



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

**LEASE NO. L-XXXX
AND
LOAN AGREEMENT**

BY AND BETWEEN

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

AND

[INSERT NAME OF TENANT]

CHINA BASIN PARK

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

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

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BASIC LEASE INFORMATION

<i>Lease Date (for reference purposes only):</i>	[REDACTED], 2025
<i>Landlord:</i>	The CITY AND COUNTY OF SAN FRANCISCO , operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Tenant:</i>	[REDACTED]
<i>Notice Address for Tenant:</i>	[REDACTED]
<i>Tenant Agent for Service of Process:</i>	
<i>Notice Address for Port:</i>	Port of San Francisco Pier 1, The Embarcadero San Francisco, CA 94111 Attention: Deputy Director of Real Estate and Development
<i>With a copy to:</i>	Port of San Francisco Pier 1, The Embarcadero San Francisco, CA 94111 Attention: General Counsel
<i>Key Contact for Port:</i>	Assistant Deputy Director of Development (415) 274-0621
<i>Property and Location:</i>	As of the Commencement Date, the Premises shall consist of China Basin Park, as more particularly described on the attached Exhibit A-1 and as depicted on the attached Exhibit A-2 , including all Improvements thereon (collectively, the “ Premises ”). The term “ Premises ” refers to the property that is subject to this Lease from time to time, as may be adjusted as provided in Section 2.2 , and will include all Improvements and Subsequent Horizontal Construction as and when constructed thereon.
<i>Development Project</i>	Mission Rock Development at SWL 337 and Pier 48
<i>Commencement Date:</i>	The date on which the Premises is released from the Master Lease (as defined below) and accepted by Port pursuant to Section 14.7(c) of the DDA (as defined below), and subject to approval of this Lease by the Port Commission and the Board of Supervisors and Mayor.

<i>Expiration Date:</i>	Unless earlier terminated or extended in accordance with this Lease, the Expiration Date will be the date that is fifteen (15) years after the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then the Expiration Date shall be calculated from the first day of the first month after the Commencement Date.
<i>“As-Is” Condition (§2.9):</i>	Port will deliver the Premises to Tenant on the Commencement Date in their then-existing and as-is condition, with no representations, warranties, or other obligation of Port, including but not limited to the repair or construction of any Improvements or alterations, and subject to all applicable Laws governing their use, occupancy and possession.
<i>Right to Institute Rules and Regulations (§2.11):</i>	Tenant will be subject to current and future Rules, Regulations, and Laws related to parks and open space, as further described in Section 2.11 .
<i>Term (§3.1Error! Reference source not found.):</i>	One (1) 15-year term, as further described in Section 3.1 .
<i>Renewal Options (§3.2):</i>	Three (3) Tenant options to extend, each for five (5) years, as further described in Section 3.2 .
<i>Termination Rights (§3.3):</i>	<p>Tenant may terminate the Lease prior to the Expiration Date upon ninety (90) days written notice to the Port, as further described in Section 3.3(a).</p> <p>Port may terminate the Lease prior to the Expiration Date upon ninety (90) days written notice to Tenant, as further described in Section 3.3(b).</p>
<i>Base Rent (§4.1):</i>	No base rent, as further described in Section 4.1 .
<i>Reporting (§4.3):</i>	<p>Tenant must provide to Port a Quarterly Report within sixty days after the end of each calendar quarter, as further detailed in Section 4.3(a).</p> <p>Tenant must provide to Port an Annual Report on or prior to April 1 of each year, as further detailed in Section 4.3(b).</p>
<i>Annual Budgets (§5):</i>	Each annual operating budget and capital budget must be approved by Port, as further described in Section 5.2 .
<i>Budget Variance (§5.3):</i>	After annual budget approval by Port, Tenant may, without further Port approval, re-allocate or increase expenses, as further described in Section 5.3 .

<i>Revenue Allocation (§5.5):</i>	All Gross Revenue derived from or related to the Premises, excluding Capital Improvement Sponsorships, must be allocated as described in Section 5.5 .
<i>Mission Rock Long Term Reserve Fund (§5.6):</i>	<p>The funds in the Mission Rock Long Term Reserve Fund shall only be used to fund:</p> <ol style="list-style-type: none"> 1. Repairs of unanticipated damage if Tenant’s insurance proceeds are insufficient; or to repair unanticipated damage regardless of Tenant’s insurance proceeds if Tenant demonstrates, to Port’s reasonable satisfaction, that the overall economic impact of an insurance claim and any potential proceeds for unanticipated damage will negatively impact the Premises; or other unanticipated liabilities for which there is no applicable insurance coverage, as mutually agreed by Tenant and Port; 2. Capital Repairs and Replacements or other enhancements to: <ol style="list-style-type: none"> a. the Premises; and b. other parks, open space paseos, and public rights of way within the Mission Rock STD, so long as approved by the Port in the Budget or an amendment to the Budget; or 3. Events in support of Tenant’s DEI Plan.
<i>Security Deposit:</i>	Zero Dollars (\$0)
<i>Port Loan (§7):</i>	<p>Maximum Amount: \$800,000; Maximum Annual Draw: \$300,000; Fund Availability: within 3 years of Commencement Date Interest: Zero; Eligible Uses: baseline maintenance and operations; Term: 15 years;</p> <p>each as more particularly described in Section 7 and Section 5.5.</p>
<i>Permitted Use (§8.1):</i>	<p>The primary use will be to use the Premises as a public park and open space commonly known as China Basin Park, including for events and programming, retail concessions, walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes.</p> <p>Any other use within the Premises requires the prior written consent of Port, which may be withheld in its sole discretion.</p>

<p><i>Events and Programming (§10):</i></p>	<p>Tenant must comply with and obtain all applicable regulatory and governmental approvals and permits prior to any Event.</p> <p>No less than thirty (30) days and no more than sixty (60) days prior to the commencement of each month, Tenant must submit to Port a calendar of proposed Events for the next fourteen (14) months and actual Events from the past month on a rolling basis.</p> <p>Tenant must obtain Port’s prior written approval for all medium to large events (as defined in the BCDC Permit) that will last three (3) days or more, which approval shall be granted in accordance with the terms and conditions described in Section 10.</p> <p>Port will have the right to use all or any portion of the Premises from time to time throughout the Term in accordance with Section 10.7.</p>
<p><i>Subleases, Event Licenses, Concession Agreements (§10, 11,24):</i></p>	<p>Tenant is prohibited from entering into any agreement relating to the Premises with any entity, organization, or person that:</p> <ol style="list-style-type: none"> 1. is subject to an active debarment or suspension order from the City; or 2. has in the last ten (10) years, or is currently, subject to an eviction or other enforcement order prosecuted by or for the Port. <p>To comply with this provision, Tenant shall:</p> <p>(i) confirm that the applicable counterparty is not listed as a suspended or debarred entity as reported by the City, which information is publicly available at https://sf.gov/resource/2022/suspended-and-debarred-contractors (or other City database specified by the Port in writing that is accessible to Tenant); and</p> <p>(ii) include representations in its form agreements that the applicable counterparties (a) are not subject to an active debarment or suspension order from the City, and (b) have not been debarred or suspended by the City in the last ten (10) years, and (c) are not currently, subject to an eviction or judicial action or other enforcement order prosecuted by or for the Port; and</p> <p>(iii) for any agreement with a term of more than one (1) year, provide advance notice to Port of each proposed subtenant, licensee, and concessionaire prior to execution of such sublease, Event License, Concession Agreement, or other agreement with a third party, to confirm eligibility.</p> <p>Each sublease, Event License, Concession Agreement, or other agreement with a third party must:</p>

