.**

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

### **32. CITY AND PORT REQUIREMENTS.**

The San Francisco Municipal Codes (available at [www.sfgov.org](http://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.

#### **32.1. Nondiscrimination.**

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the 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 32.1(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 Administrative Code and shall require all subtenants and other contractors to comply with such provisions. Notwithstanding any provision of this Lease, this subsection shall not apply to any agreement between Tenant and NPS.

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



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

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

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

**32.2. 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 Administrative Code Chapter 12Q (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 32.2(a).

(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 Office of Labor Standards Enforcement ("OLSE") when it enters into such a Sublease or Contract and shall certify to OLSE that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the OLSE has first provided Tenant with notice and an opportunity to cure the violation.

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

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

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



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

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

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

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

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

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

**32.6. 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.

**32.7. Graffiti Removal.** Tenant agrees to remove all graffiti from the Premises, including from the exterior of the Facility if included within the Premises, within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. "Graffiti" means any inscription, word, figure, marking or design that is affixed,



marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of this Lease or the Port Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

**32.9. 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.

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

**32.11. 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.

**32.12. Notification of Limitations on Contributions.** If this Lease is subject to the approval by City's Board of Supervisors, Mayor, or other elected official, the provisions of this Section 32.12 shall apply. 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, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that, if applicable, the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that if this Section 32.12 applies, Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 and must provide to City the name of each person, entity or committee described above.

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

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

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



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

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

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a "special event" (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and special events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

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

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



### **32.19. Consideration Of Criminal History In Hiring And Employment Decisions**

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

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

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

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

(e) Tenant and subtenants shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall post the notice prepared by the OLSE, available on the OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

**32.20. Local Hire.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of



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

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

**32.21. San Francisco Bottled Water Ordinance.** Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in plastic bottles with a capacity of twenty-one (21) fluid ounces or less at City-permitted events held on the Premises with attendance of more than 100 people.

**32.22. Port's Zero Waste Events and Activities Policy.** Tenant shall comply with the Port's Zero Waste Events and Activities Policy, a copy of which is attached hereto as *Exhibit M*, as it may be amended from time to time, for all special events (as defined by the policy), regardless of attendance numbers.

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

**32.24. 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.



### 33. MISCELLANEOUS PROVISIONS.

**33.1. 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 of and proper venue in the Superior Court for the City and County of San Francisco.

**33.2. 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.

**33.3. 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.

**33.4. 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.

#### **33.5. Interpretation of Lease.**

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

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

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

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

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

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by



experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

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

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

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

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

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

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

**33.9. 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.

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

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

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



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

**33.14. *Relationship of the Parties.*** Port is not, and none of the provisions in this Lease shall be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, including without limitation, NPS.

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

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

#### **34. LIMITATION ON DAMAGES.**

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

**34.2. *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.

**34.3. *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.

#### **35. 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 L*. 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.

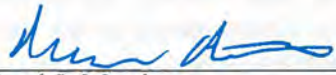
**36. APPROVAL OF BOARD OF SUPERVISORS.**

Notwithstanding anything to the contrary contained in this lease, Tenant acknowledges and agrees that no officer or employee of City has authority to commit City to this Lease unless and until City's Board of Supervisors shall have duly adopted a resolution approving this Lease and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon adoption of such a resolution, and this Lease shall be null and void if City's Mayor and the Board of Supervisors do not approve this Lease, in their respective sole discretion. Approval of this Lease by any department, commission or agency of City shall not be deemed to imply that such resolution will be enacted, nor will any such approval create any binding obligations on City.

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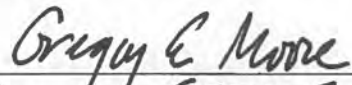
IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

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

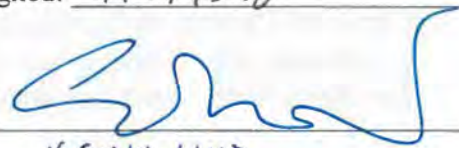
By:   
Michael J. Martin  
Deputy Director, Real Estate and Development

Date Signed: 12/17/18

**TENANT:** GOLDEN GATE NATIONAL PARKS CONSERVANCY, A  
CALIFORNIA CORPORATION

By:   
Name: Gregory E. Moore  
Title: President & CEO

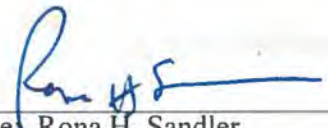
Date Signed: 11/07/2014

By:   
Name: N COLIN LIND  
Title: CHAIR, BOARD OF TRUSTEES


Date Signed: 11/7/18

Two Corporate Officers  
MUST SIGN

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

By:   
Name: Rona H. Sandler  
Deputy City Attorney

Port Commission Reso. 18-39  
BoS Reso. 317-18

Lease Prepared By: Jay Edwards, Senior Property Manager  (initial)



**EXHIBIT A**

**EFFECTIVE DATE MEMORANDUM**

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


Tenant: Golden Gate National Parks Conservancy, a California Corporation

Lease Number: L-16274

Premises: Piers 31-33, San Francisco, California

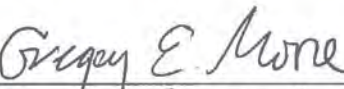
The Effective Date of the Lease is hereby established as 12/17, 2018.

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

By:   
Michael J. Martin  
Deputy Director, Real Estate and Development

Date Signed: 12/17/18

Tenant: **GOLDEN GATE NATIONAL PARKS CONSERVANCY, A CALIFORNIA CORPORATION**

By:   
Name: Gregory E. Moore  
Title: President & CEO

Date Signed: 11/7/2018

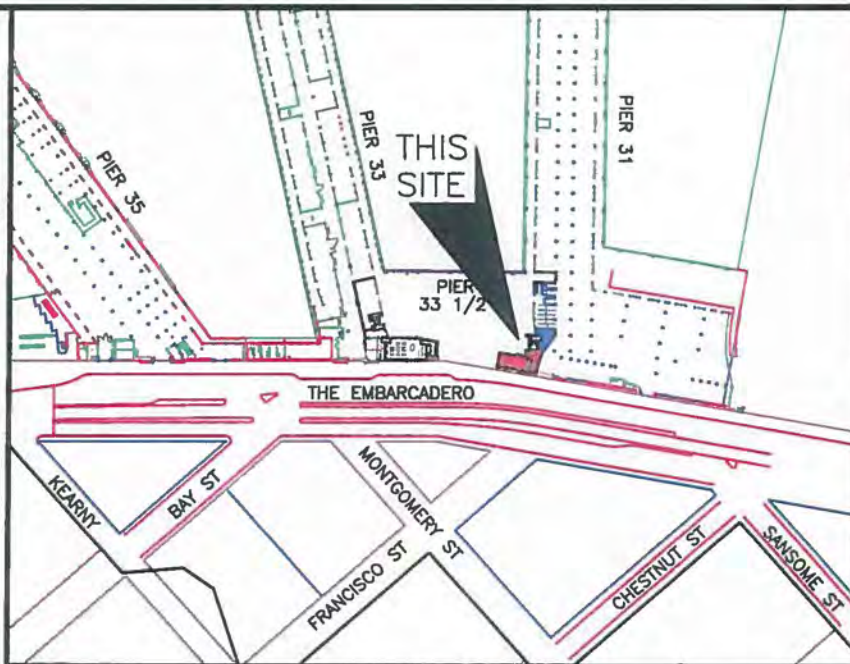
**EXHIBIT B**

**DESCRIPTION OF PREMISES  
PHASE I**

[Attachment on following page]

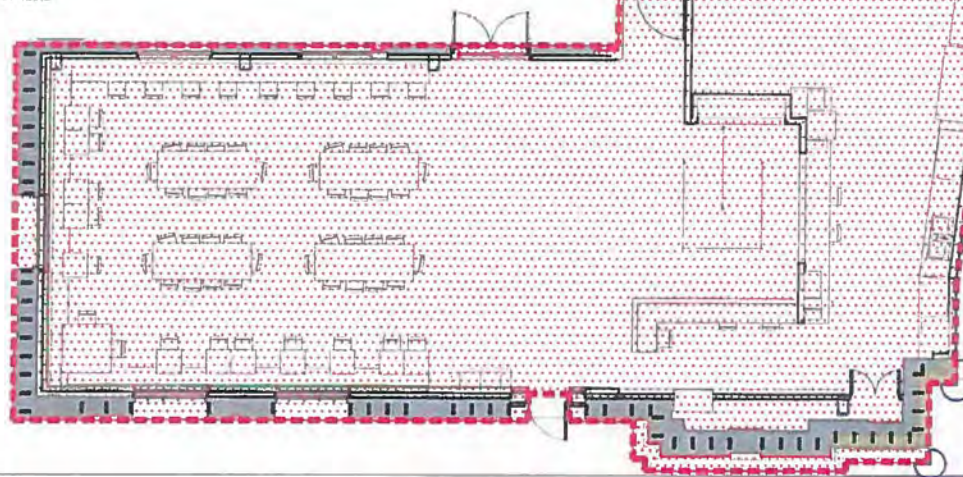


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LOCATION PLAN  
NO SCALE

PARCEL B  
STORAGE  
AREA = 1,000 Sq Ft



PARCEL A  
CAFE/ KITCHEN  
AREA = 2,760 Sq Ft

THE EMBARCADERO

PIER 31

INITIALS: PORT:

TENANT:

DATE:

EXHIBIT B  
PHASE I

LEASE NO.

L-16274



SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

TENANT

GOLDEN GATE NATIONAL  
PARKS CONSERVANCY

PHASE  
I

DRAWN BY: J. DOMINGUEZ

DATE: NOV. 28th, 2017

CHECKED BY: J. EDWARDS

SCALE: 1" = 15'

PLACE CODE NO.

1335-00

SHEET NO.

OF SHEETS





**EXHIBIT B-1**

**DESCRIPTION OF PREMISES  
PHASE II**

[Attachment on following page]

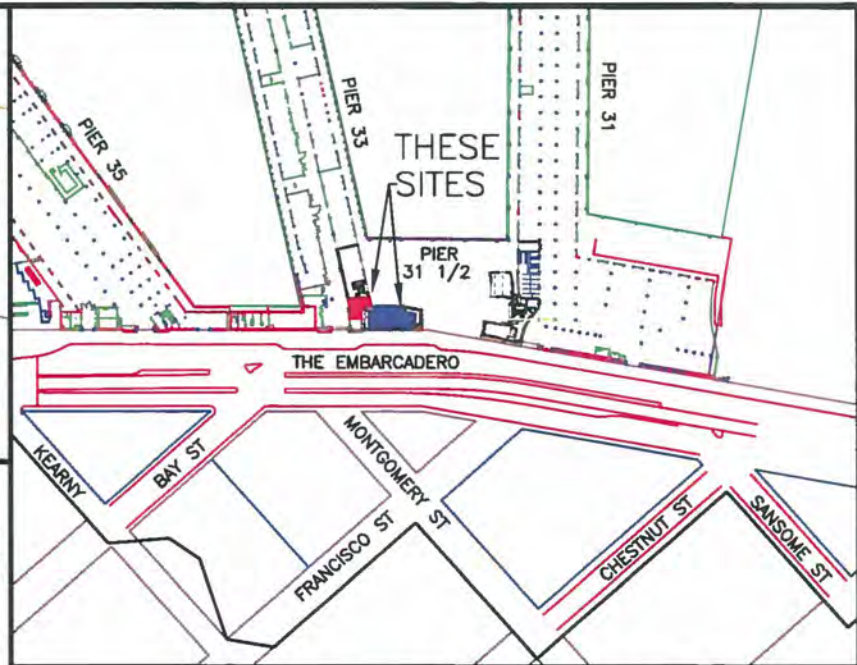


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PARCEL D  
SECOND FLOOR  
MEZZANINE = 992 Sq Ft

PARCEL E  
SHED SPACE/ STORAGE  
AREA = 1,240 Sq Ft

PARCEL C  
RETAIL SPACE  
AREA = 3,230 Sq Ft



LOCATION PLAN  
NO SCALE



THE EMBARCADERO

INITIALS: PORT:

TENANT:

DATE:

EXHIBIT B-1  
PHASE II

GM

1/07/2018

LEASE NO.

L-16274



SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

TENANT

GOLDEN GATE NATIONAL  
PARKS CONSERVANCY

PHASE II

DRAWN BY: J. DOMINGUEZ

DATE: DEC. 26th, 2017

CHECKED BY: J. EDWARDS

SCALE: 1" = 20'

PLACE CODE NO.

1335-00

SHEET NO.

OF SHEETS





**EXHIBIT B-3**

**APPROXIMATE LOCATION OF SEAWALL  
IN RELATION TO THE PREMISES**

[Attachment on following page]



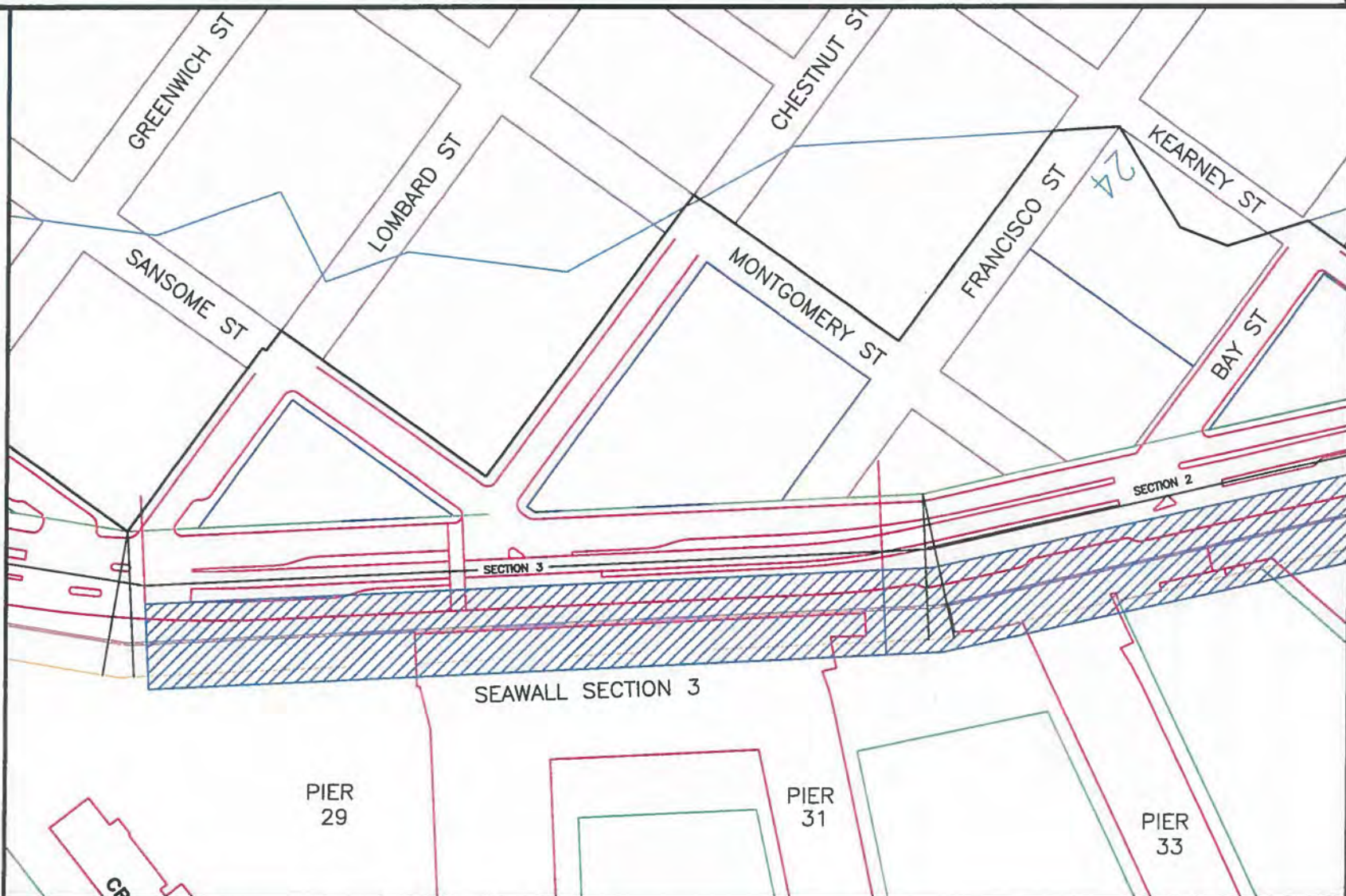
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INITIALS: PORT: \_\_\_\_\_

TENANT: CM

DATE: 11/07/2018

EXHIBIT B-3



ROCK DYKE SECTION 3

SCALE: 1"=150'

LEASE NO.

L-16724



SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

TENANT

GOLDEN GATE NATIONAL  
PARKS CONSERVANCY

PHASE  
1

DRAWN BY: J. DOMINGUEZ

DATE: DEC. 26TH 2017

CHECKED BY: J. EDWARDS

SCALE: 1"=200'

PLACE CODE NO.

1234-56

SHEET NO.

OF SHEETS





## EXHIBIT C

### INITIAL FERRY CONCESSIONER'S SCOPE OF WORK FOR WARM SHELL (PORTION OF WORK LETTER – DEFINED TERMS AND REFERENCES DEFINED BY THE INITIAL FERRY CONCESSIONER'S LEASE)

#### ***3.5 Conditions for Surrender of Portion of Parcel E; Parcel F and Parcel D- 1.***

The Embarkation Site Improvements will include build out of a “warm shell” for the following areas of the Pier 33 South Bulkhead Building and Pier 33 Shed which will then be surrendered to Port to be leased to the Conservancy for build out of the surrendered premises (“**Surrendered Premises**”) and subsequent operation of an interpretive welcome center and ancillary uses under Port Lease No. L-16274: (i) approximately 3,280 sq. ft. on the first floor (Parcel E); (ii) approximately 992 square foot on the mezzanine (after demolition of the second floor) (Parcel F); and (iii) Parcel D-1. Completion of the Embarkation Site Improvements for these three areas shall be consistent with the Schematic Design and Drawings prepared by NPS on May 22, 2017, titled Alcatraz Embarkation Site Schematic Design Package and shall include:

(a) Installation of dedicated Utilities (including but not limited to valve boxes, sewer and storm structures, electrical, water, sewer, gas, telephone boxes and vaults) to a single drop point within the Surrendered Premises within each of the (i) the Pier 33 South Bulkhead Building and (ii) Parcel D-1 sufficient to support the intended subsequent occupancy and use. Tenant shall not be responsible for distribution of Utilities within the Surrendered Premises;

(b) Installation of a meter for each Utility service that meters use only within each of the (i) the Pier 33 South Bulkhead Building and (ii) Parcel D-1;

(c) Installation of functioning heating, cooling and ventilation systems to a single point within the Surrendered Premises within the Pier 33 South Bulkhead Building. Tenant shall not be responsible for distribution of such systems within the Surrendered Premises;

(d) Installation of infrastructure to support all required fire and life safety systems including but not limited to single point of entry for water for fire suppression within each of the (i) Pier 33 South Bulkhead Building and (ii) Parcel D-1. Tenant shall not be responsible for distribution of such systems within the Surrendered Premises or for sprinklers, fire alarms, smoke detectors, or intrusion alarms;

(e) Establishment of a hub for telephone and internet service within each of the (i) Pier 33 South Bulkhead Building and (ii) Parcel D-1;

(f) Removal of all Hazardous Materials, including but not limited to ACM, PACM and lead-based paint;

(g) Installation of a minimally finished interior with open walls and an open ceiling with no grid in place and concrete floor that is poured, leveled and sanded at a minimum within the Pier 33 South Bulkhead Building;

(h) All Utilities shall be installed so as to facilitate/enable a LEED® Gold rating;

(i) All Common Area space shall be ADA compliant; and

(j) All debris and construction materials shall be removed and the areas shall comply with standards for surrender in Section 26.1.

**Initial**  
**Port:**                       
**Tenant:**



**EXHIBIT D**

**RULES AND REGULATIONS**

[Attachment on following page]

**EXHIBIT D**  
**RESTAURANT**  
**RULES AND REGULATIONS**

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

1. Noise. Sound levels emanating from indoor and/or outdoor activities on the Premises between 10:00 P.M. and 6:00 A.M. daily may not exceed the acceptable noise levels established by the San Francisco Noise Ordinance Police Code, Article 29, except as may be specifically authorized under any special event permit issued by the San Francisco Police Department. Restaurant Operator shall post signs inside the Restaurant Space at appropriate places requesting that patrons leaving the Premises after 10:00 P.M. depart in a quiet, peaceful and orderly fashion and not litter in the neighborhood. Restaurant Operator shall alert the San Francisco Police Department if exiting patrons cause any disturbance.
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.]
3. Garbage/Recycling/Composting. In accordance with local law, all waste shall be separated into the following:
  - Compost
  - Recycling
  - Trash/Landfill

Restaurant Operator shall ensure that all employees are properly trained to maximize the proper separation of compostables, recyclables, and trash. Restaurant Operator shall provide adequate collection and hauling service of these materials.

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

The containers must:

- (1) Be of appropriate number and size in light of the recyclable, compostable, and trash quantities reasonably anticipated to be generated at the location;



(2) Bear appropriate signage and be color coded to identify the type of refuse to be deposited—blue for recyclables, green for compostables, and black for trash and meet any additional design criteria established by regulation; and,

(3) Be placed as close together as possible to provide equally convenient access to users.