	<ol style="list-style-type: none"> 1. comply with all applicable Laws and each and every condition of this Lease; and 2. indemnify the Port, City, and their agents; and 3. be made available without redaction for Port review at Tenant’s offices within thirty (30) days of execution; and 4. subject the sublease, Event License, Concession Agreement, or other agreement with a third party to a cross-default provision with any contract with Port, which cross-default provision may be prosecuted by Port in its sole and absolute discretion; and 5. be subject to Tenant’s DEI Plan.
<p><i>Maintenance and Repairs (§15):</i></p>	<p>During the Term of the Lease and subject to early Tenant termination or partial closure otherwise contemplated in this Lease, Tenant will have the sole responsibility for:</p> <ul style="list-style-type: none"> • maintaining the Premises in good order and condition equal to or better than other first-class public waterfront parks and open space projects located in California, including completion of any Capital Repairs and Replacements; • completing any Compliance Improvements in accordance with all applicable Laws; and • completing any Casualty Improvements in accordance with <i>Section 21</i>. <p>Tenant may, but is not obligated to, complete Subsequent Horizontal Construction and any new improvements that did not exist on the Commencement Date, subject to Port’s prior written approval.</p>
<p><i>Utilities (§16):</i></p>	<p>Port shall allow the Premises to be served with electricity, potable water, and internet services. Tenant shall directly contract with and pay the applicable service providers for such utility services.</p> <p>Effective as of the Commencement Date of this Lease and in accordance with that certain assignment and assumption agreement, Tenant shall assume all purchaser obligations under that certain water purchase agreement (“WPA”) between Port and Mission Rock Utilities for the purchase of water for non-potable uses on the Premises. During the Term, Tenant will be solely responsible for all purchaser obligations under the WPA; provided that if one or more Specified Related Agreements are terminated that Port will reasonably compensate Tenant for both fixed costs and actual usage of non-potable water used for maintenance of such areas.</p>

<i>Exclusions from Indemnifications, Waivers, and Releases (§23.6)</i>	Indemnifications limited to the extent Claims exceed the minimum limit for Tenant's Commercial General Liability insurance applicable at the time of the Claim, as further described in Section 23.6 .
<i>Security Cameras:</i>	Tenant may install, operate and maintain security cameras on the Premises with Port's prior written approval.
<i>Prepared by:</i>	Wyatt Donnelly-Landolt

DRAFT

LEASE AND LOAN AGREEMENT

(China Basin Park)

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation** (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), as landlord, and the Tenant identified in the Basic Lease Information (“**Tenant**”). The City and Port, as landlord, and Tenant are also sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

Port and Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns with respect to the Master Lease, “**Horizontal Developer**”), are parties to that certain Disposition and Development Agreement dated as of August 15, 2018 (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**DDA**”) and that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Lease**”). The DDA and Master Lease govern the mixed-use development of an approximately 28-acre site, known as “**Mission Rock**” as more particularly described in the DDA and Master Lease (the “**Project Site**”). The Premises are a portion of the Project Site and have been released from the Master Lease. For the avoidance of doubt, nothing in this Lease shall modify or affect the Horizontal Developer’s obligations and responsibilities under the DDA or the Master Lease.

The basic lease information (the “**Basic Lease Information**”), the exhibits, schedule and this Lease Agreement are and will 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 Lease Agreement will control.

The Parties intend this Lease to constitute one part of: (i) the “**Management Agreement**” as defined in the Rate and Method of Apportionment of Special Taxes for City and County of San Francisco Special Tax District No. 2020-1 (Mission Rock Facilities and Services) (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**RMA**”), and (ii) the “**Management Agreement**” as defined in the Mission Rock Master Declaration of Restrictions recorded in the Official Records of San Francisco County on June 25, 2020 as Instrument No. 20209K94434400080 (as the same may be amended, supplemented, modified and/or assigned from time to time, the “**Master Declaration**”), and the Tenant shall constitute the “**Public Space Manager**” as defined in the Master Declaration.

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. PREMISES; AS-IS CONDITION.

2.1. Premises. Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the real property commonly known as “**China Basin Park**” as described and depicted in the attached *Exhibit A-1* and *Exhibit A-2* and incorporated herein by reference, including the Improvements thereon (collectively, the “**Premises**”).

2.2. Adjustment of Premises.

(a) **Mutual Adjustment of Premises.** From time to time during the Term, the Parties reserve the right, upon mutual agreement of Port and Tenant, to modify the Premises,

including to accommodate the completion of the Subsequent Horizontal Construction and any subsequent Improvements as approved by Port.

(b) **Memorandum of Technical Corrections.** In addition, the Parties reserve the right, upon mutual agreement of Port and Tenant, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Premises, and upon full execution thereof such memoranda shall be deemed to become a part of this Lease.

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

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

2.4. 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 and Tenant fails to address the noncompliance, whether by partial closure or as otherwise contemplated in this Lease. As further set forth in and subject to the terms of **Section 13** (Compliance with Laws and Regulations), Tenant further understands and agrees that during this Lease it is Tenant’s obligation, at no cost to Port, to cause the Premises and Tenant’s use and operation of the Premises to be in compliance with the ADA and any other federal or state disability access Laws in effect as of the date of this Lease. During this Lease it is Tenant’s obligation, at no cost to Port, to cause any Alterations or Improvements to the Premises performed by or on behalf of Tenant, to be in compliance with the ADA and any other federal or state disability access Laws in effect as of the date of such Alteration or Improvements. Port acknowledges it will be responsible for, and that Tenant shall have no obligation to, cause the Premises to be in compliance with any changes to the ADA and any other new or changed federal or state disability access Laws that both: (a) become effective after the date of this Lease, and (b) impose an affirmative obligation to comply prior to or regardless of any Alterations or Improvements. Tenant will notify Port if it is making any Alterations or Improvements to the Premises that might impact accessibility standards required under federal and state disability access Laws. If any portion of the Premises (other than Alterations or Improvements performed by Tenant) does not comply with the ADA, and necessary repairs or restoration, alterations, installations, improvements, or additions to any Improvements or to the Premises shall constitute Compliance Improvements, and shall be governed by **Section 13**.

2.5. No Right to Encroach.

(a) If Tenant (including, its Agents, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the “**Encroachment**”

Area”), then upon written notice from Port (“**Notice to Vacate**”), Tenant will immediately vacate such Encroachment Area and, if such Encroachment Area is subject to Port jurisdiction, 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 (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the “**Encroachment Area Charge**”). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period will be prorated based on a thirty (30) day month. In no event will acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, successors or assigns, or a waiver (or be deemed as a waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant’s obligation to Indemnify Port as set forth in **Section 2.5(c)**), at law or in equity.

(b) In addition, Tenant will 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 will 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 will 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 23** below (Indemnity and Exculpation) will also apply to Tenant’s (including, its Agents, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant will additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, reasonable attorneys’ fees and costs.

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

2.6. 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, is being 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 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.

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

2.8. Unique Nature of Premises. Tenant acknowledges that: (a) the Premises is located along the waterfront and near buildings and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; (c) there is a risk that all or a portion of the Premises will be inundated with water due to floods or sea level rise; and/or (d) Port cannot guarantee that the Premises will be suitable for leased occupancy during the entire Term of this Lease.

2.9. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are being leased and accepted in their then-existing and as-is condition, with no representations, warranties, or other obligations of Port, including but not limited to the repair or construction of any Improvements or alterations, and subject to all applicable Laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as **Schedule 2.9**. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its Agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the Premises, the physical or environmental condition of the Premises, the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. Tenant expressly acknowledges that a portion of the Premises are or will be subject to that certain license agreement by and between Port and Pacific Gas and Electric Company, a California corporation (and its successors and assigns) with respect to that certain electric power line located in the Premises approximately parallel to Third Street and serving the Third Street Bridge Pilot House, which serviced building is adjacent to the Premises.

2.10. Release and Waiver. As part of its agreement to accept the Premises in their "As Is With All Faults" condition (but excluding any express obligation of Port or breach by Port of any express representation, warranty, or covenant in this Lease), Tenant, on behalf of itself and its successors and assigns, will be deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the other Indemnified Parties of and from any and all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Premises, including any Hazardous Materials in, on, under, above or about the Premises (including soil and groundwater conditions), (ii) the suitability of the Premises for the Permitted Use, (iii) any Laws applicable thereto, including Environmental Laws, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising at any time and from any cause in, on, around, under, and pertaining to the Premises, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but excluding any intentionally harmful acts committed solely by Port or City. Notwithstanding the foregoing, the releases and waivers in this **Section 2.10** shall not be applicable to any default by Port in the performance of any of Port's obligations under this Lease.

2.11. Port's Right to Institute Rules and Regulations. Port may impose Rules and Regulations related to parks, open space, energy, water, gas, and other matters within Port

jurisdiction reasonably necessary for the proper use, operation and maintenance of parks and open space within Port jurisdiction. Port shall meet and confer with Tenant before imposing Rules and Regulations applicable to the Premises. Port hereby confirms that no Rules and Regulations currently exist for the Premises. Tenant agrees to be bound by such reasonable Rules and Regulations Port later imposes; provided that no such Rules or Regulations shall impose restrictions or requirements that are materially more onerous than comparable rules and regulations generally applicable to parks or open spaces, unless such Rules and Regulations are (i) specific to a unique feature, aspect, or characteristic of the Premises (including but not limited to the management and operation of the Premises), and (ii) reasonable, as determined by the Port Commission. 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 or damages.

3. TERM OF LEASE; RENEWAL OPTIONS; TERMINATION RIGHTS.

3.1. Term. The term of this Lease (the "**Term**") will be for the period of years specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date, subject to renewal as set forth in **Section 3.2**, unless earlier terminated. Promptly following the actual Commencement Date, Port and Tenant will execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as **Exhibit C**, confirming the actual Commencement Date and Expiration Date, but either Party's failure to do so will not affect the commencement or expiration of the Term.

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease will not be affected thereby and Port will 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 will not commence until Port delivers possession of the Premises.

3.2. Renewal Options.

(a) Subject to Tenant's compliance with the terms of this Lease, Port grants to Tenant three (3) options ("**Renewal Options**") to extend the Term, each for an additional five (5) years (the "**Renewal Term**"). The Renewal Term will commence upon the date after the Expiration Date upon the terms and conditions of this **Section 3.2**. Tenant may exercise the Renewal Option no earlier than twenty-four (24) months prior to the Expiration Date and no later than nine (9) months prior to the Expiration Date by delivering written notice to Port of the same. To facilitate long-term Sponsorships, Port may in its sole and absolute discretion agree to either Tenant's earlier exercise of the Renewal Option or to attorn to one or more approved Sponsorship Agreements.

(b) Port may, in its sole and absolute discretion, elect by written notice to Tenant, to reject Tenant's exercise of the Renewal Option, whereupon the Renewal Option will be null and void, if:

(i) an Event of Default occurred and is continuing either: (i) at the time Port receives Tenant's notice to exercise a Renewal Option, or (ii) on the first day of the Renewal Term, unless on the first day of the Renewal Term the Event of Default is non-monetary and subject to diligent efforts by Tenant to cure (as reasonably determined by Port); or

(ii) Tenant's score under the Park Maintenance Standards is deficient and has been below the City-wide average score for other public parks in the City & County of San Francisco for two of the last three years; or

(iii) three (3) or more material Operational Dispute Notices are outstanding and have not been resolved by the parties; or

(iv) six (6) or more material Operational Dispute Notices were filed in the previous thirty-six (36) months; or

(v) Tenant owes and has not paid any outstanding debt or other payment to Port in connection with the Port Loan, provided however that Tenant may unconditionally pay to Port and fully satisfy the outstanding debt or other payment obligation within ten (10) Business Days of Port's written notice to Tenant, which satisfaction will nullify and void Port's written notice to Tenant rejecting the exercise of the Renewal Option under this subsection.

(c) **Effect on Agreement Terms.** If Tenant elects to exercise the Renewal Option, and Port does not reject Tenant's exercise of the Renewal Option in accordance with this Lease, then all the terms, covenants and conditions of this Lease will remain the same, except that (i) the Expiration Date will mean the last day of the Renewal Term, (ii) the Term will include the current Renewal Term, and (iii) based on the Park Evaluation, Tenant will perform certain additional Capital Repairs and Replacements as agreed to between the Parties in accordance with *Section 15* (Maintenance and Repairs).

3.3. Termination Rights.

(a) Tenant may terminate this Lease prior to the Expiration Date upon ninety (90) days written notice to Port if:

(i) The City levies the Contingent Services Special Tax above the Permitted Contingent Services Special Tax Amount Levy, as defined in *Section 4.2*; or

(ii) One or more Specified Related Agreements terminate due solely to Port's default under that agreement (and such default was not caused by circumstances outside Port's reasonable control), and Port and Tenant are unable to agree on appropriate compensation (or Port fails to fulfill or comply with such agreement) for the costs of non-potable water used in the areas previously covered by the terminated agreement(s); or

(iii) Tenant demonstrates to Port, in Port's reasonable discretion, that all Tenant funds presently held or anticipated by Tenant are less than the amount of funds reasonably necessary to operate and maintain the Premises in accordance with this Lease and: (A) complete necessary Capital Repairs and Replacements, Compliance Improvements, or Casualty Improvements, (B) complete any Remediation that is not Tenant's obligation to perform and which Port has declined to timely complete, or (C) otherwise comply with any new rules, regulations, or other requirements imposed upon Tenant; and upon such demonstration, Port, in its sole and absolute discretion, chooses not to provide funds reasonably adequate to fill the applicable funding gap or otherwise cause the completion of such Capital Repairs and Replacements, Compliance Improvements, Casualty Improvements, or Remediation.

(b) Port may terminate this Lease prior to the Expiration Date upon ninety (90) days written notice to Tenant if:

(i) One or more Specified Related Agreements terminate due solely to Tenant's default under that agreement (and such default was not caused by circumstances outside Tenant's reasonable control), and Port and Tenant are unable to agree on appropriate compensation for the costs of non-potable water used in the areas previously covered by the terminated agreement(s); or

(ii) Upon any third notice of Event of Default within a thirty-six (36) month period, and regardless of Tenant's prior cure, so long as the notices do not arise exclusively from a single event or occurrence; or

(iii) An uncured Event of Default is continuing, pursuant to *Section 25*.

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

4. RENT; CONTINGENT SERVICES SPECIAL TAXES; REVENUE REPORTING.

4.1. Base Rent. In consideration of Tenant assuming throughout the entirety of the Term, all liability, costs and expenses related to Premises, Tenant will have no obligation to pay Port monthly Base Rent during the Term, unless amended by the Parties.

4.2. Contingent Services Special Taxes. During the Term, the Permitted Contingent Services Special Tax Levy Amount shall be calculated pursuant to this **Section 4.2**, and which amount shall be subject to Port Commission approval with each annual Budget.

(a) The Initial Budget, and each Budget prepared by Tenant thereafter, shall identify costs associated with the operation and maintenance of: (i) the Premises, and (ii) the property and improvements subject to the Port Paseo and Open Spaces Management Agreement.

(b) **Initial Permitted Contingent Services Special Tax Levy Amount.** Based on the Initial Budget approved by the Port Commission, the “**Permitted Contingent Services Special Tax Levy Amount**” shall be defined depending on the status of this Lease and the Port Paseo and Opens Spaces Management Agreement, as follows:

(i) Zero Dollars (\$0.00), if this Lease and the Port Paseo and Open Spaces Management Agreement are both in effect and the Master Association provides revenues to Tenant equal to or greater than the Maximum Contingent Services Special Tax Revenues under the RMA; or

(ii) No more than twenty-five percent (25%) of the Maximum Contingent Services Special Tax Revenues under the RMA, if this Lease is in effect but the Port Paseo and Open Spaces Management Agreement is not in effect, so long as the Master Association provides revenues equal to or greater than seventy-five percent (75%) of the Maximum Contingent Services Special Tax Revenues under the RMA;

(iii) as shown in the table below for demonstrative purposes only. Provided further, that if funds provided by the Master Association to Tenant are less than seventy-five percent (75%) of the Maximum Contingent Services Special Tax Revenues under the RMA, then the Permitted Contingent Services Special Tax Levy Amount shall increase so that the combined value of the Master Association’s provision of funds to Tenant plus the revenue, if fully levied, from the Contingent Services Special Tax equals one hundred percent (100%) of the Maximum Contingent Services Special Tax Revenues under the RMA.