(4) Restaurant Operator shall not use the Port's trash cans, or Big Bellys, for the disposal of their trash from the restaurant.

Restaurant Operator shall not put any fats, oils or grease in trash collection containers. Restaurant Operator 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.

4. Litter. Restaurant Operator 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 The Embarcadero and between the Premises and all adjacent properties reasonably clean of debris and litter; (ii) once each day between thirty minutes after closing and 8:00 A.M. the following morning, collect and dispose of any discarded trash and litter; (iii) remove trash and litter from any landscaped areas within the Premises; and (iv) with the permission of adjacent Port tenants enter upon adjacent properties to remove litter thereon originating on the Premises.
5. Landscaped and Hardscape Areas. Take reasonable precautions to minimize any damage to landscaping and hardscape, if any, from restaurant vendors, service people and patrons.
6. Traffic. Coordinate all vehicular deliveries and pickups to occur at times and in a manner that will not unreasonably impede the flow of traffic on The Embarcadero or interfere with the safe operation of SFMTA vehicles.
7. Advertising/Signage. Restaurant Operator shall place no temporary or promotional advertising, banners or signs on the interior of the windows on the Premises intended to be seen from the adjacent streets or properties except as may be previously approved in writing by the Executive Director or his/her representative.
8. Compliance with Rules. Restaurant Operator shall take commercially reasonable efforts to cause all vendors, service persons and patrons to comply with the applicable Restaurant Rules and Regulations.
9. Changes. The Restaurant Rules and Regulations may be changed from time to time to reflect changing circumstances or Port policies upon mutual consent of the Restaurant Operator and the Executive Director of the Port or as adopted by Port for restaurant operators within Port's jurisdiction.

10. Plumbing System and FOG. It is the Restaurant Operator's sole responsibility to maintain plumbing system.

Restaurant Operator shall be prohibited from:

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

Restaurant Operator shall be required to:

- comply with all directives from the SF PUC regarding the FOG program including:
- Use an Automatic Grease Removal Device (AGRD) on all sinks, as required.
- Ensure that all grease removal devices are cleaned at least every 90 days by a grease hauler certified by the California Department of Food and Agriculture.
- Maintain documentation of service and maintenance records.
- Develop and implement a written maintenance program for the sewer lines.

11. These Rules and Regulations are in addition to, and shall not be construed to modify or amend the terms and conditions of the Lease. Port reserves the right at any time and from time to time to change or rescind any one or more or all of these Rules and Regulations or to make such other and further Rules and Regulations as the Port shall determine is in the best interest of the Port, the environment and/or Restaurant Operator, its Agents and Invitees. Upon notice by Port, such revised or new rules shall be binding upon Restaurant Operator.

12. In the event of any conflict between these or any modified rules and regulations and the Lease, the terms and provisions of the Lease shall prevail. Additionally, Tenant shall reimburse the Port for any and all costs related to the maintenance of plumbing and sewer lines.

Port: Initial:   
Tenant: 





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**EXHIBIT E**  
**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 the Basic Lease Information, this Work Letter and its attachments and associated Port Building Permits and any amendments thereto.

**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 respective Phase I and Phase II Initial Tenant Improvements Outside Completion Date, as defined in the Basic Lease Information, to such later date of Completion as determined by Port 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 in accordance with the Schematic Design and Drawings, Tenant's obligations to obtain final approvals for the Initial Tenant Improvements, and the Schedule of Performance. Before the termination of this Work Letter, as to each of the Phase I and Phase II Improvements, this Work Letter shall control in the event of any inconsistency between this Work Letter and the Lease. Upon expiration 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 Effective Date and shall expire on the date of Completion of 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 by the respective Phase I and Phase II Initial Tenant Improvements Outside Completion 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 13 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 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 the 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) workers' compensation with statutory limits and employer's



liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice. In addition, Tenant shall carry "**Builder's All Risk**" insurance covering 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 start of construction, Tenant shall provide Port, at Tenant's sole cost and expense, (i) 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 or, (ii) a financial guarantee, in a form approved by Port in its sole discretion, from a third party with liquid assets in an amount of no less than One Hundred Twenty-five percent (125%) of the cost of the Initial Tenant Improvements. Each bond shall be in an amount equal to one hundred percent (100%) 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. 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.

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

**2.8. Port Rights of Access.** Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Premises to the extent reasonably necessary to carry out the purposes of this Work Letter, including, but not limited to, the inspection of the 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. For purposes of clarity, this Section 2.8 does not apply to inspections, approvals, or other actions taken by the CHE in his/her regulatory capacity as the Port's chief building official.

**2.9. 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, test and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Port for approval before installation pursuant to Port's sign policy, which approval may not be withheld unreasonably. 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 prepared by NPS on May 22, 2017, titled Alcatraz Embarkation Site Schematic Design Package, and attached hereto as part of the Scope of Development which includes, without limitation, the following:

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

**(2)** Site plans at appropriate scale showing relationships of the Initial Tenant Improvements with their respective uses, designating public areas, open spaces, seating areas, walkways, canopies, buildings, service areas, location of the monument sign and subordinate wayfinding signs. 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 and site cross sections showing height relationships of those areas noted above.



(5) Booklets submitted to the San Francisco Bay Conservation and Development Commission (BCDC) Design Review Board dated July 27, 2017 and January 22, 2018 that are hereby incorporated by reference.

(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, canopies, 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) Cross section of buildings, canopies, and site showing all typical dimensions, materials, and connections at appropriate scale.

(4) Floor plans.

(5) Preliminary interior improvement plans.

(6) Plans and other detailed illustrations to sufficiently describe the proposed public areas including but not limited to, walls, fences, railings, benches, bicycle racks, interpretive markers, plaques, models, pavements, exterior lighting, signs, trash/recycling receptacles, and other site furnishings.

(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.

**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 respond to Tenant's request for approval within such ninety (90) day period, then Tenant may provide a second notice to Port requesting Port's approval (the "Second Notice"). The Second Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: **"APPROVAL REQUEST FOR ALCATRAZ EMBARKATION/CONSERVANCY LEASE. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve or disapprove within five (5) business days following receipt of the Second Notice, Port's failure to respond shall be deemed approval.

(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 to Tenant's request for approval within such thirty (30) day period, then Tenant may provide a second notice to Port requesting Port's approval (the "Second Notice"). The Second Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: **"APPROVAL REQUEST FOR ALCATRAZ EMBARKATION/CONSERVANCY LEASE. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve or disapprove within five (5) business days following receipt of the Second Notice, Port's failure to respond shall be deemed approval.



**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. Completion of Construction.**

**4.1. Completion.** Subject to Force Majeure, Tenant shall use its best efforts to commence, prosecute and Complete the Initial Tenant Improvements by the respective Phase I and Phase II Initial Tenant Improvements Outside Completion Date. 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. Tenant's obligation to Complete construction of the Initial Tenant Improvements shall not be subject to Port delays, Regulatory Approval delays or any other delays (other than Force Majeure).

**4.2. Port's Remedy for Tenant's Failure to Timely Complete Construction.** In the event Tenant fails to Complete the Initial Tenant Improvements by the respective Phase I and Phase II Initial Tenant Improvements Outside Completion Date, at Port's discretion, Tenant shall pay to Port an amount equaling Three Hundred Dollars (\$300.00) per day commencing on the Initial Tenant Improvements Completion Date and continuing at such rate until Port has determined that the Initial Tenant Improvements are Complete in addition to the Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Port delays or other reasons (other than Force Majeure as provided in this Work Letter).

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

TENANT \_\_\_\_\_

PORT \_\_\_\_\_

#### **5. Certificate Of Completion**

##### **5.1. Completion.**

(a) After Tenant has Completed 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 Completion determination.

(b) Port's issuance of any Completion determination 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.

(c) **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.

## **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 authorizations, permits and approvals 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**

<b>ATTACHMENT 1</b>	<b>SCOPE OF DEVELOPMENT (INCLUDING THE SCHEMATIC DESIGN AND DRAWINGS AND SCHEDULE OF PERFORMANCE)</b>
<b>ATTACHMENT 2</b>	<b>FORM OF PERFORMANCE BOND &amp; PAYMENT (LABOR AND MATERIAL) BOND</b>



**ATTACHMENT 1**  
**SCOPE OF DEVELOPMENT**

Tenant shall be responsible for building out the following: Parcel A Pier 31 Bulkhead into a casual dining restaurant; Parcel B Pier 31 Shed into restaurant storage; and Parcel C Pier 33 South Bulkhead Building into a visitor contact station and interpretive retail on the first floor and associated administrative space in the mezzanine. Improvements shall be consistent with the Alcatraz Embarkation Site Schematic Design dated May 22, 2017, including the subsequent Booklets submitted to the San Francisco Bay Conservation and Development Commission (BCDC) Design Review Board dated July 27, 2017 and January 2018 that are hereby incorporated by reference as part of the Schematic Design and Drawings.

**Pier 31 Bulkhead – casual dining restaurant**

Tenant is responsible for build out of a casual dining restaurant space from an “as is” condition to Completion, including but not limited to:

- Dedicated utility services (electrical, gas, water) from the core utility area shown in *Exhibit G* and distributed throughout the Premises. Dedicated meters are required for electricity, gas, water and any other utility. Tenant will pay the utility provider directly for all utility charges. All Utilities must be above the deck to the point of connection in the utility core area. Sewer will require a pit with a holding tank and sump pump.
- Functioning heating and ventilation system to and throughout the Premises.
- Infrastructure sufficient to support fire sprinkler and life safety systems.
- All seismic upgrade work, to the extent required in connection with the Initial Tenant Improvements.
- All Hazardous Material abatement, to the extent required in connection with the Initial Tenant Improvements..
- All exterior envelope work.
- Hub for telecom/internet.
- All soft costs related to the design of interior food preparation and service areas to meet all permitting and regulatory requirements.
- Point of Sale stations and associated telecom/internet connections and distribution.
- All interior finishes including flooring, wall and ceiling treatments, lighting.
- All food service preparation equipment and associated ventilation.
- All interior furnishings, fixtures, casework, décor and window treatments.
- Window modifications if required to meet new interior layout.
- All interior code required signage, wayfinding and identification signage.

**Pier 33 Bulkhead – visitor contact station and interpretive retail**

Tenant is responsible for build out of a visitor contact station and interpretive retail (first floor and small mezzanine) from a warm shell as described in *Exhibit C* to Completion, including but not limited to:

- All soft costs related to the design of first floor Welcome Center and mezzanine office to meet Port and regulatory permitting requirements. Distribution of all utilities to final locations based upon interior layout.
- Point of sale stations and associated telecom/internet connections and distribution.
- All interior finishes including flooring, wall and ceiling treatments and lighting.
- All interior fixtures for interpretative and retail displays and sales.
- All interpretative exhibits, signage and media.
- All interior furnishings, including mezzanine office furnishings, décor and window treatments.
- All interior work related to the interpretation of the Bayside History Walk.
- All interior code required signage, wayfinding and identification signage.



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ATTACHMENT 2

PERFORMANCE BOND AND PAYMENT (LABOR & MATERIALS) BOND

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

hereinafter designated as the "Principal", a Lease by Port Commission Resolution No. 18-39, adopted June 25, 2018 for:

***Initial Tenant Improvements***  
**Lease No. 16724 (the "Contract")**

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

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

NOW, THEREFORE, we the Principal and

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

(PERFORMANCE BOND)

(PAYMENT BOND)

and

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

(PERFORMANCE BOND)

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

END OF DOCUMENT





(PAYMENT BOND)

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

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

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

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

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

Approved as to form:  
Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

\_\_\_\_\_  
Surety

By: \_\_\_\_\_



**EXHIBIT F**  
**SCOPE OF WORK FOR PIER 31 1/2 MARGINAL WHARF IMPROVEMENTS**

# EXHIBIT F



SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

## MARINE STRUCTURAL PROJECT IV ALCATRAZ FERRY EMBARCACTION SITE REPAIRS (PIER 31 1/2 SUBSTRUCTURE REPAIRS) 100% DESIGN

VICINITY MAP



PROJECT MAP



DRAWING INDEX

SHEET NO.	TITLE	REV.	DATE
G1	TITLE SHEET-DRAWING INDEX	0	11-18-17
G2	GENERAL NOTES-1 OF 2	0	11-18-17
G3	GENERAL NOTES-2 OF 2	0	11-18-17
G4	TYPICAL DETAILS	0	11-18-17
G5	LIVE LOAD DIAGRAM	0	11-18-17
S1	SITE PLAN - OVERALL	0	11-18-17
S2	PARTIAL SOFFIT PLAN - PIER 33	0	11-18-17
S3	PARTIAL SOFFIT PLAN - ORIGINAL MARGINAL WHARF-1 OF 2	0	11-18-17
S4	PARTIAL SOFFIT PLAN - ORIGINAL MARGINAL WHARF-2 OF 2	0	11-18-17
S5	PARTIAL SOFFIT PLAN - PIER 31	0	11-18-17
S6	SOFFIT PLAN - PIER 31 1/2 INFILL WHARF	0	11-18-17
S7	TOP OF DECK PLAN - PIER 31 1/2 INFILL WHARF	0	11-18-17
S8	PARTIAL PILE PLAN - PIER 33	0	11-18-17
S9	PARTIAL PILE PLAN - ORIGINAL MARGINAL WHARF-1 OF 2	0	11-18-17
S10	PARTIAL PILE PLAN - ORIGINAL MARGINAL WHARF-1 OF 2	0	11-18-17
S11	PARTIAL PILE PLAN - PIER 31 APRON	0	11-18-17
S12	PILE PLAN - PIER 31 1/2 INFILL WHARF	0	11-18-17
S13	SOFFIT DAMAGE TABLES 1 OF 2	0	11-18-17
S14	SOFFIT DAMAGE TABLES 2 OF 2	0	11-18-17
S15	PILE DAMAGE TABLES	0	11-18-17

DRAWING INDEX

SHEET NO.	TITLE	REV.	DATE
S16	SOFFIT REPAIR DETAILS	0	11-18-17
S17	BEAM AND PILE CAP-REPAIR DETAILS	0	11-18-17
S18	PILE REPAIR-DETAILS 1 OF 2	0	11-18-17
S19	PILE REPAIR-DETAILS 2 OF 2	0	11-18-17
S20	TOPPING SLAB AND CANTILEVER	0	11-18-17
S21	SUNKEN SLAB AND PILE HOLE REPAIRS	0	11-18-17

### NOTE:

SHEET NO. G1 AS USED AS REFERENCE ON ALL DRAWINGS IS TYPICALLY CALLED AS P31.5-G1 IN THE TITLE BLOCK.

FILE LOCATION: C:\Users\JAN\Documents\COMP\PIER 31 1/2\PIER 31 1/2-01-04-2017

NO.	DATE	DESCRIPTION	BY	APP.
1	11-18-17	100% DESIGN SUBMITTAL	JAN	1/2/17



SAN FRANCISCO PORT COMMISSION  
PORT OF SAN FRANCISCO  
DEPARTMENT OF ENGINEERING

**COWI** Manne  
North America  
A Business Unit of COWI North America, Inc.  
1300 Clay Street, 7th Floor Oakland, CA 94612  
TEL: 415.539.8872 FAX: 415.539.8718  
WWW.COWI.COM

DESIGNED: DATE: 05/23/17  
JWSW  
CHECKED: DATE: 05/23/17  
JWSW

APPROVED BY: SAN FRANCISCO PORT COMMISSION  
DATE: 12/5/17  
R. J. J. J.  
CHIEF HARBOR ENGINEER

SCALE: AS SHOWN  
REV. NO. 0

MARINE STRUCTURAL PROJECT IV  
ALCATRAZ FERRY EMBARCACTION SITE REPAIRS  
PIER 31 1/2 SUBSTRUCTURE REPAIRS  
TITLE SHEET  
DRAWING INDEX

CONTRACT NO. 2750  
DRAWING NO. A271120-01  
SHEET NO. P31.5-G1  
01 OF 26











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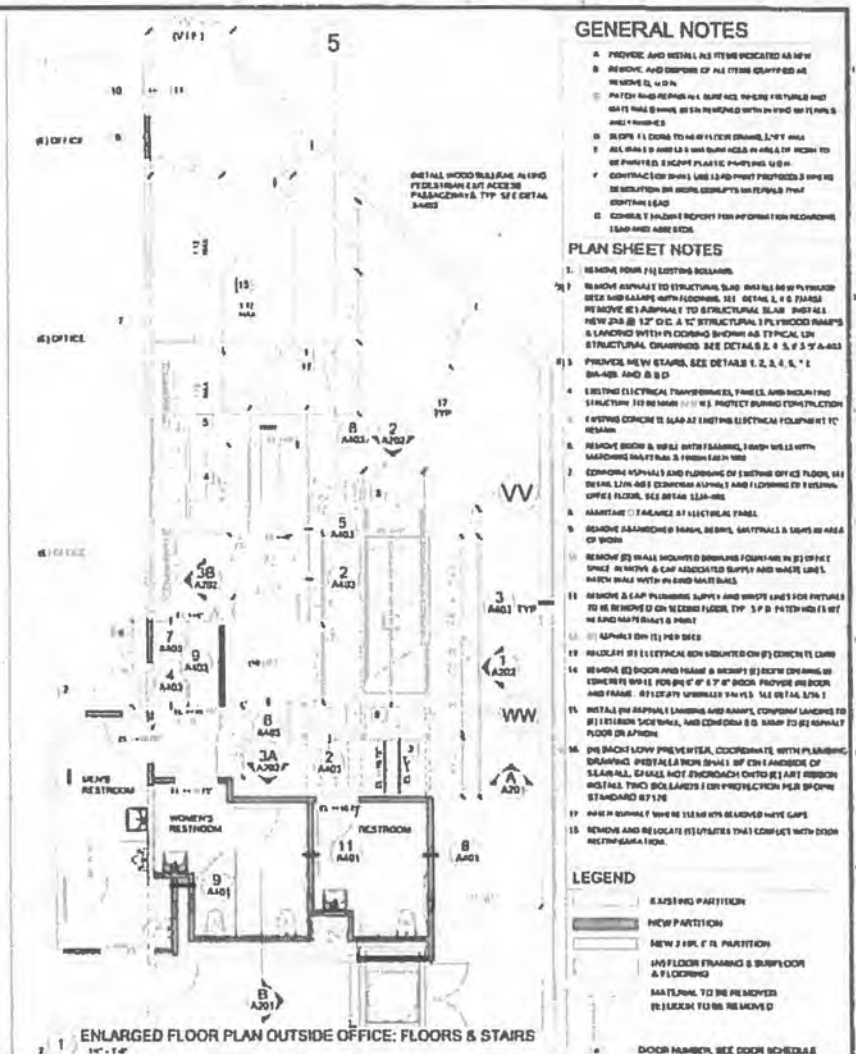
**EXHIBIT G**  
**UTILITY CORE**