Permitted Contingent Services Special Tax Levy Amount:	\$0.00	25%*
Status of Lease:	In Effect	In Effect
Status of Port Paseo and Open Spaces Management Agreement:	In Effect	Not in effect
* Percentage may increase pending Master Association contribution to Tenant as described in Section 4.2(b)(ii) .		

(c) Tenant shall calculate the Permitted Contingent Services Special Tax Levy Amount for each scenario described in **Section 4.2(b)**, above, for submission and approval with each annual Budget.

(d) **Future Permitted Contingent Services Special Tax Levy Amount.** After the Initial Budget year, Tenant’s future calculations of the Permitted Contingent Services Special Tax Levy Amount shall be based on actual expenses from one or more prior years using the following formulas, unless otherwise mutually agreed by the Parties:

(i) If this Lease and the Port Paseo and Open Spaces Management Agreement are both in effect, then Zero Dollars (\$0.00).

(ii) If this Lease is in effect but the Port Paseo and Open Spaces Management Agreement is not in effect, then an amount equal to the product of (1) the then-current Maximum Contingent Services Special Tax Revenues under the RMA, and (2) a fraction in which the numerator equals the actual operation and maintenance costs applicable to the Port Paseo and Open Spaces Management Agreement in the most recently concluded year, and the denominator equals the sum of the actual operation and maintenance costs applicable to both the Port Paseo and Open Spaces Management Agreement and this Lease; as shown in the formula below for demonstrative purposes only.

Permitted Contingent Special Services Tax Levy Amount	=	Max. Contingent Services Special Tax Revenues (current)	x	$\frac{\text{Paseo and Open Spaces Management Agreement O\&M prior costs}}{\text{Lease O\&M prior costs} + \text{Paseo and Open Spaces Management Agreement O\&M prior costs}}$
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4.3. Reporting.

(a) **Quarterly Report.** Within sixty (60) days after the end of each calendar quarter, Tenant will deliver to Port a quarterly report for the Premises (“**Quarterly Report**”) including: (i) actual Operating Expenses and actual Capital Expenses plus an updated proposed budget based on known changes to Gross Revenues, Operating Expenses, and/or Capital Expenses, and (ii) any new Concession Agreements entered into during the prior quarter. Port may request additional information in its reasonable discretion.

(b) **Annual Report.** Prior to April 1 of each year, Tenant will deliver to Port an “**Annual Report**” for the previous calendar year that includes a narrative on Park operations for the prior calendar year, and the following:

(i) The Annual Report must identify as separate line items for the Premises: actual Gross Revenues, Sponsorship Revenues, Donations, Operating Expenses, and Capital Expenses. The Annual Report must also contain a summary of improvements, maintenance, and activities on the Premises during the prior calendar year, including but not limited to:

(ii) A copy of the event report prepared pursuant to the BCDC Permit, and a supplemental event report containing similar information for Events held on the Premises that are not subject to the BCDC Permit; and

(iii) List of all medium to large Events and all private Events held on the Premises during the prior calendar year and a summary of small public events in substantially the same format attached as **Exhibit [X]**; and

(iv) A table summarizing the material terms of any new sublease, Event License, Concession Agreement, or other agreement affecting the Premises with a term equal to or greater than one year and entered into during the prior calendar year, in substantially the same format attached as **Exhibit [X]**; and

(v) The Park Evaluation Report; and

(vi) The amount of any budget surplus or deficit to be carried over from a previous calendar year.

4.4. *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, will bear interest from the due date until paid at the Interest Rate, compounded annually. However, interest will 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 will not excuse or cure any default by Tenant. Tenant will also pay any costs, including reasonable attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

4.5. *Late Charges/Habitual Late Payer.* Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease or Tenant's failure to provide the Quarterly Report to Port within fourteen (14) calendar days of the deadline, 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 or submit the Quarterly Report on the date due, such failure will be subject to a Late Charge. Tenant will also pay any costs including reasonable attorneys' fees incurred by Port by reason of Tenant's failure to timely pay Rent or submit the Quarterly Report. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant will pay, as Additional Rent, an amount equal to One Hundred Dollars (\$100.00) (as such amount may reasonably 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 will not excuse or cure any default by Tenant.

4.6. *Returned Checks.* If any check for a payment for any Lease obligation is returned without payment for any reason, Tenant will 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 will be subject to a Late Charge as well as interest at the Interest Rate.

4.7. *Net Lease.* Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties will 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 the Improvements. Without limiting the foregoing but subject to all terms and conditions of this Lease (including but not limited to Tenant termination in **Section 3.3**), Tenant is solely responsible for paying each item of cost or expense of every kind and nature whatsoever (including for the use, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof), the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and the Improvements thereon, or any rights or interests of Port in or under this Lease. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, will relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or will otherwise relieve Tenant from any of its obligations under this Lease, or will 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 will not affect or impair any right or remedy expressly provided Tenant under this Lease.

4.8. *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: 16.1** (Utilities), **19.3** (Tenant's Environmental

Condition Notification Requirements), **19.8** (Storm Water Pollution Prevention), **31.1(d)** (CMD Form), and **35** (Estoppel Certificate) or to provide evidence of the required insurance coverage described in **Section 20** below, then upon written notice from Port of such failure, Tenant will 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 will 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 4.8** 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 4.8** and that Port's right to impose the foregoing charges will 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 4.8** and the reasonableness of the amount of the charges described in this **Section 4.8**.

5. ANNUAL BUDGETS, REVENUES, RESERVES & ACCOUNTS, BOOKS & RECORDS, & AUDITS.

5.1. Initial Budget. The Parties have agreed upon an initial annual operating budget and initial capital budget (collectively, the "**Initial Budget**") for the operation, maintenance, and repair of the Premises during the remainder of the first fiscal year of the Term, or other such time period agreed upon by the Parties. The Initial Budget is attached hereto as **Exhibit D**.

5.2. Annual Operating Budget and Capital Budget.

(a) Prior to the expiration of the Initial Budget, and on an annual basis thereafter, Tenant will prepare and submit to Port an operating budget for Port's approval in its reasonable discretion ("**Operating Budget**") for the Premises for the following fiscal year (or portion thereof as agreed to by Port) and an updated capital budget ("**Capital Budget**") for the Premises for the following five (5) fiscal years in similar forms to the Initial Budget (or as otherwise requested by Port). Each budget approved by Port during the Term will be referred to herein as the "**Budget**."

(b) Port will review and respond to Tenant, including listing any specific objections to such proposed budget, within thirty (30) calendar days after receipt of such proposed budget. If Port fails to respond to such proposed budget within such thirty (30) calendar day period, then Tenant will deliver to Port a second notice requesting Port's response ("**Second Budget Notice**"). The Second Budget Notice must display prominently on the envelope enclosing such notice and the first page of such notice, substantially the following: **"APPROVAL REQUEST FOR MISSION ROCK OPEN SPACE MATTERS. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIFTEEN (15) CALENDAR DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to respond within fifteen (15) calendar days after Port's receipt of the Second Budget Notice, then such non-response will be deemed to be approval of such proposed budget. If Port timely objects to a proposed budget and the Parties cannot mutually agree upon an updated budget prior to the commencement of the fiscal year, then the Port shall be deemed to have approved a budget equal to the prior year's Budget, adjusted to include any new Events that will be directly or specifically funded by Sponsorships. Any revision to or modification of the deemed-approved budget beyond the variance permitted in **Section 5.3**, below, shall be subject to Port review and approval as described in this Section.