# EXHIBIT G

ABBREVIATIONS	GENERAL NOTES	APPLICABLE CODES	PROJECT DESCRIPTION	LIST OF DRAWINGS
<p><b>ABBREVIATIONS</b></p> <p>1. 1/2" = 1'-0"</p> <p>2. 1/4" = 3'-0"</p> <p>3. 1/8" = 6'-0"</p> <p>4. 1/16" = 12'-0"</p> <p>5. 1/32" = 24'-0"</p> <p>6. 1/64" = 48'-0"</p> <p>7. 1/128" = 96'-0"</p> <p>8. 1/256" = 192'-0"</p> <p>9. 1/512" = 384'-0"</p> <p>10. 1/1024" = 768'-0"</p> <p>11. 1/2048" = 1536'-0"</p> <p>12. 1/4096" = 3072'-0"</p> <p>13. 1/8192" = 6144'-0"</p> <p>14. 1/16384" = 12288'-0"</p> <p>15. 1/32768" = 24576'-0"</p> <p>16. 1/65536" = 49152'-0"</p> <p>17. 1/131072" = 98304'-0"</p> <p>18. 1/262144" = 196608'-0"</p> <p>19. 1/524288" = 393216'-0"</p> <p>20. 1/1048576" = 786432'-0"</p> <p>21. 1/2097152" = 1572864'-0"</p> <p>22. 1/4194304" = 3145728'-0"</p> <p>23. 1/8388608" = 6291456'-0"</p> <p>24. 1/16777216" = 12582912'-0"</p> <p>25. 1/33554432" = 25165824'-0"</p> <p>26. 1/67108864" = 50331648'-0"</p> <p>27. 1/134217728" = 100663296'-0"</p> <p>28. 1/268435456" = 201326592'-0"</p> <p>29. 1/536870912" = 402653184'-0"</p> <p>30. 1/1073741824" = 805306368'-0"</p> <p>31. 1/2147483648" = 1610612736'-0"</p> <p>32. 1/4294967296" = 3221225472'-0"</p> <p>33. 1/8589934592" = 6442450944'-0"</p> <p>34. 1/17179869184" = 12884901888'-0"</p> <p>35. 1/34359738368" = 25769803776'-0"</p> <p>36. 1/68719476736" = 51539607552'-0"</p> <p>37. 1/137438953472" = 103079215104'-0"</p> <p>38. 1/274877906944" = 206158430208'-0"</p> <p>39. 1/549755813888" = 412316860416'-0"</p> <p>40. 1/1099511627776" = 824633720832'-0"</p> <p>41. 1/2199023255552" = 1649267441664'-0"</p> <p>42. 1/4398046511104" = 3298534883328'-0"</p> <p>43. 1/8796093022208" = 6597069766656'-0"</p> <p>44. 1/17592186044416" = 13194139533312'-0"</p> <p>45. 1/35184372088832" = 26388279066624'-0"</p> <p>46. 1/70368744177664" = 52776558133248'-0"</p> <p>47. 1/140737488355328" = 105553116266496'-0"</p> <p>48. 1/281474976710656" = 211106232532992'-0"</p> <p>49. 1/562949953421312" = 422212465065984'-0"</p> <p>50. 1/1125899906842624" = 844424930131968'-0"</p> <p>51. 1/2251799813685248" = 1688849860263936'-0"</p> <p>52. 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1/324518553658426726783556020576256" = 243388915243820045087367015432192'-0"</p> <p>109. 1/649037107316853453567112041152512" = 486777830487640090174734030864384'-0"</p> <p>110. 1/1298074214633706907134224022305024" = 973555660975280180349468061728768'-0"</p> <p>111. 1/2596148429267413814268448044610048" = 1947111321950560360698936123457536'-0"</p> <p>112. 1/5192296858534827628536896089220096" = 3894222643901120721397872246915072'-0"</p> <p>113. 1/10384593717069655257073792178440192" = 7788445287802241442795744493830144'-0"</p> <p>114. 1/20769187434139310514147584356880384" = 15576890575604482885591488987660288'-0"</p> <p>115. 1/41538374868278621028295168713760768" = 31153781151208965771182977975320576'-0"</p> <p>116. 1/83076749736557242056590337427521536" = 62307562302417931542365955950641152'-0"</p> <p>117. 1/166153499473114484113180674855043072" = 124615124604835863084731911901282304'-0"</p> <p>118. 1/332306998946228968226361349710086144" = 249230249209671726169463823802564608'-0"</p> <p>119. 1/664613997892457936452722699420172288" = 508460498419343452338927647605129216'-0"</p> <p>120. 1/1329227995784915872905445398840344576" = 1016920996838686904677855295210258432'-0"</p> <p>121. 1/2658455991569831745810890797680689152" = 2033841993677373809355710590420516864'-0"</p> <p>122. 1/5316911983139663491621781595361378304" = 4067683987354747618711421180841033728'-0"</p> <p>123. 1/10633823966279326983243563180722756608" = 8135367974709495237422842361682067456'-0"</p> <p>124. 1/21267647932558653966487126361445513216" = 16270735949418990474845684723364134912'-0"</p> <p>125. 1/42535295865117307932974252722891026432" = 32541471898837980949691369446728269824'-0"</p> <p>126. 1/85070591730234615865948505445782052864" = 65082943797675961899382738893456539648'-0"</p> <p>127. 1/170141183460469231731897010891564105728" = 130165887595351923798765477786913079296'-0"</p> <p>128. 1/340282366920938463463794021783128211536" = 260331775190703847597530955573826158592'-0"</p> <p>129. 1/680564733841876926927588043566256423072" = 520663550381407695195061911147652317184'-0"</p> <p>130. 1/1361129467683753853855176087132512846144" = 1041327100762815390390123822295304634368'-0"</p> <p>131. 1/2722258935367507707710352174265025692288" = 2082654201525630780780247644590609268736'-0"</p> <p>132. 1/5444517870735015415420704348530051384576" = 4165308403051261561560495289181218537472'-0"</p> <p>133. 1/1088903574147003083084140869706010276912" = 8330616806102523123120990578362437074944'-0"</p> <p>134. 1/2177807148294006166168281739412020553824" = 16661233612205046246241981156724874149888'-0"</p> <p>135. 1/4355614296588012332336563478824041107648" = 33322467224410092492483962313449748299776'-0"</p> <p>136. 1/8711228593176024664673126957648082215296" = 66644934448820184984967924626899496599552'-0"</p> <p>137. 1/1742245718635204932934625391528164443072" = 133289868897640369969935849253798993199104'-0"</p> <p>138. 1/3484491437270409865869250783056328886144" = 266579737795280739939871698507597986398208'-0"</p> <p>139. 1/6968982874540819731738501566112657772288" = 533159475590561479879743397015195972796416'-0"</p> <p>140. 1/13937965749081639463477003132225315544576" = 1066318951181122959759486794030391945592832'-0"</p> <p>141. 1/27875931498163278926954006264450631089152" = 2132637902362245919518973588060783891185664'-0"</p> <p>142. 1/55751862996326557853908012528901262178304" = 4265275804724491839037947176121567782371328'-0"</p> <p>143. 1/111503725992653115707816025057802524356608" = 8530551609448983678075894352243135564742656'-0"</p> <p>144. 1/223007451985306231415632050115605048713216" = 17061103218897967356151788704486271129485312'-0"</p> <p>145. 1/446014903970612462831264100231210097426304" = 34122206437795934712303577408972542258970624'-0"</p> <p>146. 1/892029807941224925662528200462420194852608" = 68244412875591869424607154817945084517941248'-0"</p> <p>147. 1/1784059615882449851325056400924840389705216" = 136488825751183738849214309635890169035882976'-0"</p> <p>148. 1/3568119231764899702650112801849680779410432" = 27297765150236747769842861927178033807176576'-0"</p> <p>149. 1/7136238463529799405300225603699361558820864" = 54595530300473495539685723854356067614353152'-0"</p> <p>150. 1/14272476927059598810600451207398723117641728" = 109191060600946991079371447708712135228706304'-0"</p> <p>151. 1/28544953854119197621200902414797446235283456" = 218382121201893982158742895417424270457412608'-0"</p> <p>152. 1/57089907708238395242401804829594892470566912" = 436764242403787964317485790834848540914825216'-0"</p> <p>153. 1/114179815416476790484803609659189784941132224" = 873528484807575928634971581669697081829650432'-0"</p> <p>154. 1/228359630832953580969607219318379569882264448" = 1747056969615151857269943163339394163659300864'-0"</p> <p>155. 1/456719261665907161939214438636759139764528896" = 3494113939230303714539896326678788327318601728'-0"</p> <p>156. 1/913438523331814323878428877273518279529057792" = 6988227878460607429079792653357576654637203456'-0"</p> <p>157. 1/1826877046663628647756857754547355559058115584" = 13976455756921214858159585306715153309274406912'-0"</p> <p>158. 1/3653754093327257295513715509094711118116231168" = 27952911513842429716319170613430306618548813824'-0"</p> <p>159. 1/7307508186654514591027431018189422236232622336" = 55905823027684859432638341226860613237097627648'-0"</p> <p>160. 1/14615016373309029182054862036378844472465244672" = 111811646055369718865276682453721264754195255296'-0"</p> <p>161. 1/29230032746618058364109724072757688944930489344" = 223623292110739437730553364907442529508390510592'-0"</p> <p>162. 1/58460065493236116728219448145515377889860978688" = 447246584221478875461106729814885059016781021184'-0"</p> <p>163. 1/116920130986472233456438896291030755779721957376" = 894493168442957750922213459629771018033562042368'-0"</p> <p>164. 1/233840261972944466912877792582061511559443914752" = 1788986336885915501844426919259542036067124084736'-0"</p> <p>165. 1/467680523945888933825755585164123023118887829504" = 3577972673771831003688853838519084072134248169472'-0"</p> <p>166. 1/935361047891777867651511170328246046237775659008" = 7155945347543662007377707677038168144268496338944'-0"</p> <p>167. 1/1870722095783555735303022340656492092475551318016" = 14311890695087324014755415354076336288536986777888'-0"</p> <p>168. 1/3741444191567111470606044681312984184951102636032" = 28623781390174648029510830708152672577073973555776'-0"</p> <p>169. 1/7482888383134222941212089362625968369902205272064" = 57247562780349296059021661416305345154147947111552'-0"</p> <p>170. 1/14965776766268445882424178725251936739804410544128" = 114495125560698592118043322832610690308295894223104'-0"</p> <p>171. 1/29931553532536891764848357450503873679608821088256" = 228990251121397184236086645665221380616591788446208'-0"</p> <p>172. 1/59863107065073783529696714901007747359217642176512" = 457980502242794368472173291330442761233183576892416'-0"</p> <p>173. 1/119726214130147567059393429802015494718435284353024" = 915961004485588736944346582660885522466367153784832'-0"</p> <p>174. 1/239452428260295134118786859604030989436870568706048" = 18319220089711774738886931653217710449327343</p>				







☐ EXISTING PARTITION  
☒ NEW PARTITION  
☐ NEW 2 IN. R. R. PARTITION  
☐ 1st FLOOR FRAMING & SUBFLOOR & FLOORING  
☐ MATERIAL TO BE REMOVED  
☐ (E) LEXAN TO BE REMOVED

PIER 31 UTILITY & RESTROOM PROJECT	278 0000 000 18004-31-A 278 0000 000
ENLARGED PLANS	A-102 4 1/2 80

Initial: cm KE





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**EXHIBIT H**  
**LOCAL HIRE PLAN**

**San Francisco Local Hiring Policy for Construction Fact Sheet**

- The effective date of the San Francisco Local Hiring Policy for Construction is March 25, 2011. Contracts first advertised for bid on or after March 25, 2011 are covered by the new ordinance.
- The mandatory participation level is 30% of all project hours within each trade to be performed by local residents, with no less than 15% of all project work hours within each trade to be performed by disadvantaged workers. All contractors, regardless of tier, are subject to these requirements.
- A local resident is defined as an individual who is domiciled within the City and County of San Francisco at least 7 days prior to commencing work on the project. An individual may have only one domicile, which is their principal residence and where they intend to return when they are absent.
- The mandatory participation level will increase annually over seven years up to a mandatory participation level of 50% of project work hours within each trade performed by local residents, with no less than 25% of all project hours within each trade performed by disadvantaged workers.
- At least 50% of the project work hours performed by apprentices within each trade shall be performed by local residents, with no less than 25% of project work hours performed by apprentices within each trade to be performed by disadvantaged workers.
- The local hiring ordinance applies to contracts for public work or improvement projects in excess of \$400,000.
- The ordinance establishes various consequences of non-compliance with the policy, including the authority of assessment of penalties against contractors that do not meet the local hiring requirements.
- The penalty for failing to meet the local hiring requirement shall be the amount equal to the journeyman or apprentice prevailing wage rate for the primary trade used by the contractor for each hour the contractor fell short.
- Contractors may request a conditional waiver from local hiring requirements on a project-specific basis for "specialized trades," by receiving credit for local hiring on non-covered projects, or sponsoring new apprentices.
- A contractor may utilize the Office of Economic and Workforce Development's CityBuild Referral Program if their preferred method of hiring does not enable them to meet the local hiring requirements of the policy.
- The Office of Economic and Workforce Development is charged with the enforcement of this policy.
- For more information and updates about the San Francisco Local Hiring Policy for Construction, please visit [www.workforcedevelopmentsf.org](http://www.workforcedevelopmentsf.org)
- Questions about the new policy can also be addressed by emailing [Local.Hire.Ordinance@sfgov.org](mailto:Local.Hire.Ordinance@sfgov.org) or by calling the Local Hire hotline at 415-701-4894.







CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
CITYBUILD PROGRAM



LOCAL HIRING PROGRAM  
OEWD FORM 1  
CONSTRUCTION CONTRACTS

**FORM 1: LOCAL HIRING WORKFORCE PROJECTION**

Contractor: \_\_\_\_\_ Project Name: \_\_\_\_\_ Contract #: \_\_\_\_\_

The Contractor must complete and submit this Local Hiring Workforce Projection (Form 1) within 15 days of award of contract. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount. Notice to Proceed (NTP) will not be issued until the City receives a completed Form 1 from Contractor. The Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by Contractor's failure to submit an accurate and complete Form 1 for its workforce and the workforce of its Subcontractors in a timely manner.

**Will you and your Subcontractors be able to meet the mandatory Local Hiring Requirements?**

- ☐ **YES** (Please provide information for all contractors performing construction work in Table 1 below.)
- ☐ **NO** (Please complete Table 1 below and Form 4: Conditional Waivers.)

**INSTRUCTIONS FOR COMPLETING TABLE 1:**

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.)
3. Contractor may achieve the mandatory requirement for each trade using any combination of Subcontractors.
4. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by San Francisco residents.
5. Additional blank form is available at our Website: [www.oewd.org](http://www.oewd.org). For assistance or questions in completing this form, contact the CityBuild (415) 581-2363 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**TABLE 1: WORKFORCE PROJECTION**

Trade Craft	Contractor <i>List contractors by Trade Craft</i>		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
<i>Example:</i> Laborer	Contractor X	Journey	800	100	12.5%
		Apprentice	200	100	50%
<i>Example:</i> Laborer	Contractor Y	Journey	500	100	20%
		Apprentice	0	0	0
<i>Example:</i>	<b>TOTAL LABORER</b>	Journey	1300	200	15%
		Apprentice	200	100	50%
<i>Example:</i>	<b>TOTAL</b>		1500	300	20%
		Journey			
		Apprentice			
		Journey			
		Apprentice			
		Journey			
		Apprentice			

Name of Authorized Representative

Signature

Date

Phone

Email





CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
CITYBUILD PROGRAM



LOCAL HIRING PROGRAM  
OEWD FORM 2  
CONSTRUCTION CONTRACTS

**FORM 2: LOCAL HIRING PLAN**

Contractor: \_\_\_\_\_ Project Name: \_\_\_\_\_ Contract #: \_\_\_\_\_

If the Engineer's Estimate for this Project exceeds **\$1 million**, then Contractor must submit a Local Hiring Plan using this Form 2 through the City's Project Reporting System. NTP will not be issued until Contractor submits a completed Form 2. Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by the Contractor's failure to submit a completed Form 2 in a timely manner. The Local Hiring Plan must be approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved Conditional Waivers (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

**COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.**

**INSTRUCTIONS:**

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: [www.oewd.org](http://www.oewd.org). For assistance or questions in completing this form, contact the CityBuild (415) 581-2363 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.**

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
<i>Example: Laborer</i>	1500	300	20%	200	100	50%

**List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft**

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor <input type="checkbox"/> Joe Smith	100	100	200	3/25/11	60	Joe Smith
Contractor <input type="checkbox"/> Michael Lee	100	0	100	5/25/11	30	Michael Lee

**\*We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.**

City Use Only	
OEWD Approval	<input type="checkbox"/> Yes <input type="checkbox"/> No
Signature and Date:	





## FORM 4: CONDITIONAL WAIVERS

Contractor: \_\_\_\_\_ Project Name: \_\_\_\_\_ Contract #: \_\_\_\_\_

Upon approval from OEWD Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD prior to approval of Contractor's first Application for award and application of Contractor must submit their individual Waiver request to OEWD and copy their original Contractor

**TRADE WAIVER INFORMATION:** Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

☐ 1. SPECIALIZED TRADES ☐ 2. SPONSORING APPRENTICES ☐ 3. CREDIT FOR NON-COVERED PROJECTS

1. **SPECIALIZED TRADES:** Will your firm be requesting Conditional Waivers for Specialized Trades designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period? ☐ Yes ☐ No

**Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:**

☐ PLASTERER ☐ ROOFER ☐ CARPENTER ☐ DECKING CARPENTER ☐ SINKER ☐ WELDER ☐ PIPEFITTER ☐ ENGINEER ☐ ELECTRICIAN ☐ NEUTRICIAN

a. List OEWD-approved project-specific Specialized Trades approved during the bid period:

OEWD APPROVAL: ☐ Yes ☐ No OEWD Signature: \_\_\_\_\_

2. **SPONSORING APPRENTICES:** Will you be able to enroll with OEWD to sponsor an OEWD-specified number of apprentices in the agreeable trades into California Department of Industrial Relations Division of Apprenticeship Standards approved apprenticeship programs? ☐ Yes ☐ No

**PLEASE PROVIDE DETAILS:**

Construction Trade	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
		Y <input type="checkbox"/> N <input type="checkbox"/>				
		Y <input type="checkbox"/> N <input type="checkbox"/>				

OEWD APPROVAL: ☐ Yes ☐ No OEWD Signature: \_\_\_\_\_

3. **CREDIT for HIRING on NON-COVERED PROJECTS:** Will your firm be requesting credit for hiring targeted Workers on Non-covered Projects? ☐ Yes ☐ No

**PLEASE PROVIDE DETAILS:**

Labor Trade, Position, or Title	Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
journeymen				
Apprentice				

OEWD APPROVAL: ☐ Yes ☐ No OEWD Signature: \_\_\_\_\_

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**EXHIBIT I**  
**MITIGATION MEASURES AND IMPROVEMENT MEASURES MONITORING AND REPORTING**  
**PROGRAM**

# EXHIBIT I

File No. 2017-000188ENV  
Alcatraz Ferry Embarkation Project  
Motion No. \_\_\_\_\_

MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<b>MITIGATION MEASURES FOR THE ALCATRAZ FERRY EMBARKATION PROJECT</b>					
<i>Cultural Resources Mitigation Measures</i>					
<b>M-CR-2: Accidental Discovery of Archaeological Resources</b>  The following mitigation measure is required to avoid any potential adverse effect from the proposed project on accidentally discovered buried or submerged historical resources as defined in CEQA Guidelines Section 15064.5(a) and (c). The project proponent shall distribute the Planning Department archaeological resource "ALERT" sheet to the project prime contractor; any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); and any utilities firm involved in soil-disturbing activities within the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel, including machine operators, field crew, pile drivers, supervisory personnel, etc. The project proponent shall provide the Environmental Review Officer and the Port of San Francisco with a signed affidavit from the responsible parties (prime contractor, subcontractor[s], and utilities firm) to the Environmental Review Officer confirming that all field personnel have received copies of the "ALERT" Sheet.  Should any indication of an archaeological resource be encountered during any soils disturbing activity of the project, the project Head Foreman and/or project proponent shall immediately notify the Environmental Review Officer and the Port of San Francisco and shall immediately suspend any soils disturbing activities in the vicinity of the discovery until the	Project proponent	Prior to any soil disturbing activities	Project proponent must provide the Port of San Francisco and Environmental Review Officer with a signed affidavit from the responsible parties confirming that all field personnel have received copies of the "ALERT" sheet.	Distribution of the "ALERT" sheet is considered complete when the Port of San Francisco and Environmental Review Officer receive the affidavit.	Port of San Francisco (Pier 31½ site)  National Park Service (Fort Baker site)
	Head Foreman and/or project proponent	Accidental discovery	Notify Environmental Review Officer of accidental discovery		

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MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
Environmental Review Officer has determined what additional measures should be undertaken.					
If the Environmental Review Officer determines that an archaeological resource may be present within the project site, the project proponent shall retain the services of an archaeological consultant from the pool of qualified archaeological consultants maintained by the Planning Department archaeologist. The archaeological consultant shall advise the Environmental Review Officer and the Port of San Francisco as to whether the discovery is an archaeological resource, retains sufficient integrity, and is of potential scientific/historical/cultural significance. If an archaeological resource is present, the archaeological consultant shall identify and evaluate the archaeological resource. The archaeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the Environmental Review Officer may require, if warranted, specific additional measures to be implemented by the project proponent.	Project proponent and archeological consultant	In case of accidental discovery	If Environmental Review Officer determines an archeological resource may be present, the archaeological consultant's work shall be conducted in accordance with this measure at the direction of the Port of San Francisco and Environmental Review Officer.	If it is determined there is a need for an archaeological consultant, this task is considered complete upon submittal of the Final Archaeological Resources Report.	
Measures might include: preservation in situ of the archaeological resource; an archaeological monitoring program; or an archaeological testing program. If an archaeological monitoring program or archaeological testing program is required, it shall be consistent with the Environmental Planning division guidelines for such programs. The Environmental Review Officer may also require that the project proponent immediately implement a site security program if the archaeological resource is at risk from vandalism, looting, or other damaging actions.	Project proponent	After determination by Environmental Review Officer of appropriate action to be implemented following	Implementation of archeological measures required by Environmental Review Officer.	—	
The project archaeological consultant shall submit a Final Archaeological					



MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<p>Resources Report to the Environmental Review Officer and the Port of San Francisco that evaluates the historical significance of any discovered archaeological resource and describes the archaeological and historical research methods employed in the archaeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archaeological resource shall be provided in a separate removable insert within the final report.</p> <p>Copies of the Draft Final Archaeological Resources Report shall be sent to the Environmental Review Officer for review and approval. Once approved by the Environmental Review Officer, copies of the Final Archaeological Resources Report shall be distributed as follows: the California Archaeological Site Survey Northwest Information Center shall receive one copy, and the Environmental Review Officer shall receive a copy of the transmittal of the Final Archaeological Resources Report to the Northwest Information Center. The Environmental Planning division of the Planning Department shall receive one bound copy; one unbound copy; and one unlocked, searchable PDF copy on CD of the Final Archaeological Resources Report, along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the Environmental Review Officer may require a different final report content, format, and distribution than that presented above.</p>	<p>Project proponent</p> <p>Project proponent</p>	<p>evaluation of accidental discovery</p> <p>Following completion of required archeological field program</p>	<p>Submittal of Draft/Final Archaeological Resources Report to Environmental Review Officer</p> <p>Distribution of Final Archaeological Resources Report</p>		
<p><b>M-CR-4: Tribal Cultural Resources Interpretive Program</b></p> <p>If the Environmental Review Officer determines that a significant</p>	Project proponent and qualified	Prior to the issuance of site	If an archaeological consultant is	Considered complete when	Port of San Francisco

MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
archaeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the Environmental Review Officer determines that the resource constitutes a tribal cultural resource and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible. If the Environmental Review Officer, in consultation with the affiliated Native American tribal representatives and the project proponent, determines that preservation-in-place of the tribal cultural resources is not a sufficient or feasible option, the project proponent shall implement an interpretive program of the tribal cultural resources in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the Environmental Review Officer and affiliated tribal representatives, at a minimum, and approved by the Environmental Review Officer, would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays. In the event that construction activities disturb unknown archaeological sites that are considered tribal cultural resources, any inadvertent damage would be considered a significant impact.	professional archaeologist from the pool of archaeological consultants maintained by the Planning Department.	permits, submittal of all plans and reports for approval by the Port of San Francisco and Environmental Review Officer  Installation of displays (if needed) would occur prior to or during construction.	retained per Port of San Francisco and Environmental Review Officer direction, the archaeological consultant's work shall be conducted in accordance with this measure at the direction of the Port of San Francisco and Environmental Review Officer.	project proponent retains a qualified professional archaeological consultant, if required, and archeological consultant has approved scope by the Port of San Francisco and Environmental Review Officer for the interpretive program; and/or following program implementation.	(Pier 31½ site)  National Park Service (Fort Baker site)
<b>Noise Mitigation Measures</b>					
<b>M-NO-2: Conduct Vibration Monitoring at Pier 31½</b>	Project proponent	Prior to the start	Project proponent	Considered	Port of San



MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<p>The project proponent would require that a qualified professional evaluate the subject structure(s) prior to the pile driving to assess their susceptibility to vibration impacts and provide pre-construction bracing if warranted. Based on the results of the evaluation, the professional shall develop a vibration control plan. The plan would include a set of site-specific vibration attenuation measures that would be implemented under the supervision of a qualified acoustical consultant during the project construction. These attenuation measures would include as feasible, in consideration of technical and structural requirements and conditions, implementing “quiet” pile driving technology, such as predrilling piles, using sonic pile drivers, or using more than one pile driver to shorten the total duration of pile driving. During construction, the construction contractor will conduct vibration monitoring when construction activities occur within 50 feet of the historic Pier 33 bulkhead building. If monitoring indicates that peak particle velocity caused by construction activities is approaching 0.12 inches per second, construction activities would be halted and a plan would be developed to reduce construction activities. Other effective strategies may also be required to the extent necessary to achieve a peak particle velocity vibration level at bulkhead buildings of less than the level of 0.12 inches per second.</p>	and construction contractor(s).	<p>of construction activities</p> <p>Implementation during construction</p>	<p>shall include requirements of vibration monitoring plan in all construction contracts for the Pier 31½ site. Vibration monitoring plan to be submitted to Port of San Francisco for review and approval prior to construction</p> <p>Project proponent to submit to the Port of San Francisco documentation of compliance of implemented control practices that show construction contractor</p>	complete upon submittal of documentation incorporating identified practices.	Francisco

MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
			agreement with specified practices.		
<b><i>Air Quality Mitigation Measures</i></b>					
<b>M-AQ-4: Best Available Control Technology for Diesel Generators at Pier 31½</b>  The project proponent shall ensure that the backup diesel generator meets or exceeds one of the following emission standards for particulate matter: 1) Tier 4-certified engine; or 2) Tier 2- or Tier 3-certified engine that is equipped with a California Air Resources Board Level 3 Verified Diesel Emissions Control Strategy. A non-verified diesel emission control strategy may be used if the filter has the same particulate matter reduction as the identical California Air Resources Board-verified model and if the Bay Area Air Quality Management District approves of its use. The project proponent shall submit documentation of compliance with the Bay Area Air Quality Management District New Source Review permitting process (Regulation 2, Rule 2, and Regulation 2, Rule 5) and the emission standard requirement of this mitigation measure to the Planning Department for review and approval prior to issuance of a permit for a backup diesel generator from any City agency.	Project proponent and construction contractor(s)	Prior to approval of a generator permit by the Port of San Francisco and New Source Review permit by the Bay Area Air Quality Management District	Anticipated location and engine specifications of a proposed diesel backup generator shall be submitted to the Port of San Francisco for review and approval prior to issuance of a generator permit; and to the Bay Area Air Quality Management District prior to New Source Review permit.	Considered complete upon review and approval by the Port of San Francisco and Bay Area Air Quality Management District.	Port of San Francisco
<b><i>Biological Resources Mitigation Measures</i></b>					
<b>M-BI-1a: Avoidance and Minimization Measures for Special Status Bats at Pier 31½</b>  The project proponent will implement the following measures:	Project proponent and qualified biological	Prior to demolition and potentially	Project proponent shall include avoidance	Considered complete upon completion of	Port of San Francisco



MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<ul style="list-style-type: none"> <li>Demolition within Pier 31 and 33 bulkhead buildings shall occur when bats are active, approximately between the periods of March 1 to April 15 and August 15 to October 15; outside of bat maternity roosting season (approximately April 15 – August 15) and outside of months of winter torpor (approximately October 15 – February 28), to the extent feasible.</li> <li>If demolition within Pier 31 and 33 bulkhead buildings during the periods when bats are active is not feasible, a qualified biologist will survey the project site to identify if active bat roosts being used for maternity or hibernation purposes are present. If so, a no disturbance buffer of 100 feet shall be established around these roost sites until they are determined to be no longer active by the qualified biologist.</li> <li>The qualified biologist shall be present during demolition within the Pier 31 and 33 bulkhead buildings if active bat roosts are present. Structures with active roosts shall be disturbed only when no rain is occurring or is forecast to occur for 3 days and when daytime temperatures are at least 50 °F.</li> <li>Removal of structures containing or suspected to contain active bat roosts shall be dismantled under the supervision of the qualified biologist in the evening and after bats have emerged from the roost to forage. Structures shall be partially dismantled to significantly change the roost conditions, causing bats to abandon and not return to the roost.</li> </ul>	consultant	<p>during demolition within bulkhead buildings</p> <p>Implementation during construction, if applicable</p>	measures in all construction contracts. Qualified biological consultant to conduct bat surveys and present results to Port of San Francisco.	any demolition or construction.	
<b>Mitigation Measure M-BI-1b: Nesting Bird Protection Measures</b>	Project proponent	Prior to	Project proponent	Considered	Port of San

MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
Nesting birds and their nests shall be protected during construction by use of the following measures:	and qualified biological consultant	construction	shall include avoidance measures in all construction contracts. Qualified biological consultant to conduct bird surveys and present results.	complete upon completion of construction and submittal of monitoring reports, if applicable.	Francisco (Pier 31½ site)
<ul style="list-style-type: none"> <li>• Removal of trees, scrub vegetation, and structures shall occur outside the bird nesting season (February 1 to August 30), to the extent feasible.</li> <li>• If removal of trees, scrub vegetation, or structures during bird nesting season cannot be fully avoided, a qualified wildlife biologist shall conduct preconstruction nesting bird surveys within 7 days prior to the start of such activities or after any construction breaks of 14 days or more. Surveys shall be performed for the project site and suitable habitat within 250 feet of the project site in order to locate any active passerine (perching bird) nests and within 500 feet of the project site to locate any active raptor (birds of prey) nests or double-crested cormorant or heron rookeries.               <ul style="list-style-type: none"> <li>- At Pier 31½, if it is determined that bird nesting habitat is only present for gulls, surveys may be conducted actively during construction from April through August during gull nesting season. Any old nests, potential nests, or nests under construction (but not active) shall be removed.</li> </ul> </li> <li>• If active nests are located during the preconstruction bird nesting survey, the wildlife biologist shall evaluate if the schedule of construction activities could affect the active nests and the following measures shall be implemented based on their determination:               <ul style="list-style-type: none"> <li>- If construction is not likely to affect the active nest, it may proceed without restriction; however, a biologist shall regularly monitor the nest to confirm there is no adverse</li> </ul> </li> </ul>		During construction	Qualified biologist to notify Port of San Francisco and, if necessary, USFWS and/or CDFW. Qualified biologist to perform monitoring, as		National Park Service (Fort Baker site)



MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<p>effect and may revise their determination at any time during the nesting season. In this case, the following measure would apply.</p> <ul style="list-style-type: none"> <li>- If construction may affect the active nest, the biologist shall establish a no disturbance buffer. Typically, these buffer distances are between 25 feet and 250 feet for passerines and between 300 feet and 500 feet for raptors. These distances may be adjusted depending on the level of surrounding ambient activity (e.g., if the project area is adjacent to a road or active trail) and if an obstruction, such as a building, is within line-of-sight between the nest and construction. For bird species that are federally and/or state-listed sensitive species (i.e., fully protected, endangered, threatened, species of special concern), a proposed project representative, supported by the wildlife biologist, shall consult with the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife regarding modifications to nest buffers, prohibiting construction within the buffer, modifying construction, and removing or relocating active nests that are found on the site.</li> <li>• Removing inactive passerine nests may occur at any time. Inactive raptor nests shall not be removed unless approved by the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife.</li> </ul>			needed.		

MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<ul style="list-style-type: none"> <li>Removing or relocating active nests shall be coordinated by the project representative with the U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife, as appropriate, given the nests that are found on site.</li> <li>Any birds that begin nesting within the project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels and no work exclusion zones shall be established around active nests in these cases.</li> </ul>					
IMPROVEMENT MEASURES FOR THE ALCATRAZ FERRY EMBARKATION PROJECT					
<b>I-TR-2a: Provide Information on Active Transportation and Transit Routes to/from the Pier 31½ Site</b>  The project proponent will require the concessioner to provide information regarding pedestrian, bicycle, and transit travel to/from the embarkation site to both employees and in advance to visitors. This may include maps designating preferred pedestrian, bicycle, or transit routes to/from the site, maps indicating where City-provided bicycle facilities or transit stops are present, and time estimates for walking or biking to common destinations, such as BART stations, Union Square, Pier 39, or other tourist destinations. This information would be presented on tickets and information websites, as well as distributed via mail or email to all ticketed visitors.	Project proponent and concessioner	Prior to and during operations	Port of San Francisco staff	Ongoing during operations	Port of San Francisco
<b>I-TR-2b: Install Multimodal Wayfinding Kiosk and Signage at the Pier 31½ Site</b>	Project proponent and concessioner	Prior to and during	Project proponent shall submit	Considered complete when	Port of San Francisco



MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
The project proponent will add a multimodal wayfinding kiosk that may include maps, signs, or digital displays to provide visitor information on various travel options and times. The kiosk will be located near the site entrance/exit to the Pier 31 ½ site. In addition to a centralized kiosk, signage could be placed at the site entrance with directional arrows indicating walk times to nearby destinations or transit stops.		operations	documentation of permanent kiosk and signage	kiosk and signage are approved by Port of San Francisco staff. These amenities would then be installed in the publicly accessible area of the site.	
<b>I-NO-1: Construction Noise Minimization Plan for Pier 31½</b>  The project proponent shall develop a construction noise minimization plan that requires the following: <ul style="list-style-type: none"> <li>Construction contractors shall specify noise-reducing construction practices and measures that will be employed to reduce construction noise from pile driving and construction activities. The practices and measures specified by the project proponent will be reviewed and approved by the City prior to the issuance of building permits. Practices and measures that can be used to limit noise include but are not limited to those listed below:               <ul style="list-style-type: none"> <li>Avoid simultaneous use of equipment that exceeds 90 dBA, particularly impact and vibratory pile drivers</li> <li>Install noise mufflers to stationary equipment and impact tools that are no less effective than those provided by the manufacturer</li> <li>Use construction equipment with low noise emission ratings</li> </ul> </li> </ul>	Project proponent and construction contractor(s)	Prior to the start of construction activities; implementation ongoing during construction	Project proponent shall submit the Construction Noise Minimization Plan to the Port of San Francisco. Project proponent shall include requirements of noise minimization plan in all construction contracts.	Considered complete with the Port of San Francisco's approval of the Construction Noise Minimization Plan and inclusion of the plan as a requirement in the building permit.	Port of San Francisco

MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<ul style="list-style-type: none"> <li>○ Locate equipment, materials, and staging areas as far as practicable from sensitive receptors</li> <li>○ Install barriers around particularly loud activities at the construction site to eliminate the line of sight between the source of noise and nearby sensitive receptors, which could reduce noise up to 10 dBA based on the configuration of the site and equipment used.<sup>1</sup></li> <li>○ Prohibit unnecessary idling of vehicles or equipment</li> <li>○ Require applicable construction-related vehicles or equipment to use designated truck routes to access the proposed project site</li> </ul> <p>Restrict construction activities between 7:00 AM to 8:00 PM Monday through Saturday</p>					

<sup>1</sup> The Federal Highway Administration's *Roadway Construction Noise Model Users' Guide* gives the following "rules of thumb" for estimating noise attenuation of barriers at construction sites:

- 3 dBA - if a noise barrier or other obstruction (like a dirt mound) just barely breaks the line-of-sight between the noise source and the receptor;
- 5 dBA - if the noise source is partly enclosed OR shielded with a barrier with some gaps located close to the source;
- 8 dBA - if the noise source is completely enclosed OR completely shielded with a solid barrier located close to the source;
- 10 dBA - if the noise source is completely enclosed AND completely shielded with a solid barrier located close to the source;
- 15 dBA - if a building stands between the noise source and receptor and completely shields the noise source



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MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
Tier 3 auxiliary engines.	contractor(s)	construction involving tugboats	requirements in all construction contracts and submit documentation of tugboat engines to the Monitoring Agency.	submittal of certification statement.	(Pier 31½ site)  National Park Service (Fort Baker site)
<b>I-BI-1a: Pile Driving Work Windows</b>  Pile driving will occur between July 1 and November 30 at the Pier 31½ site and between July 1 and September 30 at the Fort Baker site.	Project proponent and construction contractor(s)	During construction	Project proponent shall include requirements in all construction contracts.	Considered complete after construction.	Port of San Francisco (Pier 31½ site)  National Park Service (Fort Baker site)



MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<p><b>I-BI-1b: Noise Monitoring Plan</b></p> <p>The project proponent will develop and implement a marine noise monitoring plan which would be subject to review and approval by the National Marine Fisheries Service. As part of this plan, the following measures will be implemented:</p> <ul style="list-style-type: none"> <li><i>Equipment Controls:</i> The proposed project will be required to bring loud mechanical equipment online slowly (employ a “soft-start”).</li> <li><i>Noise Monitoring:</i> A trained acoustical specialist will conduct underwater noise monitoring during marine construction to ensure that pile driving noise levels do not exceed the levels identified through noise modeling for the proposed project. If noise levels are exceeded, the proposed project will implement cushion blocks in the hammer to reduce sound levels and prevent exceedance of the levels projected through noise modeling, and noise level exceedances will be reported to the National Marine Fisheries Service.</li> </ul>	Project proponent, construction contractor(s), and qualified biologist	Prior to and during in-water construction	<p>Qualified biologist shall develop noise monitoring plan. Project proponent shall include requirements of noise monitoring plan in all construction contracts.</p> <p>Project proponent shall submit documentation of noise monitoring to National Marine Fisheries Service.</p>	Considered complete after submitting documentation of noise monitoring to National Marine Fisheries Service.	<p>Port of San Francisco (Pier 31½ site)</p> <p>National Park Service (Fort Baker site)</p>

MITIGATION MONITORING AND REPORTING PROGRAM FOR ALCATRAZ FERRY EMBARKATION PROJECT					
MEASURES ADOPTED AS CONDITIONS OF APPROVAL	Responsibility for Implementation	Schedule	Monitoring/ Reporting Responsibility	Status/Date Completed	Monitoring Agency
<p><b>I-BI-1c: Marine Mammal Safety Zone</b></p> <p>The project proponent will maintain a 500-meter safety zone around sound sources in the event that the sound level is unknown or cannot be adequately predicted. This will be required at the onset of construction, prior to confirming noise levels through noise monitoring (as required through <b>Improvement Measure I-BI-1b, Noise Monitoring Plan</b>).</p> <p>A qualified marine biologist on shore or by boat will survey the safety zone to ensure that no marine mammals are within the zone before pile driving begins. If a marine mammal is observed within the safety zone before pile driving begins, pile driving will be delayed until the marine mammals move out of the area.</p> <p>If marine mammals enter the safety zone after pile driving of a segment has begun, pile driving will continue. The biologist will monitor and record the species and number of individuals observed, and make note of their behavior patterns. If the animal appears distressed, and if it is operationally safe to do so, pile driving will cease until the animal leaves the area. Prior to the initiation of each new pile driving episode, the area will again be thoroughly surveyed by the biologist.</p>	Project proponent, construction contractor(s), and qualified biologist	Prior to and during pile driving	Project proponent shall include requirements of safety zone in all construction contracts. Project proponent shall submit documentation of marine mammal safety zones to National Marine Fisheries Service.	Considered complete after submitting documentation of marine mammal safety zones to National Marine Fisheries Service.	Port of San Francisco (Pier 31 ½ site)  National Park Service (Fort Baker site)





**EXHIBIT J**  
**SUMMARY OF SECRETARY OF THE INTERIOR'S STANDARDS**  
**FOR THE TREATMENT OF HISTORIC PROPERTIES**

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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## **EXHIBIT K**

### **PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES**

*Approved by San Francisco Port Commission, October 26, 2004, with proposed amendments to respond to comments from California State Office of Historic Preservation.*

#### **Background**

As part of the preparation of the Port of San Francisco Embarcadero Historic District nomination, the Port has developed Historic Preservation Review Guidelines (Guidelines) to define how the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) should be interpreted and applied to the historic resources within the District, to ensure its responsible management and stewardship. The set of Guidelines below focuses on Pier and Bulkhead Wharf Substructures, providing an important tool to be used by the Port's historic preservation experts to define parameters for the repair, maintenance or alterations to the pile foundations, substructures and decks of piers and bulkhead wharves upon which pier sheds, bulkhead buildings and other waterfront structures sit.

These Guidelines were developed by the Port's historic preservation expert staff in concert with San Francisco Architectural Heritage and preservation experts familiar with the specific historic resources in the District. The Guidelines were approved by the San Francisco Port Commission in October 2004, and further amended to respond to comments from the California State Office of Historic Preservation. The Guidelines will be used in the review of pier and bulkhead wharf substructure projects that are subject only to approval by the Port. Projects affecting District resources which are subject to review and approval by any of the following entities are not subject to these Guidelines, in recognition of the separate review criteria and practices employed by those agencies to administer the Secretary's Standards:

- 1) Federal Undertakings - Requiring Section 106 consultation
  - Projects receiving federal funding
  - Transfer of federal property
  - Approval of a federal permit, license or similar entitlement (i.e. Army Corps. of Engineers)
- 2) Federal Historic Preservation Tax Credit Projects – Requiring State Office of Historic Preservation and National Park Service approvals
- 3) San Francisco Historic Preservation Commission – Subject to Planning Code Article 10 Provisions for City Landmarks and City Historic Districts

#### **Port of San Francisco Review Process – Overview**

For projects affecting historic resources within the Embarcadero Historic District that are subject only to the Port's review and approval, the Port conducts its review in conjunction with use of Historic Preservation Guidelines, where applicable, to direct actions that comply with the Secretary's Standards.

All projects undergo case-specific review to determine the appropriate application of the Guidelines and other related Port design reviews. The Port maintains qualified historic preservation expertise on staff and may work with other qualified historic preservation professionals to review projects for consistency with the Secretary's Standards and any applicable Guidelines.



In the case of repairing and managing pier and bulkhead wharf substructures, the Guidelines below are to be used in the Port review process. The process follows the principles of the Secretary's Standards for Rehabilitation and the Port's longstanding practice of repairing existing materials wherever feasible. Replacement of historic materials, if deterioration makes such repair infeasible, is limited to replacement in-kind (use of the same materials) whenever possible. Where replacement in-kind is infeasible, the Port directs use of new substitute materials that are compatible with the character defining features of the subject historic resource to preserve the historic integrity of contributing resources or, in the case of reviewing non-contributing resources, the integrity of the Historic District.

### **Pier and Bulkhead Wharf Substructures**

The historic piers and resources in the Embarcadero Historic District are made up of pile-supported platforms upon which pier shed and bulkhead building structures were built to conduct maritime commerce. The substructure of the piers and bulkhead wharf, described in detail in Section 7 of the Embarcadero Historic District nomination, consists of vertically driven piles, topped by stringer and pile cap beams, which create the horizontal structural framework upon which pier decks rest. Beneath these structures, the tides of the San Francisco Bay ebb and flow. Pier substructures are defined to include pier aprons, which are constructed at the perimeter of piers, generally used to provide a pile-supported platform for ship berthing, an outdoor work area, and in more recent times a public access and recreation area. In most instances, pier aprons are constructed of wood and have a shorter life span, historically requiring more maintenance and repair than steel and concrete substructures.

Within this complex, the bulkhead wharf is an important feature. It is comprised of 23 individual sections that extend end to end throughout the historic district, adjacent and connected to the Seawall, which establishes the constructed edge of the waterfront between piers. In addition, the bulkhead wharf plays an important role in defining the Embarcadero's urban form, which supports maritime, public access and commercial recreation/retail functions.