(c) No later than forty-five (45) days after the end of each quarter, Tenant shall provide Port with a quarterly budget update for informational purposes only. Each quarter, Port or Tenant may request a reforecasting of the Budget for the remainder of the fiscal year. Port approval for a Budget reforecast shall only be required if the reforecast Budget includes deviations from the then-current Budget that would require Port consent or approval pursuant to

Section 5.3. In the event of an anticipated Budget shortfall, Port may request information from the Tenant regarding Tenant's intended approach to address the Budget shortfall.

(d) In preparing each Operating Budget and Capital Budget, (i) Tenant may consult with the Master Association to the extent required in connection with the portion of the budgets relating to association dues, and (ii) after the third year of the Term, Port and Tenant shall meet to discuss funding sources for costs associated with maintenance and operation of the Premises and any other public open spaces operated or maintained by Tenant within the Mission Rock STD.

5.3. Permitted Budget Variance. Tenant will utilize commercially reasonable, good faith efforts to operate the Premises without exceeding the parameters of the Initial Budget and subsequent Budgets; provided however, that (i) Tenant shall have no obligation to spend amounts set forth in the Budget, and (ii) Tenant's failure to operate the Premises within the Initial Budget or any subsequent Budget parameters will not be deemed a default by Tenant hereunder unless such failure was the result of Tenant's failure to act in good faith or Tenant's failure to obtain Port's consent to any expenditures or overages as required hereunder. Without limiting the foregoing, Tenant will not make expenditures for the operation and maintenance or improvement of the Premises in any fiscal year that would exceed the corresponding line item in the applicable Budget for such fiscal year without obtaining Port's prior written consent, in Port's reasonable discretion. Notwithstanding the foregoing, Tenant will have the right, without obtaining Port's prior written consent, to the following (each, a "**Permitted Variance**"):

(a) re-allocate or increase Operating Expenses within the Operating Budget subject to the following conditions:

(i) re-allocation or increases shall not increase the total Operating Budget unless operating expenses are solely funded by excess revenues or the Operating Reserve Account;

(ii) subject to the prior condition, re-allocation or increases cannot result in the total Operating Budget exceeding 150% of the previously approved Operating Budget;

(iii) re-allocation is prohibited from the WPA line item, unless there is a corresponding decrease in WPA costs; and

(iv) re-allocation is prohibited from the LCC Incremental Cost line item, which may not exceed \$150,000 in any year, unless there is a corresponding decrease in LCC Incremental Costs; or

(b) re-allocate capital expenses within the Capital Budget, but any re-allocation shall not increase the total Capital Budget.

(c) Expense variances beyond those identified above shall require the Port's prior written approval.

(d) In the event of an emergency, as reasonably determined by Tenant, Tenant may seek oral approval from the Port's Executive Director or the Director's designee to make expenditures in excess of applicable line items in the Budget for: (i) emergency repairs required to prevent further immediate damage to property or injury to persons, or (ii) expenses required to ensure the general safety of the public, but after oral approval will follow the procedures set forth in this Section in reallocating funds seeking an amendment to the Budget, or including the costs of such repairs or expenses in a future Budget.

5.4. Annual Budget Reconciliation. No later than March 31st for each fiscal year during the Term, Tenant will deliver to Port a reasonably detailed written statement (each an "**Annual Reconciliation**") setting forth (i) Tenant's final determination of the actual Operating Expenses and Capital Expenses incurred with respect to the operation, maintenance and repair of

the Premises for the immediately preceding fiscal year and (ii) the amount of any variance between the actual Operating Expenses and Capital Expenses incurred for the immediately preceding fiscal year and the estimated amounts for such Operating Expenses and Capital Expenses set forth in the applicable Budget for such fiscal year.

5.5. Annual Revenue Allocation. All Gross Revenue except Donations and Capital Improvement Sponsorships will be subject to the following revenue allocation during the Term of this Lease, except as superseded in **Section 7.5** (Return of Excess Port Loan Proceeds):

(a) First, to Operating Expenses and Capital Expenses consistent with the Budget (and each approved or Permitted Variance), except for any Capital Expenses that are funded directly by Capital Improvement Sponsorships;

(b) Second, to the Operating Reserve Account, provided that:

(i) the maximum annual amount deposited in the Operating Reserve Account shall not exceed either: (1) if any amounts drawn by Tenant from the Port Loan have not been repaid, then \$100,000; or (2) if Tenant has repaid all amounts (if any) drawn from the Port Loan, then the lesser of: (x) \$200,000, as adjusted annually by any change in CPI; or (y) 20% of total Operating Expenses for the applicable fiscal year and Capital Expenses in the Budget for the applicable fiscal year; and

(ii) the total maximum amount at any time in the Operating Reserve Account shall not exceed either: (1) if any amounts drawn by Tenant from the Port Loan have not been repaid, then \$100,000, as adjusted annually by any change in CPI; or (2) if Tenant has repaid all amounts (if any) drawn from the Port Loan, then \$600,000, as adjusted annually by CPI (as applicable, the “**Maximum Aggregate Operating Reserve Account Amount**”);

(c) Third, to repay all outstanding amounts drawn by Tenant from Port Loan;

(d) Fourth, to the Maintenance Reserve Account, provided that no additional revenue shall be allocated to the Maintenance Reserve Account if the funds in the Maintenance Reserve Account equal or exceed the Capital Needs Amount;

(e) Fifth, to the Mission Rock Long Term Reserve Fund; and

(f) Finally, once the funds in the Mission Rock Long Term Reserve Fund are equal to the aggregate amount in the Operating Reserve Account and the Maintenance Reserve Account, all remaining Gross Revenues shall be split 50% to the Mission Rock Long Term Reserve Fund and 50% to repay the Horizontal Development Costs (as defined in the DDA). Any portion of Gross Revenue which is to be used to repay Horizontal Development Costs pursuant to this Lease shall be referred to herein as “Park Revenue HDC Funds.” Any capitalized terms used in this Section that are not defined in this Lease shall have the meanings given to them in the DDA or Financing Plan, as applicable. Park Revenue HDC Funds shall constitute an alternate Project Payment Source for Capital Costs as contemplated by **Section 1.6** of the Financing Plan. If any Annual Report concludes that Park Revenue HDC Funds exist, such funds shall promptly be used to pay Approved Payments in accordance with the priorities for payment set forth in the Financing Plan.

5.6. Reserves and Accounts.

(a) Operating Reserve Account. Tenant will establish and maintain a separate depository account (the “**Operating Reserve Account**”) in an amount not to exceed the Maximum Aggregate Operating Reserve Account Amount. The Operating Reserve Account shall be used only to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, insurance premiums, or other expenses which are payable other than monthly, abnormally high vacancies, and other expenses that vary seasonally (collectively, “**Operating Expense Fluctuations**”), or for such other costs, not to exceed thirty-five percent (35%) of the Operating Reserve Account balance at the

beginning of the fiscal year. The other sixty-five percent (65%) of funds in the Operating Reserve Account at the beginning of the fiscal year may only be used for Operating Expense Fluctuations, and Tenant will not use the funds for any other purpose unless Tenant obtains the prior written consent of Port, which will not be unreasonably withheld, conditioned, or delayed.