Initial:                       
Port:                       
Tenant:

**EXHIBIT L**  
**TENANT ESTOPPEL CERTIFICATE**

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

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

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

Dated: \_\_\_\_\_, 20\_\_.

[Name of Tenant]

By:

Name:

Title:



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**EXHIBIT M**

**PORT'S ZERO WASTE EVENTS AND ACTIVITIES POLICY**

[Attachment on following page(s)]



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## **EXHIBIT M**

### **PORT OF SAN FRANCISCO ZERO WASTE EVENTS AND ACTIVITIES POLICY**

**February 2012**

The Port of San Francisco is proud to host numerous events on Port property each year. These include fundraising walks and runs, "tailgate parties" at athletic events, Christmas tree sales, 4th of July Celebration, Oktoberfest, Fleet Week, and the proposed 34<sup>th</sup> America's Cup events (subject to pending environmental review). Some events can generate public participation of 5,000 or more people during the period of the event. Large outdoor events of this size typically generate a variety of plastic wastes from the sale of water in single-use bottles, the use of non-compostable plastic food ware, and the distribution of plastic bags to customers for food, merchandise and souvenirs. Along the Port's facilities, the inherent challenges of waste management at a large event are compounded by a windy environment and proximity to the San Francisco Bay.

#### *Plastics*

Several plastic waste items have significant environmental impacts. Single use plastic bags are difficult to recycle and can contaminate existing recycling and composting streams. These products are easily scattered by the wind and can create significant litter problems on shore and in water. Single-use plastic water bottles are resource intensive to produce, fill and transport, and contribute to waste management challenges at events. Non-food product plastic packaging is also difficult to recycle, may create a significant litter problem and harm the marine environment. The National Oceanic and Atmospheric Administration (NOAA) has recognized burst latex and Mylar balloons as a commonly reported source of marine debris. Balloons drift onto the surface of water and mimic the appearance of jellyfish and other floating organisms that are a natural food source for turtles, fish, dolphins, and shorebirds.

Plastic wastes are of increasing concern in marine environments and are a focus of volunteer and non-profit clean-up activities along the waterfront and bay shoreline. Plastics from litter, stormwater and maritime sources enter the marine environment where they degrade into microscopic bits and damage the ecology of our oceans. They can entangle wildlife and disrupt their internal organs and, when digested by marine life plastics can function as a pathway of exposure to several pollutants such as polychlorinated biphenyls (PCBs), dichlorodiphenyltrichloroethane (DDTs) and polycyclic aromatic hydrocarbons (PAHs). These pollutants can bio-accumulate and bio-magnify in the food chain, eventually making their way into human food sources. There are five ocean gyres, or large bodies of water that contain massive accumulations of degraded plastics around the globe.



### *Food-Related Wastes and Packaging*

Large events produce large volumes of food-related wastes and packaging. San Francisco Special Events Ordinance No. 73-89 requires any applicant seeking permission for the temporary use or occupancy of a public street, a street fair or an athletic event within the City and County that includes the dispensing of beverages or which generates large amounts of other materials to submit a recycling plan to the department issuing the permit for the event or activity. Recycling plans shall include arrangements for collection and disposition of source separated recyclables and/or compostables by a service provider of the event organizer. San Francisco offers one of the most successful and comprehensive large municipal food scrap collection programs in the nation.

Events at the Port of San Francisco attract tourists who may be less familiar with the City's recycling and composting programs than residents and local business owners. In the experience of the Department of the Environment, the best way to manage food waste streams at large events is to require the use of either compostable or durable, reusable food service ware.

Exclusive use of compostable food service ware facilitates source separation and the diversion of organic materials from landfill, mitigates contamination in the City's recycling programs, and streamlines composting and related waste diversion activities during large events. A wide variety of compostable food service ware and bags are available in the marketplace. These are made from renewable resources such as paper, corn starch and sugarcane.

### *Reusable Water Bottles and Refilling Stations*

The City's water delivery system consistently provides among the purest, safest drinking water in the nation from spring snowmelt stored in the Hetch Hetchy Reservoir and flowing down the Tuolumne River. Re-usable water bottles are easy to refill and use of Hetch Hetchy water guarantees a high quality of water for the public. Durable or compostable service ware can be combined with water filling stations to further reduce the need for single-use plastic packaging.

The Port Commission adopts the following measures to address the concerns outlined above and to 1) ensure that food waste streams from large outdoor events can be easily composted, and 2) marine life in the Bay is protected from plastics and litter through elimination or reduction of plastics at these events.

1. The provisions of this Policy are mandatory for all events or activities ("Events") on Port property that the Port expects will attract 5,000 or more people aggregated over the number of days the event is held. Examples of these Events include but are not limited to: exhibitions or presentations of sporting events, tournaments, concerts, musical and theatrical performances and other forms of live entertainment, public ceremonies, fairs, carnivals, markets, shows, fundraising events, races or other public or private exhibitions and activities related thereto. This Policy shall apply to all persons or entities organizing, sponsoring or hosting an Event, including all vendors, subcontractors and agents ("Event Organizers") for

an Event. Event Organizers of Events with an expected attendance of less than 5,000 people are strongly encouraged to comply with this Policy.



2. The sale, use and distribution of single-use plastic water bottles are prohibited. The Event Organizer must provide "water filling stations" supplied either by the San Francisco Public Utilities Commission or a vendor approved by the Port's Executive Director or her or his designee for use by individuals with reusable water bottles. This prohibition applies only to single-use plastic bottles that are used for non-carbonated or non-flavored water.
3. The sale, use and distribution of single-use disposable plastic bags are prohibited. The Event Organizer must use alternatives to single-use plastic bags such as recyclable paper, compostable plastic (preferably marine degradable) and/or reusable bags as those terms are defined by the City's Plastic Bag Reduction Ordinance.
4. The sale, use and distribution of single-use non-compostable plastic food ware are prohibited. The Event Organizer may only sell, use and distribute food service ware that is either labeled "compostable" and meets American Society for Testing and Materials (ASTM) standards for compostability or that is durable, washable, and reusable.
5. All compostable plastic food service ware must meet ASTM D-6400 standards for compostable plastics, have BPI certification ([www.BPIworld.org](http://www.BPIworld.org)), and be clearly labeled with a color-coded (green) identifying marker, such as a green sticker, stripe or band on all pieces of the product (for example the cup and lid must both be labeled), or other certification standards (such as marine degradability) as may be recommended from time to time by the San Francisco Department of the Environment and approved by the Port Executive Director.
6. The intentional release of balloons on Port property in connection with an Event subject to this Policy is prohibited.
7. Event Organizers are encouraged to minimize packaging and avoid the use of disposable plastic packaging.
8. The Port reserves the right at any time and from time to time to revise this Policy or to make such other and further Rules and Regulations as the Port shall determine are in the best interest of the Port, the San Francisco Bay, and the community, or that comply with City law.
9. For Events that the Port expects will attract 5,000 or more people in the aggregate, all licenses, leases, or other real property agreements with Event Organizers entered into after the date of adoption of this Policy by the Port Commission ("the adoption date"), and all amendments to licenses, leases, or other real property agreements with Event Organizers made beginning in 2012 shall require the Event Organizer to comply with this Policy. Such Event Organizer's failure to comply with this Policy shall be deemed a material breach of the agreement and the Port may



pursue remedies, including liquidated damages and termination of the agreement.

10. The Port Commission may grant a waiver of any of the provisions of this Policy, in its sole discretion, if the provision that is waived is replaced by an action that (i) protects the Port's and Bay's natural habitat, (ii) is compliant with law, and (iii) is in keeping with the environmental spirit of the Port's goals herein.

This Policy for Zero Waste Events and Activities shall apply to all events on Port property with a total expected attendance of 5,000 or more people aggregated over the number of days the event is held. This Policy for Zero Waste Events and Activities also serves as non-mandatory goals for events with an expected attendance of less than 5,000 people.

Initial:   
Port: \_\_\_\_\_  
Tenant:  \_\_\_\_\_

**SCHEDULE 1**  
**ASBESTOS NOTIFICATION AND INFORMATION**  
**NOTICE TO EMPLOYEES,**  
**OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS**

[Attachment on following page(s)]



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

**ASBESTOS IN BUILDINGS**

**FOR: Pier 33 / Facility #1330  
FOR PERIOD THROUGH: March 2014**

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 buildings 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.

This notification includes the results of any air monitoring or bulk sampling for asbestos that has been conducted in your building during the previous calendar quarter. (This notice may also include older information of asbestos samples, for your information.)

**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 summary of the results of recent asbestos bulk sampling or air monitoring is attached to this notice.

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/mm<sup>2</sup>). 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 was 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 Toxic Substances Control Program at 252-3800 to answer your questions.

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

The following pages are a summary of asbestos bulk sampling or air monitoring results that have been conducted at Pier 33 Facility #1330. Copies of the full sampling report(s) are available for review and photocopying at the Port of San Francisco Environmental Health and Safety Office (Pier 1, S.F.) between the hours of 8 a.m. and 5 p.m. The asbestos coordinator for this building is Tim Felton who can be reached at (415) 274-0582.

Initial:

Port:

Tenant:

*FE*  
*dn*

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

**ASBESTOS IN BUILDINGS**

**FOR: Pier 31 / Facility #1310  
FOR PERIOD THROUGH: March 2014**

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 buildings 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.

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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.

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### **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:

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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 Toxic Substances Control Program at 252-3800 to answer your questions.

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**

The following pages are a summary of asbestos bulk sampling or air monitoring results that have been conducted at Pier 31 Facility 41310. Copies of the full sampling report(s) are available for review and photocopying at the Port of San Francisco Environmental Health and Safety Office (Pier I, S.F.) between the hours of 8 a.m. and 5 p.m. The asbestos coordinator for this building is Tim Felton who can be reached at (415) 274-0582.


**PORT of San Francisco Asbestos Summary**

Facility# 1310

Pier 31

All of the Facility

Survey Date	Room or Area	Contents of Survey / Description of ACM	Handling Procedures and Restrictions	Abated
6/30/1999	Roof	The roof patching mastic was found to contain 3% chrysotile asbestos. The roofing mastic found on the parapet wall was found to contain 8% chrysotile asbestos. (RGA 8/11/99)	The asbestos-containing materials found on the roof should be abated prior to building renovation if the roof is going to be impacted. A contractor licensed to perform asbestos-related work should conduct all abatement work.	No
6/30/1999	Roof	A complete building asbestos survey was conducted by RGA in June of 1999. The window putty on the skylights was found to contain trace (<1%) amounts of chrysotile asbestos. (RGA 8/11/99)	Asbestos must be removed by a certified abatement contractor if windows are removed.	No

**Port:** \_\_\_\_\_  
**Tenant:** \_\_\_\_\_  
**Initial:** 





**SCHEDULE 2**

**SUBSTRUCTURE REPORT(S)**

[Attachment on following page(s)]



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## RAPID STRUCTURAL ASSESSMENT REPORT

Structure Type:	SUBSTRUCTURE	Work Order:	5465
Facility Name:	Pier 31 North Apron	FIN:	1310SNA
Asset Number:	1310-SUB1	Facility Code:	1310
Asset Activity:	SUBSTRUCTURE 4 YR INSPECTION	Type Use:	C-M
Inspection Number:	1310-SUB1-1-2013	Inspector Name:	Duncan, Mr. Sherban A.
		Affiliation:	C+D - Gelberg Rodriguez
Inspection Start Date:	2013/05/30 11:08:51	Inspection End Date:	2013/05/30 11:08:51
Purpose Of Inspection:	Periodic Inspection	Lease Number:	
Address:			
Year Built:			

### Rating Criteria:

Green - Unrestricted use. May require some minor repair, or minimal barricading.

Yellow With Green Hatching - Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

Red - Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** Red

**Immediate Actions:** Restrict access where deck is missing, remove falling hazards

**Required Repairs:** Replace or repair fender system

**Load Limits:**

**Barricades:** Restrict access to apron where deck is missing

### Condition Assessment Summary

Condition	Yes	No	More Review Needed
1) Severe Seawall Failure		X	
2) Many Missing Piles		X	
3) Many significant damaged pile		X	
4) Significant beam deterioration		X	
5) Significant slab deterioration		X	
6) Other Hazard present	X		

### Comments:

#### Sequence - 1

#### Description - Comments

**Comment - 1.** Spalling deck and corroded/exposed rebar.

2. Deteriorated fender piles.

3. Hanging wood members - falling hazard.

4. Deteriorated/missing wood deck.





## **RAPID STRUCTURAL ASSESSMENT REPORT**

5. Some broken/damaged piles.
6. Many missing wood piles at pier corner.
7. Some broken batter piles.

### **Attachments:**

**Appendix A - Facility Data**

**Appendix B - Photographs and Structural Rating Map**



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 1. Spalling and corroded/exposed rebar at slab**





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

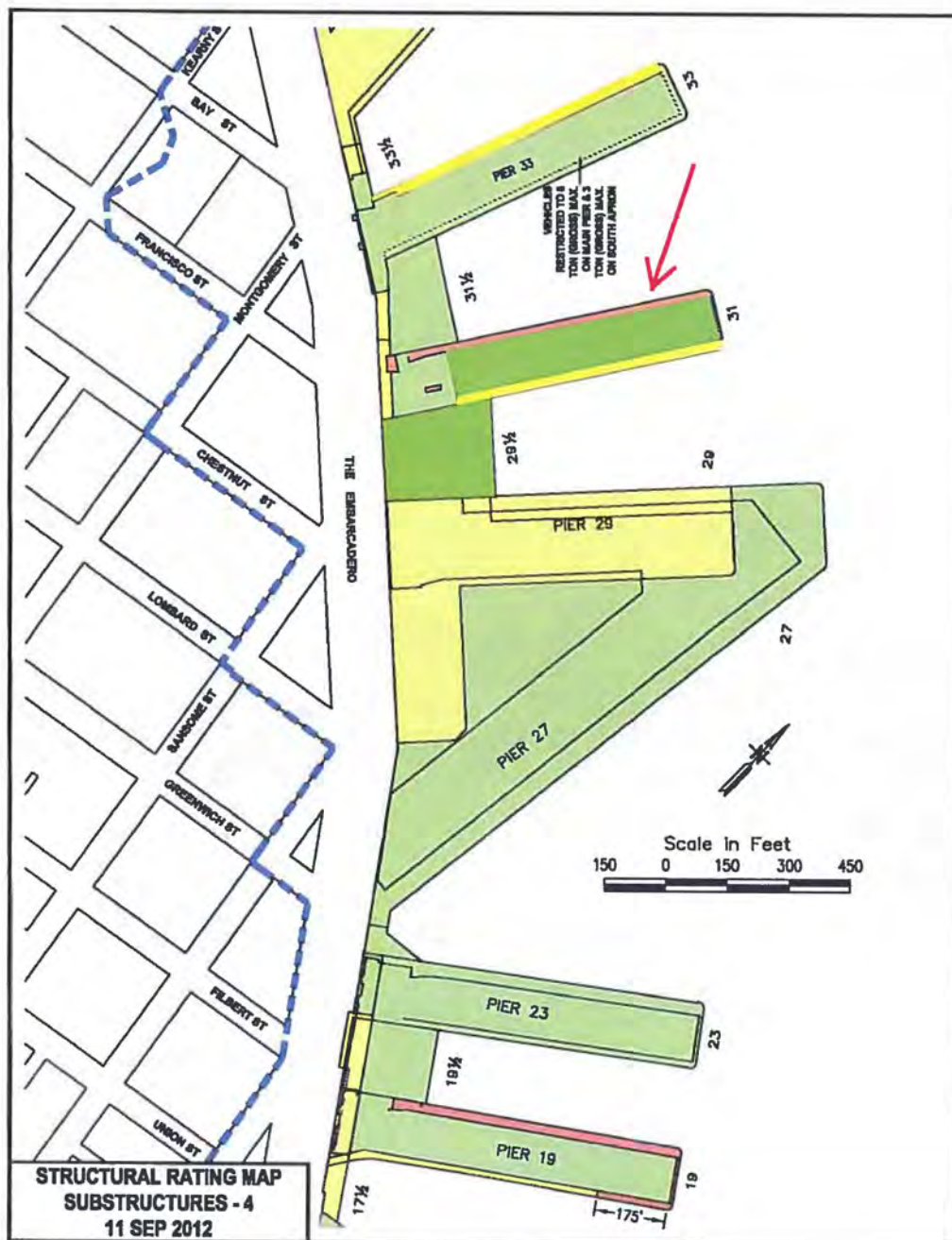


Photo 2. Structural Rating Map



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 3.** Deteriorated wood piles at pier corner





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 4.** Hole in deck, hanging wood members



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 5.** Deteriorated fender piles



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 6. Hanging wood members



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 7.** Broken batter pile





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map



Photo 8. Overall view looking south

## Appendix B - Photographs and Structural Rating Map



Photo 9. Deteriorated deck



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 10.** Spalling deck and corroded/exposed rebar



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 11.** Close up of broken batter pile







## RAPID STRUCTURAL ASSESSMENT REPORT

Structure Type:	SUPERSTRUCTURE	Work Order:	20007
Facility Name:	Pier 31 Bulkhead/Shed Building	FIN:	1310SHG
Asset Number:	1310-SHEDA	Facility Code:	1310
Asset Activity:	STRUCTURE FOUR YR INSPECTION	Port Engineer:	Bell, Mr. Jonathan Matthew N
Inspection Number:	1310-SHEDA-1-2017	Inspected By:	Port of San Francisco
Inspection Start Date:	2017/06/19 14:00:00	Inspection End Date:	2017/06/19 15:30:00
Purpose Of Inspection:	Real Estate Request	Lease Number:	L-14169
Address:			
Year Built:	1918		

### Rating Criteria:

**Green** - Unrestricted use. May require some minor repair, or minimal barricading.

**Yellow With Green Hatching** - Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

**Red** - Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** Green and Yellow with Green Hatching

**Immediate Actions:** No

**Required Repairs:** Repairs are planned to the three shored columns and concrete walls

**Load Limits:** No new roof or truss loads at three shored columns until permanent repairs are complete

**Barricades:** No

**Long Term Actions:** No

**Detailed Structural/Geotechnical Evaluation Required:** No

### Condition Assessment Summary

Condition	Yes	No	More Review Needed
1) Full or Partial Collapse		X	
2) Major building element damaged		X	
3) Severe Cracking of walls		X	
4) Parapet or falling hazard		X	
5) Severe ground movement present		X	
6) Other Hazard present		X	

### Comments:

#### **Sequence - 1**

**Description** - Inspector Comment

**Comment** - Port of San Francisco Engineer performed superstructure inspection of the Pier 31 shed building and Pier 29.5 Bulkhead building on 6/19/2017. Inspection was performed on all interior and exterior portions of the building that were accessible by foot. The inspection was initiated by the completion of the Pier 31 Roof and Structural Repair Project (Contract 2762). The scope of this project was roof repair and wood structural





## RAPID STRUCTURAL ASSESSMENT REPORT

framing repair and strengthening at Pier 31 shed building and Pier 29.5 bulkhead building.

Overall Pier 31 superstructure rating is Green - Unrestricted Use, due to repairs completed during this project. There are three remaining damaged truss columns which are currently shored and are scheduled for replacement in the next fiscal year (2017-18). The area of the roof supported by these three shored columns is rated Yellow - Restricted Use until permanent repairs are completed. The rating map also shows the outer end of the shed yellow-tagged due to the substructure rating in that area.

The building was constructed around 1918. The Pier 31 shed, Pier 29.5 infill wharf building, and the Pier 29 bulkhead were all constructed from the same set of drawings. All original structural framing consists of wood columns supporting wood trusses with steel rod tension ties. Bulkhead building walls along the Embarcadero are wood stud walls with lath and plaster. All other Pier 31 walls are cast in place reinforced concrete.

The structural scope of the 2017 project was mainly replacement and strengthening of wood structural members that had deteriorated due to exposure to moisture and dry rot. Typical susceptible locations include the bases of columns near the building exterior, tops of roof supporting members, and wood truss connection joint details that trapped water leaking through the roof.

Roofing was replaced as part of 2017 project and we do not expect any further dry rot deterioration over the lifespan of the new roof. Major structural members with dry rot damage were replaced or strengthened. Currently all wood columns, trusses, and roof framing appears to be in serviceable condition, with the exception of the three shored columns previously noted.

There are five steel beams installed some time prior to the 2017 project that are not shown in the Port's record drawings. These beams were added in order to remove wood columns while maintaining support for the wood trusses above. The 2017 project added a large steel girder directly underneath an existing wood truss that required strengthening. In all cases, posts were added adjacent to existing wood columns to support the ends of the beams.

The wood stud walls of the bulkhead building had no notable defects.

The reinforced concrete walls along the apron have various spalls and cracks, with more damage on the north face than the south face. Spalls appear to be due to corroding rebar. Cracks are typically at corners of door openings. Where rebar was exposed it did not appear to have significant section loss. Cracks and spalls are planned to be repaired in an upcoming project. The rear concrete wall was only inspected from the interior. There were no defects noted on the interior face of the wall.

There are four old shoring posts supporting beams at the rear wall. These posts appear to have been keyed into the concrete slab and then rotated up in to place and wedged under the beams. As a result they are not vertically plumb. The original connections to the concrete wall were not investigated in detail.

The roof was not inspected, but photos from the 2017 project showing the new roofing work are included for reference.