(b) **Maintenance Reserve Account.** Tenant will establish and maintain a separate depository account (the “**Maintenance Reserve Account**”) in an amount as set forth in the Budget and in any event not to exceed the cost of all reasonably anticipated capital repairs and improvements (“**Capital Needs Amount**”) which are reasonably required to preserve, repair, or replace capital improvements, fixtures, or equipment located on or used in connection with the operation of the Premises which are subject to wearing out during the useful life of the Improvements on the Premises (“**Capital Repairs and Replacements**”); provided that the Capital Needs Amount shall not include the costs of any Capital Repairs or Replacements to the extent they will be funded by Capital Improvement Sponsorships. The funds in the Maintenance Reserve Account will be used only for Capital Repairs and Replacements, and Tenant will not use the funds for any other purpose unless Tenant obtains the prior written consent of Port, which will not be unreasonably withheld, conditioned, or delayed. The Capital Needs Amount shall be determined by the Facilities Condition Report and shall include the cost of all reasonably anticipated Capital Repairs and Replacements for the ten (10) year period covered by such Facilities Condition Report less any amounts funded by Capital Improvement Sponsorships. As used herein, “**Facilities Condition Report**” means a facilities condition report prepared by a qualified team of professionals selected by Tenant with at least five (5) years of experience in constructing, renovating and/or evaluating major park and open space projects in California which identifies a recommended schedule of repairs to maintain the Premises in a manner consistent with standards set forth in *Section 15* and in compliance with all applicable Laws and the requirements of this Lease. Tenant shall obtain an updated Facilities Condition Report no later than ninety (90) days prior to each ten (10) year anniversary of the Commencement Date. Tenant will not enter into any agreement to address Capital Repairs and Replacements in an amount in excess of the Maintenance Reserve Account balance without the prior written consent of the Port.

(c) **Mission Rock Long Term Reserve.** Tenant will establish and maintain a separate depository account (the “**Mission Rock Long Term Reserve Fund**”). The funds in the Mission Rock Long Term Reserve Fund shall only be used to fund:

(i) Repairs of unanticipated damage if Tenant’s insurance proceeds are insufficient; or to repair unanticipated damage regardless of Tenant’s insurance proceeds if Tenant demonstrates, to Port’s reasonable satisfaction, that the overall economic impact of an insurance claim and any potential proceeds for unanticipated damage will negatively impact the Premises; or other unanticipated liabilities for which there is no applicable insurance coverage, as mutually agreed by Tenant and Port;

(ii) Capital Repairs and Replacements, Casualty Improvements, Compliance Improvements, Remediation, or other enhancements to:

(1) the Premises; and

(2) other parks, open space paseos, and public rights of way within the Mission Rock STD, so long as approved by the Port in the Budget or an amendment to the Budget; or

(iii) Events in support of Tenant’s DEI Plan.

(d) **Donations; Capital Improvement Sponsorships.** Tenant will establish and maintain a separate depository account for Donations and will use such Donations in accordance with any gift restrictions placed on such Donations. Tenant will establish and maintain a separate depository account for Capital Improvement Sponsorships and will use such Capital

Improvement Sponsorships funds in accordance with lawful restrictions placed on such Capital Improvement Sponsorships.

(e) Reserves at Surrender; Survival. Upon expiration or early termination of this Lease, Tenant will notify Port of any remaining liabilities of Tenant (including any termination fees) (“**Outstanding Liabilities**”). If funds in the Operating Reserve Account are not sufficient to pay all Outstanding Liabilities, Tenant and Port shall meet and confer to mutually and reasonably determine the resolution of Outstanding Liabilities, which may include (i) Port’s assumption of (in Port’s sole discretion), (ii) potential renegotiation of, and/or (iii) the order of priority to pay, Outstanding Liabilities. Tenant acknowledges and agrees that any fees must be commercially reasonable, including termination fees paid to affiliates, which must be substantiated as such upon the reasonable request of Port. Upon resolution of Outstanding Liabilities, Tenant shall unequivocally surrender and transfer to Port all funds remaining in the Operating Reserve Account, Maintenance Reserve Account, and Mission Rock Long Term Reserve Fund, and all records of expenditures of such funds within the prior three (3) years. All such funds transferred to Port will be used by Port or its Agent only for Operating Expenses and Capital Repairs and Replacements within the Mission Rock STD, as applicable. The terms of this Section will survive the expiration or earlier termination of this Lease.

5.7. Books and Records. Tenant will make available to Port during the Term, upon no less than ten (10) Business Days prior written notice to Tenant, complete and accurate Books and Records that contain all information required to permit Port to verify total Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied, or other such method as is reasonably acceptable to Port, from period to period with respect to all operations of the business to be conducted in or from the Premises and will retain such Books and Records for a period of the later of (i) three (3) years after the end of each calendar 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, until such audit or controversy is terminated (the “**Audit Period**”).

5.8. Audits. Port Representatives will have the right, from time to time, to examine and/or cause a complete audit (but not to make copies, unless in connection with discovery in the course of litigation) of any or all Annual Reconciliations and Tenant’s Books and Records. In connection with any such examination and/or audit, Port Representatives will have the right, from time to time, to request, in a written notice given to Tenant (each, a “**Records Request**”), that Tenant make, or cause to be made, available to Port Representatives, at the Premises or at Tenant’s principal office within the City and County of San Francisco, the Books and Records relating to any Audit Period. Tenant, within thirty (30) days after Tenant’s receipt of any Records Request (each such 30-day period, a “**Submission Period**”), will make, or cause to be made, available to Port Representatives the Books and Records requested by Port in such Records Request, which Books and Records will be sufficient to permit an accurate determination of Operating Expenses and Capital Expenses for the applicable Audit Period. If, with respect to any Records Request, Tenant fails to make, or cause to be made, available the Books and Records requested by such Records Request at the Premises or at Tenant’s principal office within the City and County of San Francisco within the applicable Submission Period (a “**Records Default**”) and such Records Default will continue for a period of ten (10) Business Days following written notice thereof to Tenant, such Records Default will constitute an immediate Event of Default by Tenant hereunder. For purposes of this *Section 5.8*, the phrase “make available” or other words of similar import will be deemed to require that Tenant make, or cause to be made, the Books and Records requested by any Records Request available to Port representatives at Tenant’s election, either at the Premises or at Tenant’s principal office within the City and County of San Francisco. Notwithstanding anything to the contrary herein, unless there is a continuing Event of Default by Tenant under this Lease, Port will not initiate a new audit more than one time in any calendar year.

6. TAXES AND ASSESSMENTS.

6.1. Payment of Taxes. During the Term, Tenant agrees to pay, when due, to the proper authority any and all real and personal property taxes, general and special assessments, real property transfer taxes, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, or any transfer of a leasehold interest or subleasehold interest in the Premises (including but not limited to the transfer of the leasehold interest in the Premises pursuant to the Lease, but excluding any such taxes separately assessed, levied, or imposed on any subtenant) 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 San Francisco Administrative Code. Tenant will not permit any of the above taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute and without limiting Tenant's right to contest, Tenant will Indemnify Port, City, and their Agents from and against all Claims resulting therefrom.

6.2. Possessory Interest Tax. Port and Tenant mutually acknowledge and agree that if this Lease creates a possessory interest subject to property taxation, the Parties intend for the value of such possessory interest to be Zero Dollars (\$0.00) because Base Rent is Zero Dollars (\$0.00) and Tenant is generally required to permit public access to the Premises as public open space.

7. PORT LOAN. To fund baseline operations and maintenance of the Premises for approximately three (3) years from the Commencement Date, the Port shall make available to Tenant up to Eight Hundred Thousand Dollars (\$800,000), as further described in this *Section 7* (the "**Port Loan**").

7.1. Availability of Funds. Port will make available to Tenant up to Three Hundred Thousand Dollars (\$300,000) in each calendar year of 2025, 2026, 2027, and 2028, subject always to the maximum total disbursement of Eight Hundred Thousand Dollars (\$800,000). Tenant may only receive one disbursement of Port Loan funds per calendar year.

7.2. Repayment Obligation; Term. All Port Loan funds shall be repaid to Port on or before the expiration of the initial fifteen-year Term of this Lease ("**Port Loan Due Date**"), regardless of the date of request for or disbursement of Port Loan funds. No interest shall be due or owing to Port so long as the disbursed Port Loan funds are repaid to Port prior to the Port Loan Due Date. Any outstanding balance, if not paid within five (5) days following the Port Loan due Date, will bear simple interest at the "prime rate," as designated and published from time to time in The Wall Street Journal (or any successor publication thereto), per year from the due date until paid. Notwithstanding the ultimate Port Loan Due Date, Tenant shall repay Port Loan funds to Port in accordance with *Section 5.5* and *subsection 7.5(b)*.