### **Attachments:**



# RAPID STRUCTURAL ASSESSMENT REPORT

Appendix A - Facility Data

Appendix B - Photographs and Structural Rating Map





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix A - Facility Data

**Name of Facility:** Pier 31 Bulkhead/Shed Building

**Facility Code:** 1310

**Address:**

**Lease Number(s):** L-14169

### Building Data

**Building Structure FIN:** 1310SHG

**No. of stories:** 1

**Support over water:** Yes

**Support over land:** No

**Construction Type (Wood, Concrete, Steel, Masonry or Combination):** Wood

**Occupancy Type (Commercial, Office, Industrial, Assembly, Residential, Emergency Service, etc.):**  
Industrial

**Detailed Building Description (If available):** Primary structure is wood columns and wood trusses. Some supplemental steel beams have been added to replace trusses and columns.

### Substructure/Foundation Data:

**Substructure FIN:** 1310SUB

**Piling Type:**

**Substructure Deck Type:**

**Apron Type:**

**Detailed Substructure Description (If available):** Concrete slab on concrete beams, supported by concrete piles; concrete seawall.



# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map



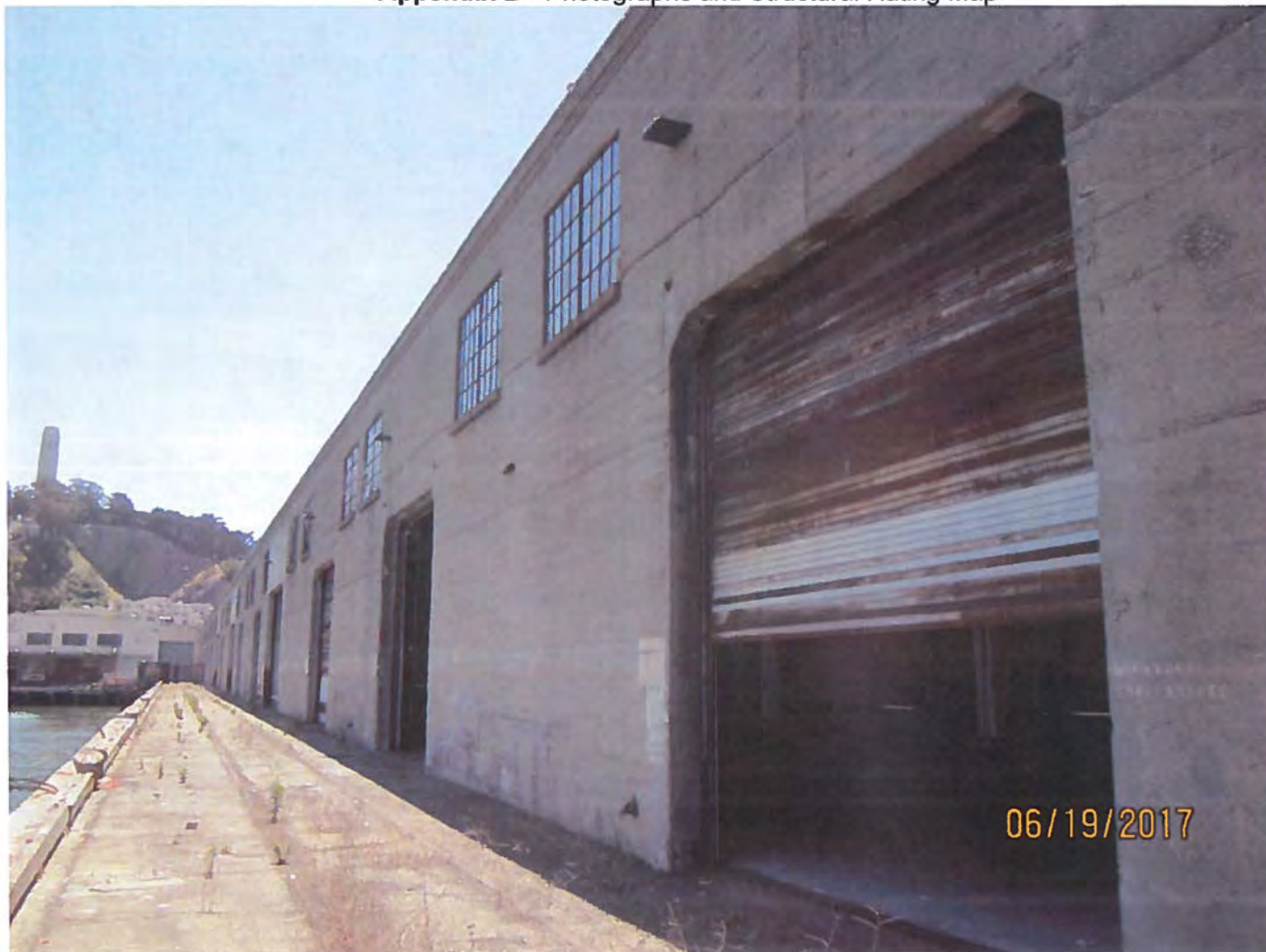
**Photo 1.** Bulkhead portion of Pier 31 shed building.





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

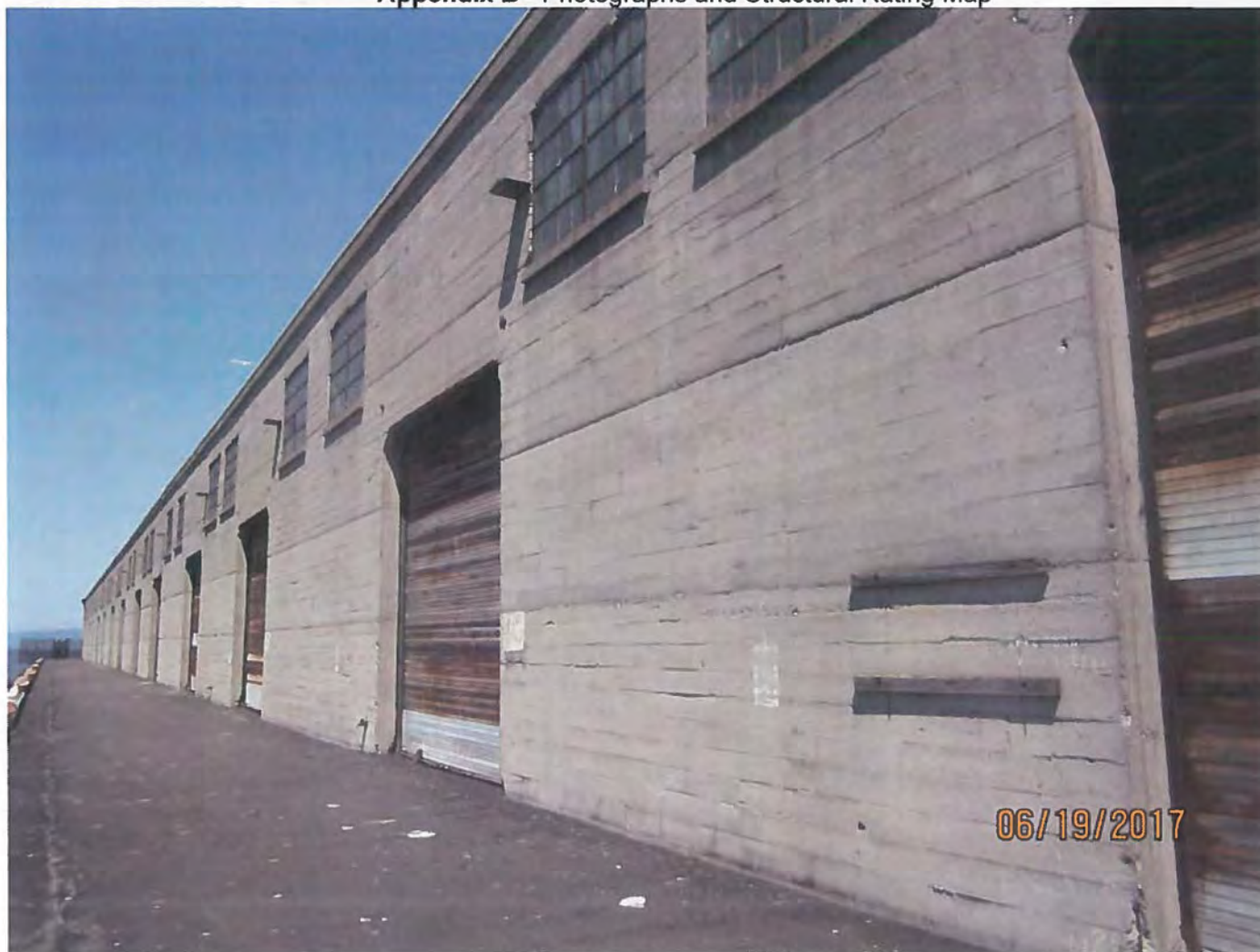


**Photo 2.** Exterior concrete wall along south face of building.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 3.** Exterior concrete wall along north face of building.





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 4. Spalls around roll-up door opening on north face wall. Repairs are planned as part of a future project.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map

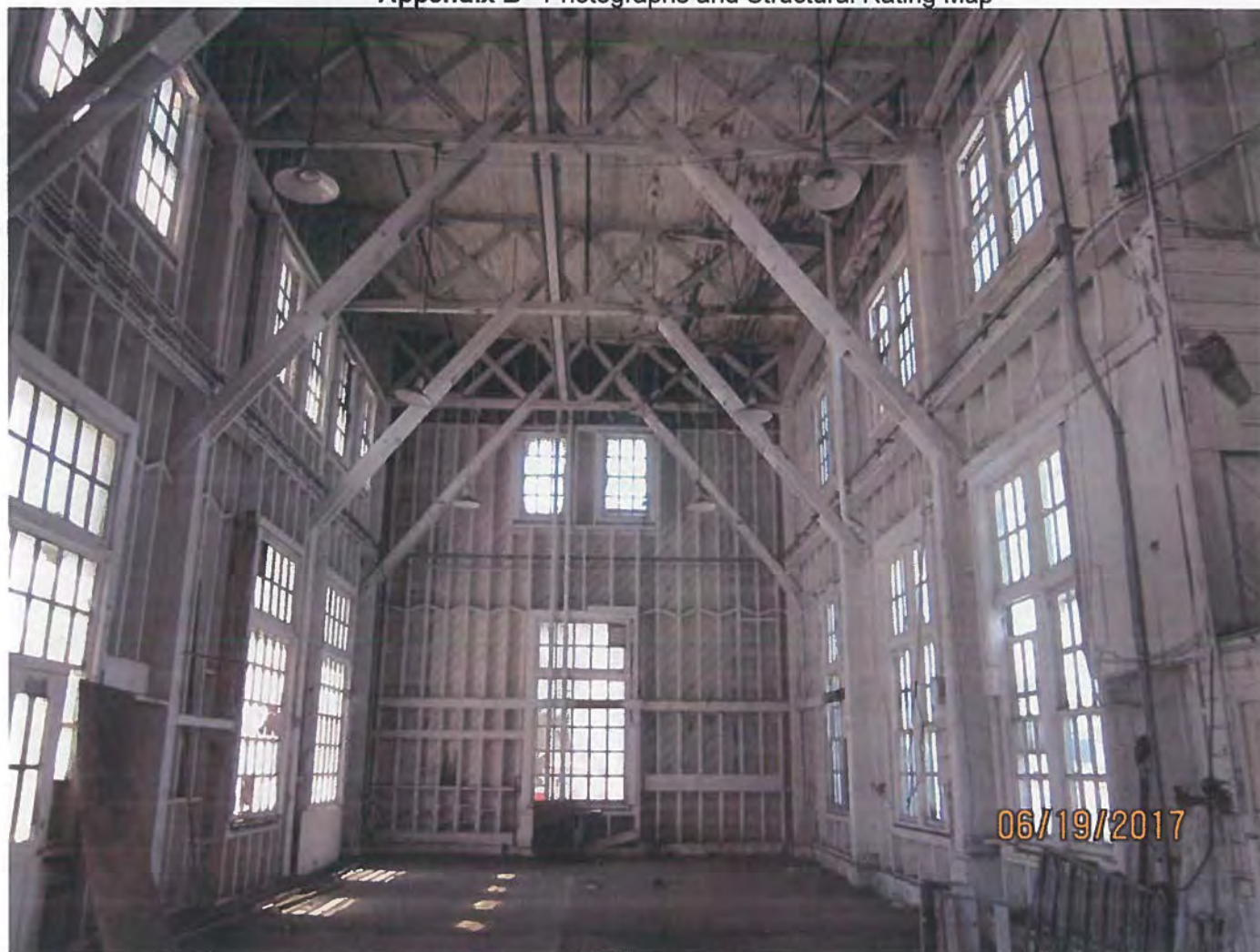


Photo 5. Typical bulkhead framing.





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 6.** Overall view of shed framing looking towards the Embarcadero



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 7.** New steel beam and tube steel posts added in 2017 to strengthen existing wood truss.





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

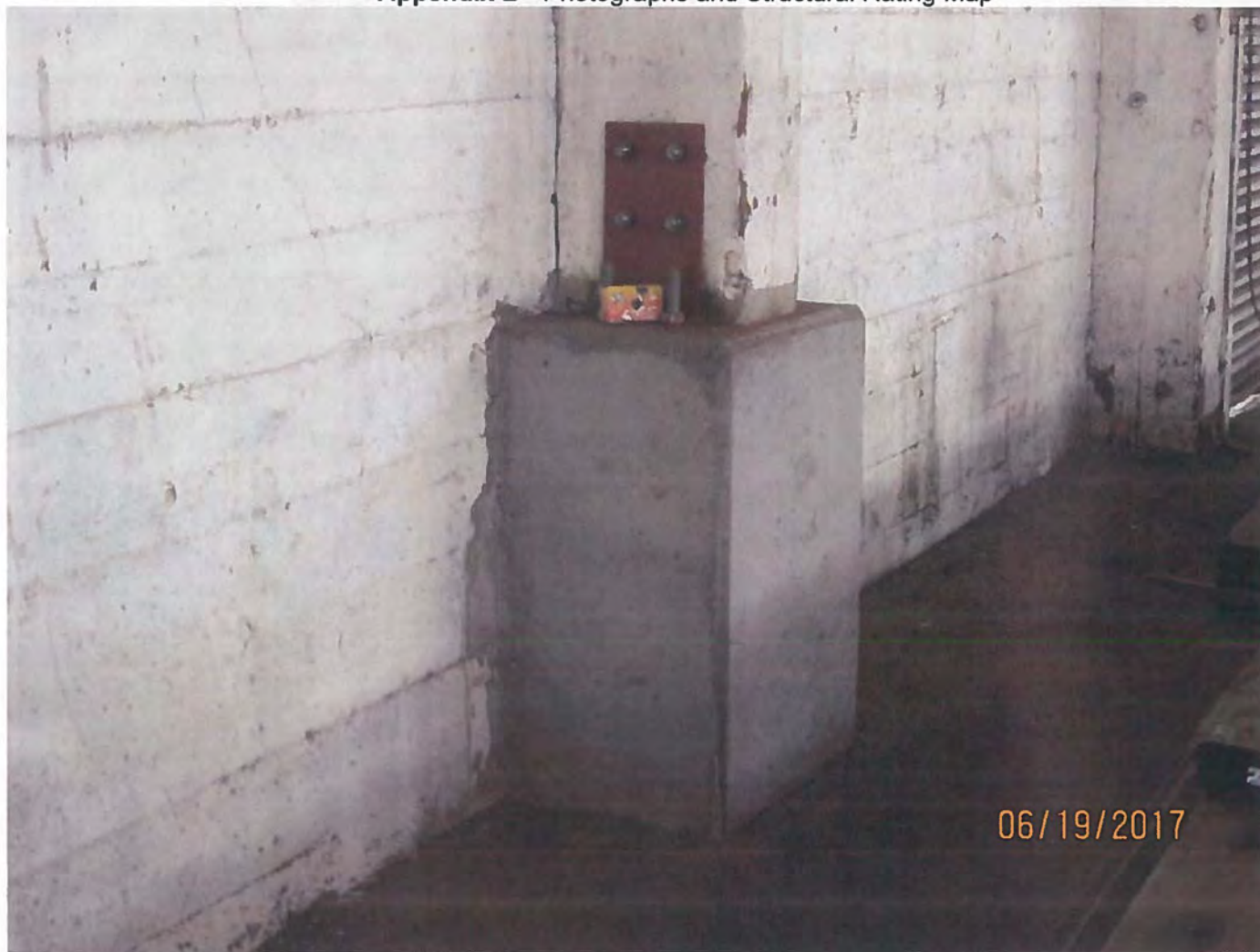


Photo 8. Replacement truss column and strengthened truss connections installed in 2017



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 9.** New concrete footings installed to replace dry rotted column bases in 2017.





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 10. Roof monitor with new beam and 2x4 sheathing.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 11.** Rear concrete wall viewed from inside shed.





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 12.** Steel beams and supplemental wood posts added in the past in order to remove original columns.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 13.** Shoring posts under roof beams near rear wall. Posts are keyed into substructure concrete slab.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 14. Wood roof beams strengthened in the past.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 15.** Interior wood columns on raised footings. Less susceptible to dry rot, but some have minor damage from vehicle impact.





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 16.** Shoring post installed at column grid H26 due to additional dry rot discovery. Permanent repairs are already planned. Similar shoring at B14 and B42. Roof area supported by these posts are shown yellow tagged until permanent repairs are complete.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 17.** Construction photo of new roofing at Pier 31 shed building.





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map

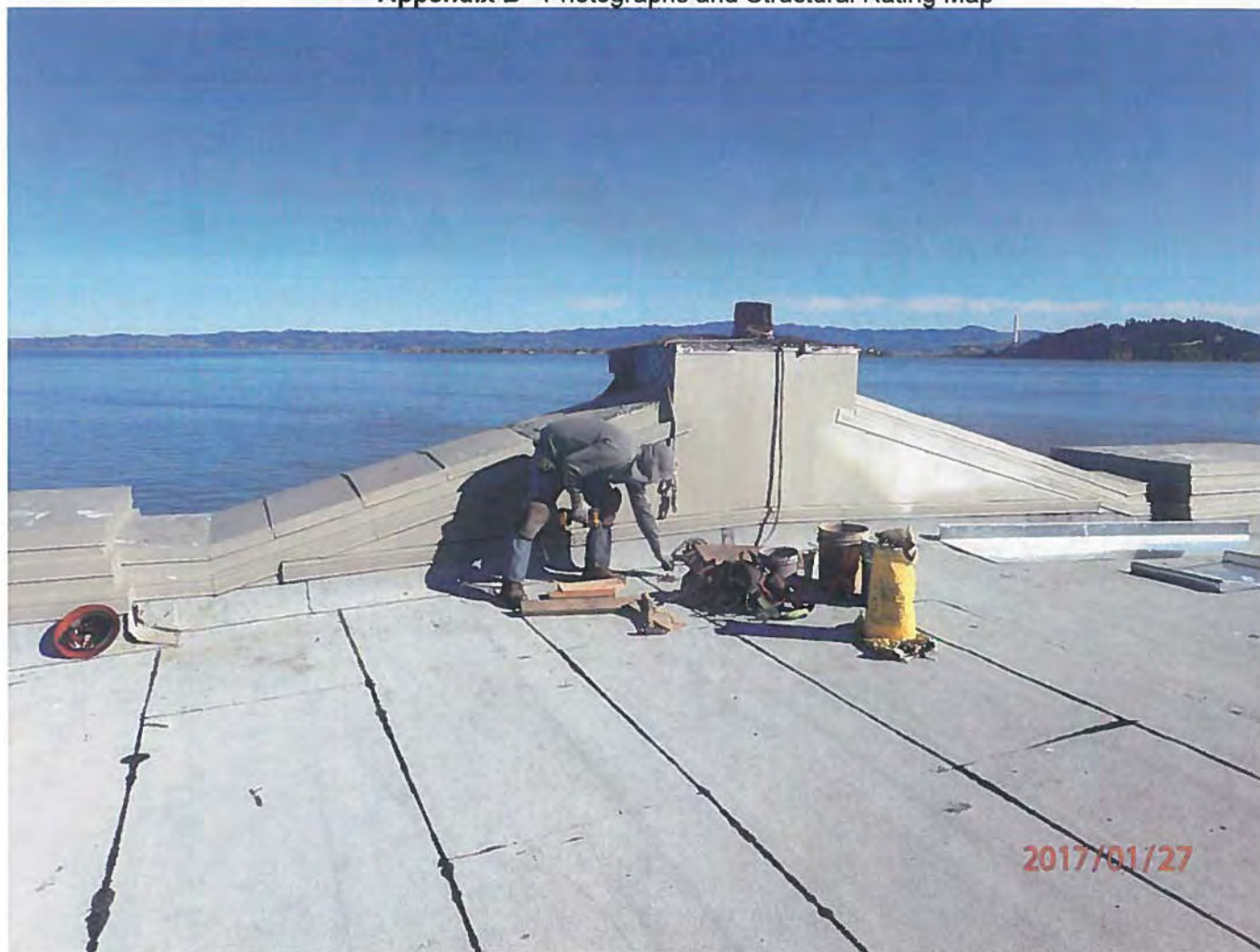


**Photo 18.** Construction photo of roofing work near bulkhead.



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 19.** Construction photo of roof work near end of pier.