7.3. Disbursement Process.

(a) **Tenant Request.** To receive Port Loan funds, Tenant shall submit a written request to Port that: (a) includes a Quarterly Report required under *subsection 4.3(a)*, (b) demonstrates an anticipated budget shortfall occurring on or before the end of the calendar year,

(c) requests a specific disbursement amount, and (d) proposes itemized use(s) of the requested disbursement amount for baseline operations and maintenance (as described below), plus a contingency amount of up to twenty-five percent (25%) of the proposed use(s), up to the annual and total Port Loan limits.

(b) Port Response. Port shall respond in writing to Tenant's request within thirty (30) days of receipt and either: approve the Tenant request, or propose an alternate disbursement amount based on the Quarterly Report and proposed itemized use(s) for baseline operations and maintenance.

(c) Loan Documentation. Upon the first request for disbursement of a Port Loan, Tenant shall sign a promissory note in the form attached to this Lease as *Schedule 7* (the "Note"), and Port shall disburse funds to Tenant. Upon each subsequent request for disbursement of Port Loan proceeds, Tenant and Port shall initial the allonge to the Note setting forth the disbursed amount. Upon any repayment of the Port Loan, including any payment of Port Loan Excess Proceeds, Port and Tenant may initial the allonge to the Note reflecting the repayment of Port Loan proceeds.

7.4. Eligible Uses. Tenant may use Port Loan funds for baseline operations and maintenance costs for the Premises, as reasonably determined by Port. Baseline operations and maintenance costs for the Premises may include but are not limited to: costs for landscaping services, maintenance services, water and other utility costs, and repair of capital assets (time and materials).

7.5. Reporting Obligations; Port Loan Excess Proceeds.

(a) Quarterly and Annual Port Loan Detail Report. If Tenant maintains an outstanding Port Loan balance or repayment obligation, then Tenant shall include the following information when submitting each Quarterly Report pursuant to *subsection 4.3(a)*, Annual Report pursuant to *subsection 4.3(b)*, and Budget Reconciliation pursuant to *Section 5.4*:

- (i) amount of Port Loan funds received in the reporting period (if any);
- (ii) itemization of the use(s) of Port Loan funds in the reporting period (if any);
- (iii) the total amount of Port Loan funds received since the Commencement Date;
- (iv) the date(s) and amount(s) of any repayment to Port since the Commencement Date;
- (v) projection of potential repayment dates and amounts pursuant to *Section 5.5*; and
- (vi) the current outstanding balance of Port Loan funds due and owing to Port.

(b) Return of Excess Port Loan Proceeds. In each year in which Tenant receives a disbursement of Port Loan funds and subject to *subsection 5.5(b)*, above: Tenant shall return to the Port as a partial repayment of the Port Loan, all available liquid assets at the end of the calendar year in excess of Twenty Thousand Dollars (\$20,000), which amount shall be identified in the Annual Report as "Port Loan Excess Proceeds." This obligation to return Port Loan Excess Proceeds to the Port supersedes the annual revenue allocation defined in *Section 5.5*. For the avoidance of doubt, Tenant shall have no immediate repayment obligation if Tenant possesses less than Twenty-Thousand Dollars (\$20,000) in available liquid assets at the end of the year in which Port Loan funds are disbursed.

7.6. Funds Subject to Appropriation. Funding for any Port or City obligations under this Lease requires lawful appropriation of funds by the Port Commission and Board of Supervisors, and certification by the Controller. The Controller is not authorized to make payments on any agreement for which funds have not been lawfully appropriated and certified as available, whether in the budget or by supplemental appropriation. This *Section 7.6* shall not be interpreted to limit or otherwise alter Tenant's right to terminate under *subsection 3.3(a)(iii)*.

8. USE OF THE PREMISES.

8.1. Permitted Use. The Premises will be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose; provided that Tenant shall not be in breach or default under this Lease if Tenant has taken commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses by Persons other than Tenant or Tenant's Agents on the Premises. Any other use within the Premises requires the prior written consent of Port, which may be withheld in its sole discretion.

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) camping;
- (c) sleeping when the Park is closed, unless associated with an Event at a reserved facility and within a designated area;
- (d) smoking;
- (e) drug use;
- (f) consuming alcohol or carrying open containers unless expressly approved, such as at a reserved facility, within a designated area, or at a permitted establishment, or as may otherwise be lawful;
- (g) climbing or affixing items to buildings, trees, lawn, or furniture, except as otherwise permitted;
- (h) using amplified sound, unless associated with an Event at a reserved facility and within a designated area and such use is in compliance with Laws and required Regulatory Approvals;
- (i) panhandling;
- (j) disorderly conduct, including fighting, yelling, disturbing other park patrons, or defying directions from Tenant staff or its Agents;
- (k) peddling and vending merchandise without a permit;
- (l) lighting fires or cooking except in any designated areas or with a permit;
- (m) littering or dumping waste;
- (n) graffiti, placing stickers, posting flyers, or otherwise defacing property;
- (o) removing or damaging plants, soil, furnishings, or other fixtures from the Premises;
- (p) feeding or harassing animals or harming their natural habitat;

(q) 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;

(r) any activity which constitutes waste or nuisance;

(s) any activity which will in any way injure, obstruct or interfere with the rights of owners or occupants of adjacent or surrounding properties, including, but not limited to, rights of ingress and egress;

(t) 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;

(u) construction staging for any construction occurring off the Premises, unless Tenant obtains both Port's written consent and all relevant permits;

(v) any vehicle and equipment maintenance, including but not limited to, fueling, changing oil, transmission or other automotive fluids, or the washing of any vehicles or equipment;

(w) the storage of any and all excavated materials, including but not limited to, dirt, concrete, sand, asphalt, and pipes, unless Tenant obtains both Port's written consent and all relevant permits; or

(x) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials, unless Tenant obtains both Port's written consent and all relevant permits.

8.3. Notice of Prohibited Use Charge. In the event Port determines after inspection that Prohibited Uses are occurring due to Tenant's direct action or Tenant's failure to take commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses in operating the Premises, Port will notify Tenant of the Prohibited Use and Tenant will promptly commence commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses and will pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event Port determines in subsequent inspection(s) that Tenant has not taken commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses, then Tenant will pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges associated with each inspection and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges will 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. OPERATING REQUIREMENTS AND COVENANTS GENERALLY.

9.1. Operating Standards Generally. Subject to the terms of this Lease, Tenant will maintain, operate, and use the Premises, or cause the Premises to be maintained, operated, and used in a manner consistent with this Lease and standards for the maintenance and operation as set forth in **Section 15**. Tenant is exclusively responsible, at no cost to Port, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant will at all times comply with this Lease, Laws (including, but not limited to the BCDC Permit

attached hereto as *Exhibit E*), and the Mission Rock Parks Plan (as amended from time to time, the (“**Parks Plan**”)) attached hereto as *Exhibit F*. Tenant will also provide (or require others to provide), services as necessary and appropriate to the uses to which the Improvements are put, including:

- (a) Repair and maintenance of the Premises, subject to and as more fully described in *Sections 9.3* and *15*;
- (b) Routine (regularly scheduled) cleaning, janitorial, pest extermination, recycling, composting, and garbage removal; restroom cleaning, window washing (including the annual exterior cleaning of all windows), and mopping and sweeping of the buildings and grounds, keeping the Premises, including all clean, tidy, and uncluttered and promptly removing all debris and waste material from these areas, as more fully described in the Park Maintenance Standards described in *Section 9.3*;
- (c) Routine (regularly scheduled) landscape and horticulture maintenance, pruning, weeding, mowing, irrigating, mulching, planting, of these areas, as more fully described in the Park Maintenance Standards described in *Section 9.3*;
- (d) Maintaining sufficient security patrols or hospitality staffing at least during the Hours of Operation;
- (e) Holding Events in accordance with *Section 10*; and
- (f) Maintaining dedicated Public Access Areas consistent with the BCDC Permit.