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

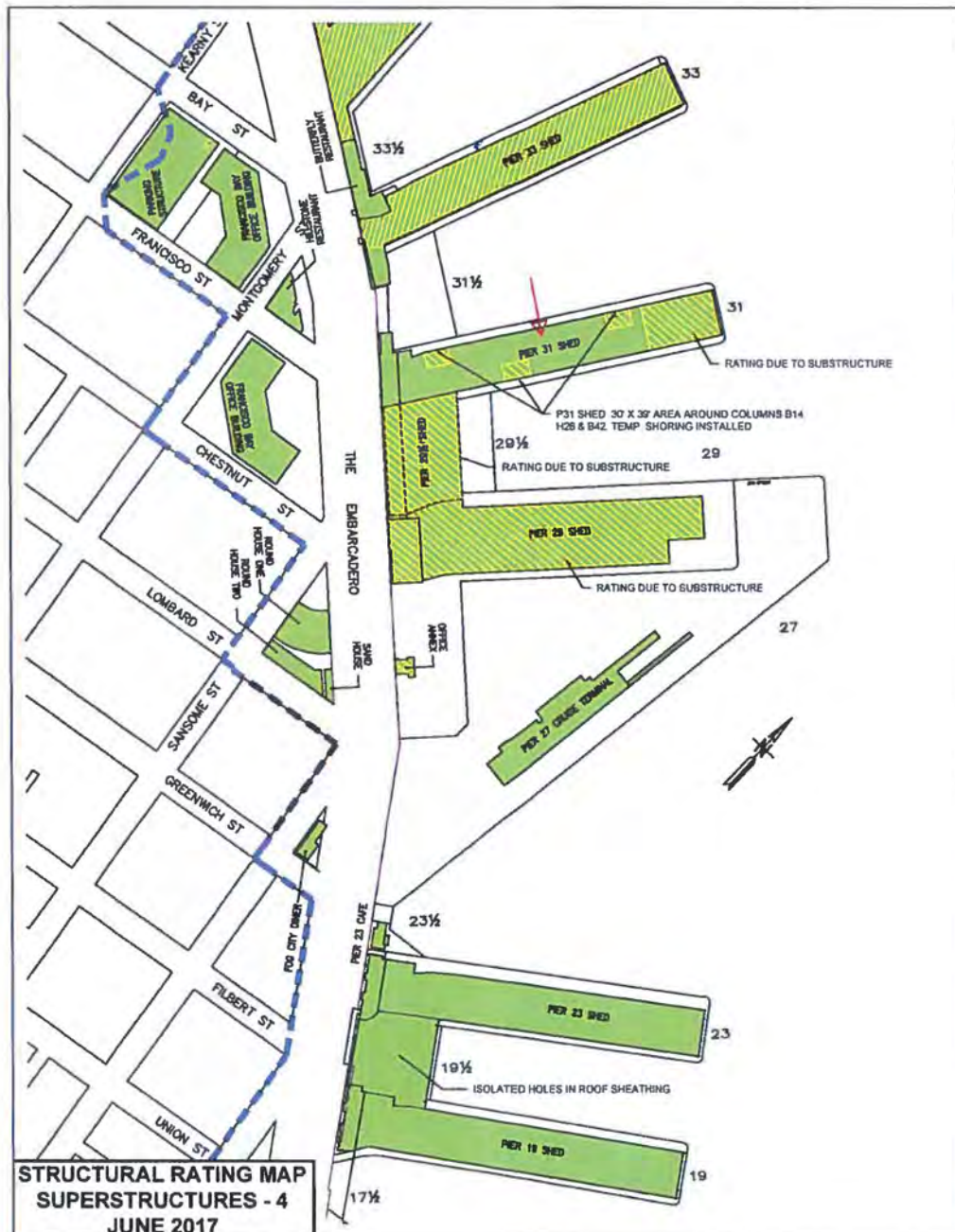


Photo 20. Superstructure rating map for Pier 31 shed. Three columns have temp. shoring and supported roof area is yellow tagged. Outer end of pier is yellow tagged due to substructure rating.



## RAPID STRUCTURAL ASSESSMENT REPORT

Structure Type:	SUBSTRUCTURE	Work Order:	5456
Facility Name:	Pier 31 Substructure	FIN:	1310SUB
Asset Number:	1310-SUB3	Facility Code:	1310
Asset Activity:	SUBSTRUCTURE 4 YR INSPECTION	Type Use:	C-L
Inspection Number:	1310-SUB3-1-2013	Inspector Name:	Duncan, Mr. Sherban A.
		Affiliation:	C+D - Gelberg Rodriguez
Inspection Start Date:	2013/05/30 10:06:48	Inspection End Date:	2013/05/30 10:06:48
Purpose Of Inspection:	Periodic Inspection	Lease Number:	
Address:			
Year Built:			

### Rating Criteria:

**Green** - Unrestricted use. May require some minor repair, or minimal barricading.

**Yellow With Green Hatching** - Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

**Red** - Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** **Green**

**Immediate Actions:** Further investigation to evaluate load limits recommended

**Required Repairs:** Repair areas of exposed rebar and spalling

**Load Limits:**

**Barricades:**

### Condition Assessment Summary

Condition	Yes	No	More Review Needed
1) Severe Seawall Failure		X	
2) Many Missing Piles		X	
3) Many significant damaged pile		X	
4) Significant beam deterioration		X	
5) Significant slab deterioration		X	
6) Other Hazard present		X	

### Comments:

**Sequence - 1**

**Description - Comments**

**Comment -**

1. Spalling and exposed/corroded rebar on slab and beams.
2. Some piles are out-of-plumb





# RAPID STRUCTURAL ASSESSMENT REPORT

**Attachments:**

**Appendix A - Facility Data**

**Appendix B - Photographs and Structural Rating Map**



# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

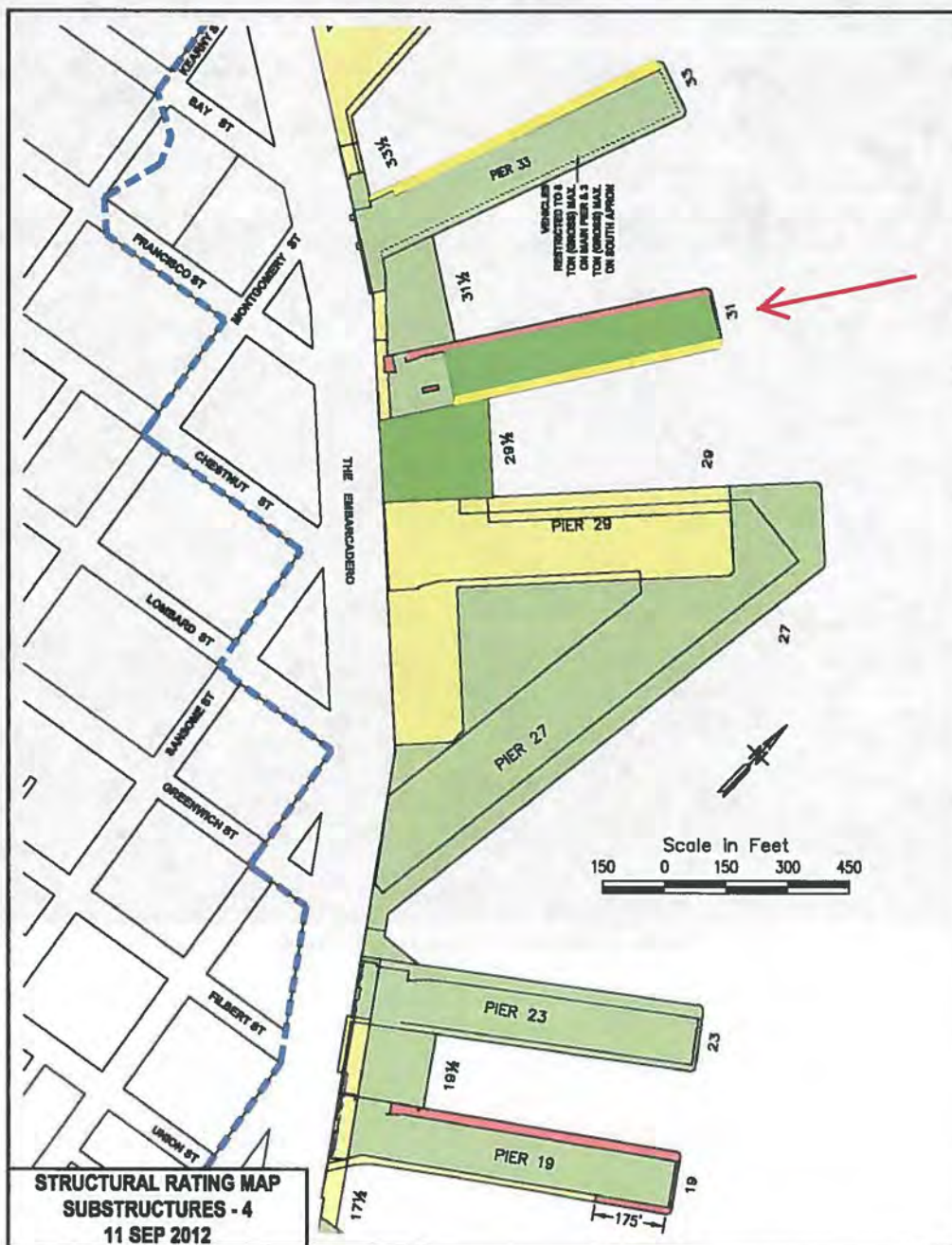


Photo 1. Structural Rating Map



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 2.** Gunite on concrete framing



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 3. Overall view looking at east end





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map



**Photo 4.** Hole at deck



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 5.** Spalling of concrete beam with exposed/corroded rebar



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 6. Concrete spalling at slab



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 7.** Seawall protected by rip-rap





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map



Photo 8. Overall view looking at south side



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 9. Spalling of concrete beams and slab



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 10. Typical framing



## RAPID STRUCTURAL ASSESSMENT REPORT

Structure Type:	SUBSTRUCTURE	Work Order:	5419
Facility Name:	Pier 31.5 Substructure	FIN:	1315SUB
Asset Number:	1315-SUB	Facility Code:	1315
Asset Activity:	SUBSTRUCTURE 4 YR INSPECTION	Type Use:	C-L
Inspection Number:	1315-SUB-1-2013	Inspector Name:	Duncan, Mr. Sherban A.
		Affiliation:	C+D - Gelberg Rodriguez
Inspection Start Date:	2013/05/31 13:29:47	Inspection End Date:	2013/05/31 13:29:47
Purpose Of Inspection:	Periodic Inspection	Lease Number:	
Address:			
Year Built:			

### Rating Criteria:

**Green** - Unrestricted use. May require some minor repair, or minimal barricading.

**Yellow With Green Hatching** - Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

**Red** - Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** **Green**

### Immediate Actions:

**Required Repairs:** Replace wood piles near metal deck

**Load Limits:**

**Barricades:**

### Condition Assessment Summary

Condition	Yes	No	More Review Needed
1) Severe Seawall Failure		X	
2) Many Missing Piles		X	
3) Many significant damaged pile		X	
4) Significant beam deterioration		X	
5) Significant slab deterioration		X	
6) Other Hazard present		X	

### Comments:

**Sequence - 1**

**Description - Comments**

**Comment -**

1. Wood piles near metal deck (gangway) are deteriorated.
2. Concrete spalling at pile caps.
3. Minor corrosion of steel plates.





# RAPID STRUCTURAL ASSESSMENT REPORT

**Attachments:**

Appendix A - Facility Data

Appendix B - Photographs and Structural Rating Map



# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

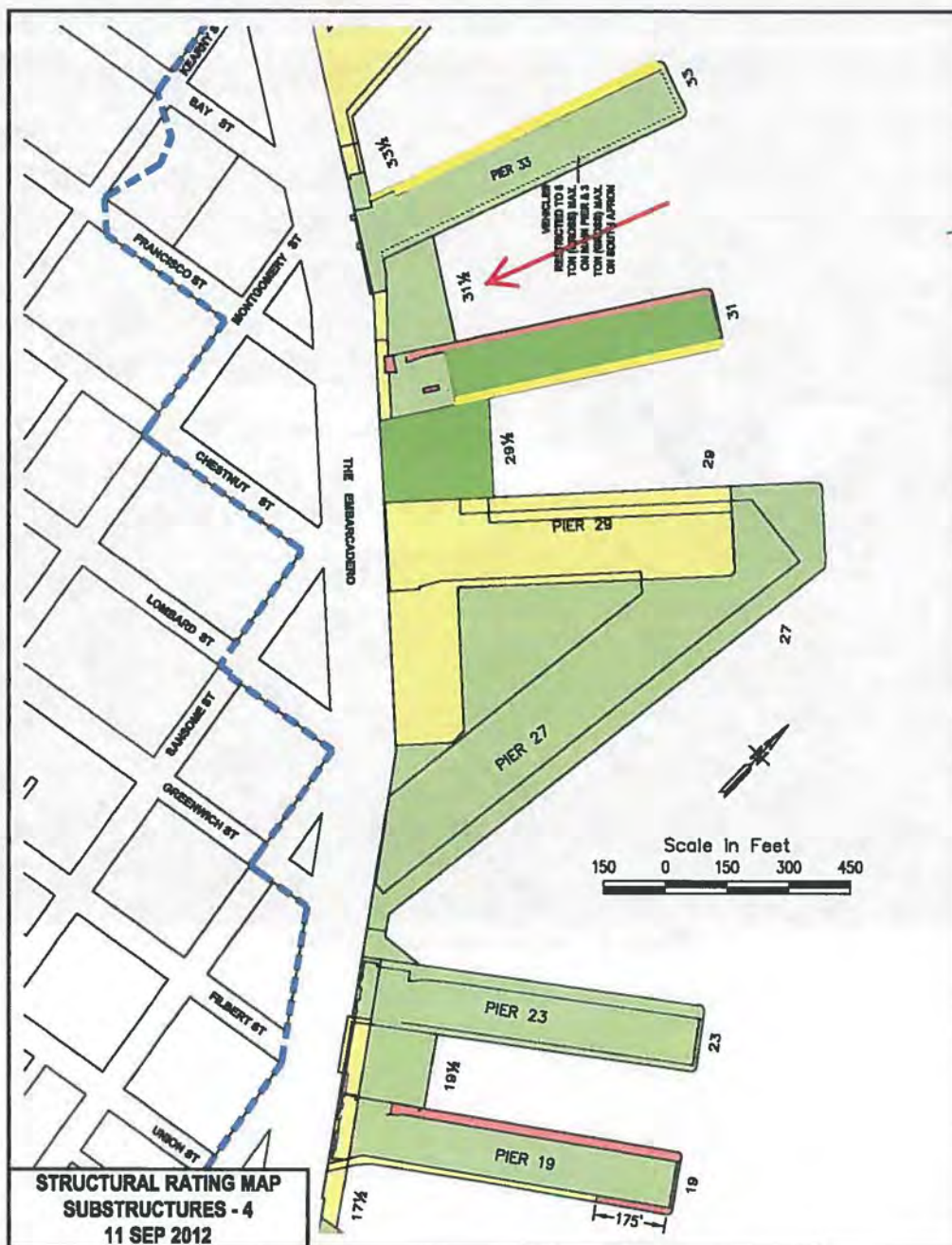


Photo 1. Structural Rating Map





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map



**Photo 2.** Overall view looking east



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 3. Crack on pile cap





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 4.** Deteriorated wood piles near metal deck



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 5. Typical framing**



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 6. Metal deck



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 7. Corrosion on steel plates





# **BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM** (rev. 7-2009)

**Facility Name:** Shed at Pier 33

**FIN:** 1330-SHEDA-ALL

**Inspection Number:** 1330-SHEDA-ALL-2010

**Inspector's Name:** Sherban A. Duncan, P.E.

**Inspection Date:** 06/01/10

**Start Time:** 2:00 P.M.

**Report Posting Date:** 6/22/10

**Affiliation:** Port of San Francisco

**End Time:** 3:30 P.M.

**Purpose of Inspection-(periodic insp., maritime request, real estate request, tenant move-in, tenant move-out, etc.):** periodic inspection

## **Rating Criteria:**

**Green** – Unrestricted use. May require some minor repair, or minimal barricading.

**Yellow** – Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

**Red** – Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** Green XX      Yellow      Red

**Immediate Actions:** Detailed Structural Evaluation when funds will be available.

**Required Repairs:** To be determined after the Detailed Structural Evaluation, when funds will be available.

## **Condition Assessment Summary:**

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		Wall spalling
5) Severe ground or slope movement present		X	
6) Other hazard present		X	

## **Comments:**

Substructure deterioration; load restrictions – see existing load limit signs.

## **Attachments:**

**Appendix A-** General Facility Description

**Appendix B-** Photographs

**Appendix C-** Structural Rating Map



# **BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM** (rev. 7-2009)

## **Appendix A-Facility Data**

**Name of Facility:** Shed at P 33

**Facility Code:** 1330

**Address:**

**Lease Number(s):**

### **Building Data**

Building Structure: 1330-SHEDA-ALL-1-2010

No. of stories: 1

Support over water: yes

Support over land: no

Construction type (Wood, concrete, steel, masonry or combination): wood, steel, concrete

Occupancy Type (Commercial, office, industrial, assembly, residential, emergency service, etc.): commercial

### **Detailed Building Description (If available):**

- Wood plank roof sheathing on wood beams supported by wood trusses on interior wood posts
- Storage, workshops, parking, food delivery, and miscellaneous facilities in Main Structure

### **Substructure/Foundation Data:**

Substructure FIN: 1330-SUBST-ALL-1

Piling type: concrete

Substructure Deck Type: framed concrete

Apron Type: framed concrete

### **Detailed Substructure Description (if available)**

**BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM** (rev. 7-2009)

**Appendix B- Photographs**

FIN: 1330-SHEDA-ALL

Inspection Date: 06/01/10

Facility Name: Shed at P 33

Inspection Number: 1415-SHEDA-ALL-2010



**Photo 1. Facade cracks**



**Photo 2. Rusting eye bolts**



**BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM** (rev. 7-2009)

**Appendix B- Photographs**

FIN: 1330-SHEDA-ALL

Inspection Date: 06/01/10

Facility Name: Shed at P 33

Inspection Number: 1415-SHEDA-ALL-2010



**Photo 3. Roof repair work and water staining**



**Photo 4. Concrete spalling around windows at east wall**

**BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM** (rev. 7-2009)

**Appendix B- Photographs**

FIN: 1330-SHEDA-ALL

Inspection Date: 06/01/10

Facility Name: Shed at P 33

Inspection Number: 1415-SHEDA-ALL-2010



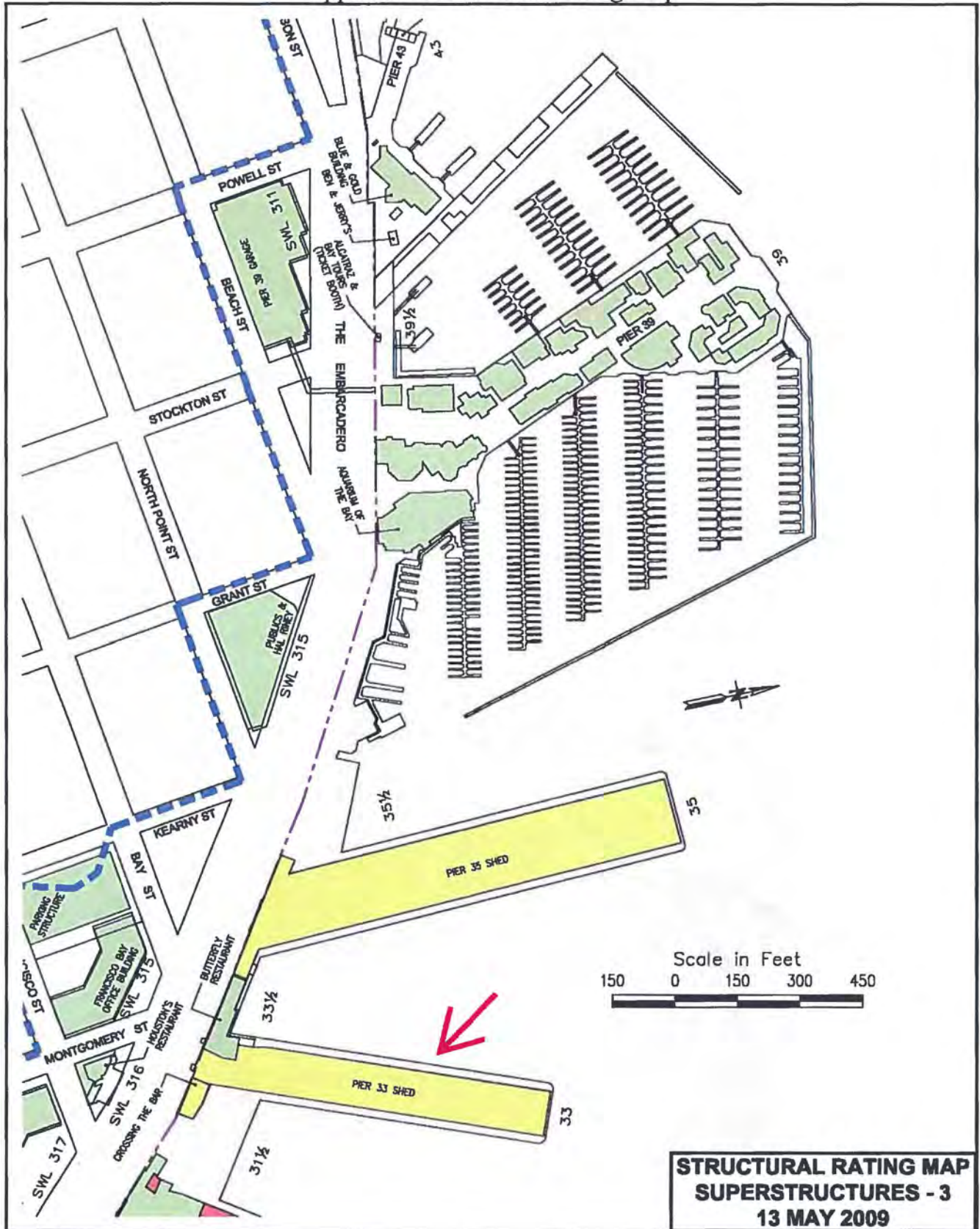
**Photo 5. Repair work with steel beams after the post removal**



**Photo 6. Fire damage at north end**



Appendix C-Structural Rating Map





## RAPID STRUCTURAL ASSESSMENT REPORT

<b>Structure Type:</b>	<b>SUBSTRUCTURE</b>	<b>Work Order:</b>	5406
<b>Facility Name:</b>	Pier 33 Southern Marginal Wharf (Crossing Bar)	<b>FIN:</b>	1330SSW
<b>Asset Number:</b>	1330-SUB5	<b>Facility Code:</b>	1330
<b>Asset Activity:</b>	SUBSTRUCTURE 4 YR INSPECTION	<b>Type Use:</b>	C-L
<b>Inspection Number:</b>	1330-SUB5-1-2013	<b>Inspector Name:</b>	Duncan, Mr. Sherban A.
		<b>Affiliation:</b>	C+D - Gelberg Rodriguez
<b>Inspection Start Date:</b>	2013/05/31 14:33:55	<b>Inspection End Date:</b>	2013/05/31 14:33:55
<b>Purpose Of Inspection:</b>	Periodic Inspection	<b>Lease Number:</b>	
<b>Address:</b>			
<b>Year Built:</b>			

### Rating Criteria:

Green - Unrestricted use. May require some minor repair, or minimal barricading.

Yellow With Green Hatching - Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

Red - Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** Green

### Immediate Actions:

**Required Repairs:** Exposed rebar and spalling

**Load Limits:**

**Barricades:**

### Condition Assessment Summary

Condition	Yes	No	More Review Needed
1) Severe Seawall Failure		X	
2) Many Missing Piles		X	
3) Many significant damaged pile		X	
4) Significant beam deterioration		X	
5) Significant slab deterioration		X	
6) Other Hazard present		X	

### Comments:

Sequence - 1

Description - Comments

Comment -

1. Some piles on northern end are out-of-plumb.





## **RAPID STRUCTURAL ASSESSMENT REPORT**

2. Some spalling with exposed/corroded rebar at slab and beams.
3. Some apparent repairs at north end.

### **Attachments:**

**Appendix A - Facility Data**

**Appendix B - Photographs and Structural Rating Map**



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 1. Seawall**





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 2. Piles out-of-plumb



# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

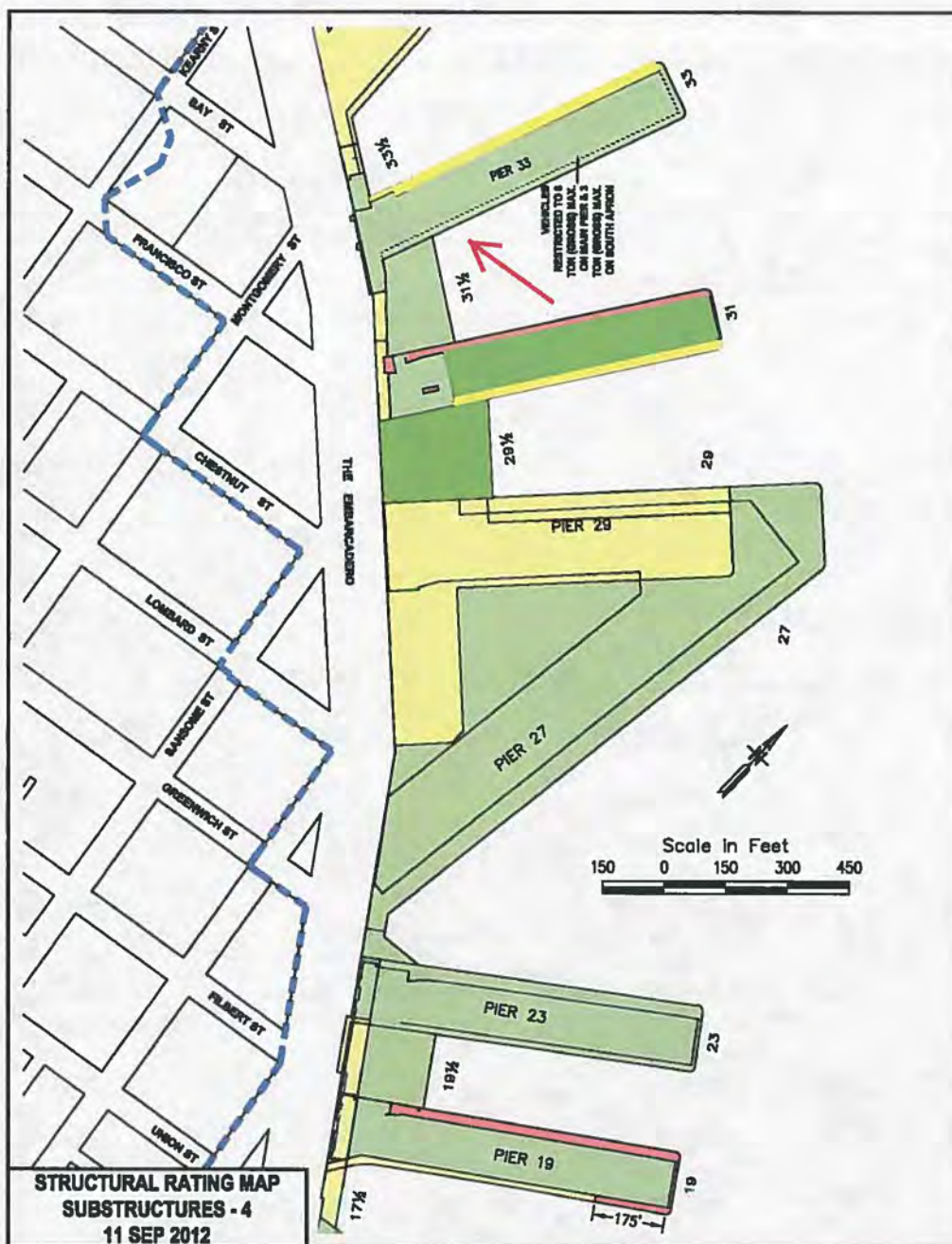


Photo 3. Structural Rating Map



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map

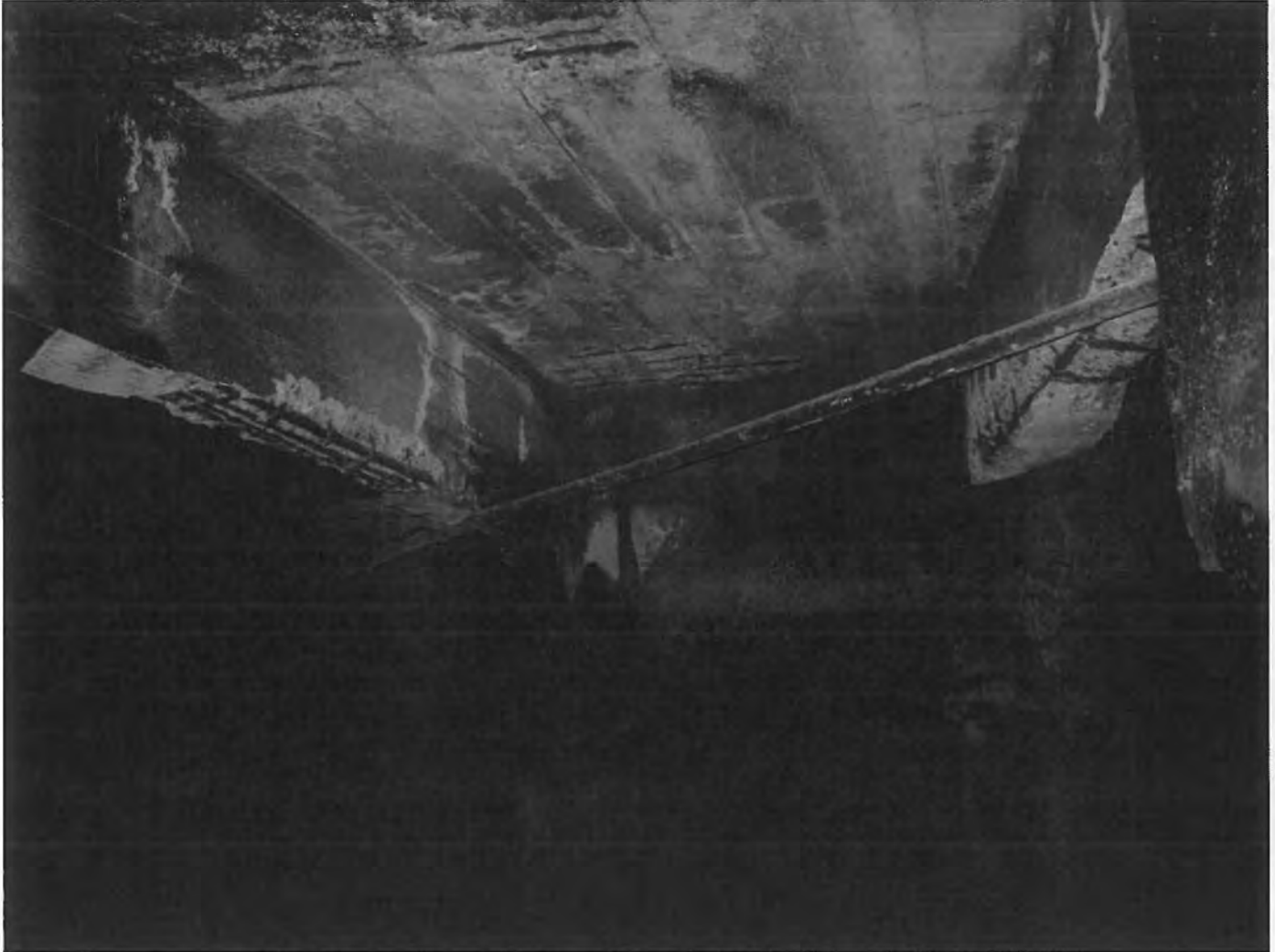


Photo 4. Typical framing



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 5.** Spalling and exposed/corroded rebar on beams and slab



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



Photo 6. Spalling and exposed/corroded rebar on beam



## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 7.** Spalling and exposed/corroded rebar at beam







## RAPID STRUCTURAL ASSESSMENT REPORT

Structure Type:	SUBSTRUCTURE	Work Order:	12720
Facility Name:	Pier 33-Substructure	FIN:	1330SUB
Asset Number:	1330-SUB3	Facility Code:	1330
Asset Activity:	SUBSTRUCTURE 4 YR INSPECTION	Port Engineer:	Duncan, Mr. Sherban A.
Inspection Number:	1330-SUB3-1-2015	Inspected By:	Port of San Francisco
Inspection Start Date:	2015/08/23 09:11:05	Inspection End Date:	2015/08/23 09:11:01
Purpose Of Inspection:	Periodic Inspection	Lease Number:	Multiple
Address:			
Year Built:			

### Rating Criteria:

**Green** - Unrestricted use. May require some minor repair, or minimal barricading.

**Yellow With Green Hatching** - Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.

**Red** - Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** **Yellow With Green Hatching**

**Immediate Actions:** See description below

**Required Repairs:** Repair broken pipes discharging water into the bay, repair areas of exposed rebar and spalling; remove hanging timbers

**Load Limits:**

**Barricades:**

### Condition Assessment Summary

Condition	Yes	No	More Review Needed
1) Severe Seawall Failure		X	
2) Many Missing Piles		X	
3) Many significant damaged pile	X		
4) Significant beam deterioration		X	
5) Significant slab deterioration	X		
6) Other Hazard present		X	

### Comments:

#### Sequence - 1

#### Description - Comments

**Comment** - Immediate Actions : Provide fences with a gate at North and South wales. Install signs as following : on each fence to read "DO NOT ENTER"; at all doors/gates to North apron to read "UNSAFE AREA/DO NOT EXIT"; at entrance to shed to read "MAXIMUM VEHICLE GROSS IS 8 TON"; at all doors/gates to South apron to read "MAXIMUM VEHICLE GROSS is 3 TON".

**Required Repairs** : Detailed engineering analysis is recommended to evaluate the load carrying capacity of the deteriorated substructure areas.





# RAPID STRUCTURAL ASSESSMENT REPORT

**Attachments:**

**Appendix A - Facility Data**

**Appendix B - Photographs and Structural Rating Map**



# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix A - Facility Data

### Substructure/Foundation Data:

**Substructure FIN:** 1330SUB

**Piling Type:** Concrete

**Substructure Deck Type:** Concrete

**Apron Type:** Concrete

**Detailed Substructure Description (If available):** Concrete Slab supported by Concrete Piles





# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map



**Photo 1.** Spalled concrete beams and slabs above the outfalls under the Main Pier



# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map



Photo 2. North apron view





## RAPID STRUCTURAL ASSESSMENT REPORT

### Appendix B - Photographs and Structural Rating Map



**Photo 3.** Concrete spalling, typical



# RAPID STRUCTURAL ASSESSMENT REPORT

## Appendix B - Photographs and Structural Rating Map

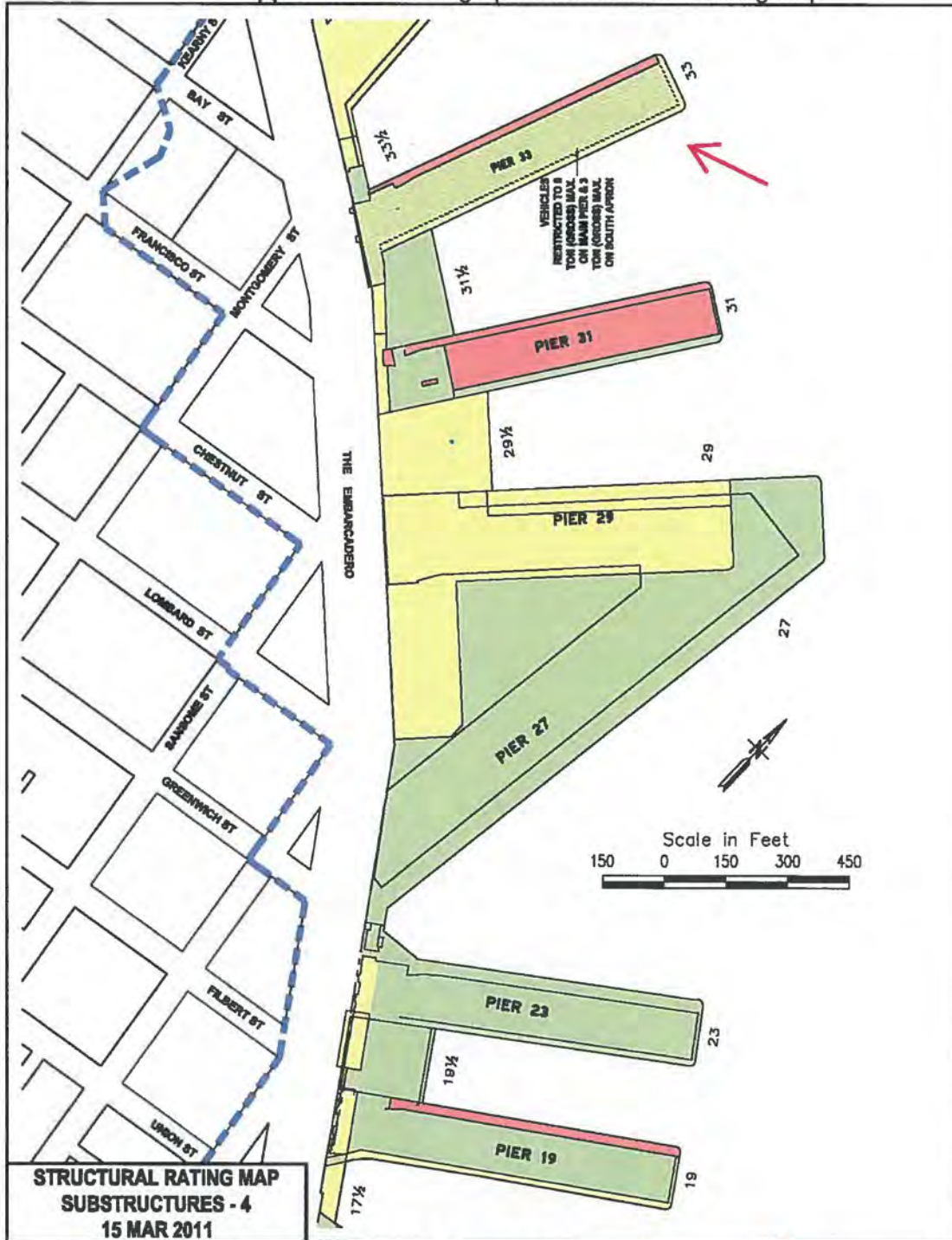


Photo 4. Structural Map

Port:  
Tenant:

Initial: ES  
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### **SCHEDULE 3**

#### **FEMA-National Flood Insurance Program 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 is preparing a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

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. The San Francisco Board of Supervisors has adopted 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 (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are 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.

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 an area that is at risk from a flood of this magnitude as a special flood hazard area ("SFHA"). To prepare the FIRM for San Francisco, FEMA has performed detailed coastal engineering analyses and mapping of the San Francisco Bay shoreline. The San Francisco Bay Area Coastal Study includes both regional hydrodynamic and wave modeling of the San Francisco Bay, as well as detailed onshore coastal analysis used to estimate wave runup and overtopping, as well as overland wave propagation. These onshore analyses form the basis for the Base Flood Elevations (BFEs) and SFHAs shown on the FIRM.

FEMA initiated preparation of a FIRM for the City in the mid-2000s, and issued a preliminary version of the FIRM in 2007, but did not finalize that map. Subsequently, FEMA completed region-wide analyses of flooding on San Francisco Bay and the Pacific Ocean coastline. FEMA used these studies to prepare another preliminary FIRM for San Francisco, which it issued in November 2015. The preliminary FIRM identified SFHAs along the City's shoreline in and along the San Francisco Bay consisting of "A zones" (coastal areas subject to inundation by tidal surge and waves less than three feet in height) and "V zones" (areas subject to the additional hazards that accompany waves more than three feet in height). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

Due to comments and an appeal submitted by the City, FEMA has not yet finalized the FIRM. Sometime during 2018, FEMA intends to issue a revised preliminary FIRM showing changes due to the appeal resolution, and give the City a period (most likely 30 days) in which to comment. Following resolution of any comments, FEMA would finalize the FIRM.

To finalize the FIRM, FEMA will issue a Letter of Final Determination (LFD) stating that the map will be published in final form six months from the date of the LFD (referred to as the "effective date" of the FIRM). During that six-month period, the City must amend the floodplain management ordinance to adopt the new FIRM. After the effective date, the FIRM will be used for all flood insurance and floodplain management purposes.

The federal 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. FEMA also publishes "Answers to



Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on the City's and FEMA's websites at the following links:

<http://sfgsa.org/san-francisco-floodplain-management-program>

<https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>

<https://www.fema.gov/national-flood-insurance-program>

**SCHEDULE 4**  
**HAZARDOUS MATERIAL DISCLOSURE**



**Environmental Reports and Documents Regarding Hazardous Materials**

**National Park Service**

**January 2018**

**Pier 31**

Pre-Renovation Asbestos and Lead-Based Paint Survey Report, Pier 27, 29, 31 and Annex Buildings (Piers 27 1/2 and 29 1/2), RGA Environmental, Inc., August 11, 1999.

**Pier 33**

Final Report SAR Project No IHX 30, Limited Asbestos and Lead Paint Survey; Pier 33-Roof, IHI Environmental, 3/10/2006.

Hazardous Materials Survey of Building Components Expected to be Impacted During upcoming renovation; Pier 33, ProTech Consulting and Engineering, May 6, 2010.

Hazardous Materials Survey Report, Wharf 33 Exterior, Sar Project No 3032K, North Tower environmental, 4/29/2004.

Hazardous materials survey report; Pier 33 exterior, North Tower environmental, April 21, 2004.

Limited Asbestos and Lead Paint Survey Pier 33 - Roof, IHI Environmental, March 10, 2006.

Limited Survey Report for Asbestos-Containing Materials and Lead-Based Paints at the Sambo's Restaurant, EnviroScience, Inc., April 1, 1997.

Port of San Francisco and Tenants, Annual Group Evaluation Report (Stormwater), 2013/2014, Port of San Francisco, June 16, 2014.

Port of San Francisco and Tenants, Annual Group Evaluation Report (Stormwater), 2012/2013, Port of San Francisco, 2012/2013.

**Port:** \_\_\_\_\_  
**Tenant:** \_\_\_\_\_  
**Initial:** 