9.2. Operational Dispute. If Port determines that Tenant is either: (a) failing to maintain, operate, or use the Premises, or (b) causing the Premises to be maintained, operated, or used in a manner that is not consistent with this Lease and standards for the maintenance and operation set forth in *Section 15*, then Port shall give Tenant prompt written notice of such determination (each such notice, an “**Operational Dispute Notice**”). Each Operational Dispute Notice shall set forth the Port’s concerns with respect to the maintenance, operation, or use of the Premises with specificity. Upon delivery of an Operational Dispute Notice, Port and Tenant shall, within ten (10) days of receipt, meet and confer in good faith to agree to a commercially reasonable and mutually acceptable proposal to resolve the Port’s concerns. For the avoidance of doubt, the parties agree that a failure to mutually agree upon a proposed resolution to address an Operational Dispute Notice shall not, of itself, constitute an Event of Default but may be the basis for Port to provide a notice of an Event of Default in accordance with *Section 25* if the original Operational Dispute Notice identified a breach or default under the Lease.

9.3. Park Standards.

(a) Without limiting *Section 9.1* and subject to [*Section 15*], Tenant shall maintain the Premises in a manner such that the Premises receives and maintains a score that is no less than ten (10) percentage points below the most recent Citywide average score for other public parks under the park maintenance evaluation methodology adopted by the San Francisco Office of the Controller and the San Francisco Recreation and Park Department (“**RPD**”), as that methodology may be changed from time to time. For reference purposes only, the evaluation methodology currently identifies 295 park maintenance standards, which are available online at: <https://sfrecpark.org/DocumentCenter/View/18951/SFRPD-Park-Evaluation-Standards-FY22>

(b) Notwithstanding the general maintenance obligation identified in subsection (a), the Port Commission, at a later date, may identify or adopt specific maintenance standards and if so, Tenant agrees to maintain the Premises in accordance with Port’s adopted standards; provided that: (i) Tenant shall have no obligation under this Section to perform Subsequent Horizontal Construction or Alterations or Improvements unless otherwise set forth in this Lease, and (ii) if a future maintenance standard would result in Tenant’s right to terminate

this Lease under *subsection 3.3(a)(iii)* then Port may revert to the most recently applicable maintenance standard.

9.4. Park Evaluation Report. Tenant will have a qualified professional conduct an annual inspection and evaluation of the condition of the Premises (“**Park Evaluation**”) using the then current RPD Park Evaluation Form (“**Evaluation Form**”) and submit it to Port together with the Annual Report. The qualified professional conducting the Park Evaluation will provide a summary of findings from the Park Evaluation (collectively “**Park Evaluation Report**”), which report will be submitted to Port by no later than April 1 of each year. If the Park Evaluation Report identifies a score that is ten (10) percentage points or more below the most recent Citywide average score for other public parks as reported by RPD, then Port and Tenant shall meet and confer regarding Tenant’s score(s) within forty-five (45) days following receipt of the Park Evaluation Report. Tenant shall have the right to request another Park Evaluation Report. Nothing in this section shall be interpreted to limit the Port’s rights under *Section 9.2* or *Section 25*.

9.5. Hours of Operation. The Park hours will be no less than from 6 a.m. to 10 p.m. and the restroom will be open and available to the general public no less than from 8 a.m. to 8 p.m., unless otherwise agreed to by Port in its reasonable discretion (“**Hours of Operation**”).

9.6. Public Access Generally. Access to China Basin Park will be generally available to the public for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. General public access may be modified for specified Events, as permitted by Port or as allowed under this Lease. Areas along the Bay Trail/Blue Greenway and major pedestrian and bicycle routes will remain open or will be re-routed in the event of construction, maintenance, or Events to allow for pedestrian and bicycle thru traffic and circulation.

9.7. Dogs and Other Animals. All dogs or other animals must always be under the control of its owner or companion. Dogs must be kept on-leash, except in any designated off-leash areas. Persons with dogs are responsible for removing and properly disposing of dog waste. Dog walkers are limited to eight dogs.

9.8. Temporary Structures. No trailer, tent, shack, or other outbuilding, or structure of a temporary character, will be allowed on any portion of the parks at any time, except for: (a) construction, (b) food truck and concession kiosks, or (c) in connection with public or private events, temporary exhibitions, special events, reservations, or programming.

9.9. Flags. Throughout the Term, a Port flag will fly on each of the flagpoles (“**Flagpoles**”), if any, located on the roofs of any structures and any other flagpoles located within the Premises. Port will provide each Port flag to Tenant. Tenant will promptly, at no charge, install, raise, lower and remove Port flags at Port’s request. If Port determines that Tenant’s response to Port’s request to raise or lower Port flags is inadequate, then at Port’s election, Port may access the roofs or such other areas of the Premises where the Flagpoles are located to adjust Port flags without prior notice to Tenant.

9.10. Signage. Prior to Port’s approval of the CBP Sign Guidelines, Tenant will 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 will comply with all Laws relating thereto, including but not limited to, CBP Sign Guidelines and building permit requirements, and Tenant will 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, will remove all sponsorship and any easily-removable sign placed by it on the Premises at the expiration or earlier termination of this Lease if so requested by Port, unless Port has expressly agreed to allow such sign(s) to remain after expiration or earlier termination of this Lease (for example, in accordance with the terms of Port’s assumption of a Sponsorship).

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

Tenant agrees to remove all graffiti from 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 Port or the Department of Public Works; provided however, if such graffiti cannot reasonably be removed within such period, Tenant will not be in default of this Lease if Tenant diligently and in good faith continues to work to remove or abate such graffiti and actually completes such removal within thirty (30) days (or other reasonable period determined by the Port). The term "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Public Works Code, the Planning Code, or the Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§101 et seq.).

9.12. Public Use, Input, and Information. The public will be welcome to freely use Premises and the amenities offered therein available on a first-come, first-served basis, subject to restrictions for certain Events and Concession Areas as described in **Sections 10 and 11**. To maintain "two way" communication with the public regarding the public's use of China Basin Park, Tenant at a minimum will do all of the following:

(a) Maintain a website that may include, but is not limited to: (i) Park maps, description of facilities and amenities, nearby attractions, retail and dining opportunities, etc.; (ii) a calendar of events and periodic public meetings hosted by Tenant; (iii) clear instructions, rates, and reservation system for reserving space for events; (iv) e-mail addresses and phone numbers where members of the public can register complaints or requests; and (v) link to Port website;

(b) Develop and maintain method for notifying neighbors of upcoming Events.

(c) At the Port's request, provide appropriate link from City websites related to parks and events to the Parks and Open Space website, facilitating a seamless experience for the public seeking information on other City parks, and events.

(d) Host at least one (1) public meeting every twelve (12) months in a meeting space accessible to the public, with noticing, agenda, public comment, and notetaking consistent with the Port's Advisory groups.

(e) Provide presentations and information to the Port Commission, as reasonably requested.

(f) Receive, respond to, and follow up on "311" calls or alerts related to the Premises.

(g) Create a hotline number for the public to contact with questions, concerns, and suggestions.

9.13. Media Communications. Tenant will not release any press releases related to the Premises without first receiving Port's advance written approval; provided, however, that Tenant may, without Port approval, (i) issue press releases regarding approved Events or other matters consistent with the Permitted Uses, (ii) send email blasts and make social media posts for marketing purposes for the Park and approved Events or other matters consistent with the Permitted Uses and to maintain communication with the public regarding the foregoing, and (iii) maintain a website pursuant to *Section 9.12(a)*.

9.14. Qualified Personnel. Tenant represents and warrants to Port that Tenant will engage qualified personnel, consultants, contractors, operators, or other service providers to perform the services as contemplated by this Lease. Tenant further represents and warrants to Port that it has (or will have acquired) all required licenses and approvals to perform the work contemplated by this Lease, and that all work performed under this Lease will be performed only by (i) Agents of Tenant, or (ii) personnel under the supervision and in the employment of the Tenant. All personnel engaged in the work will be fully qualified and will be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required.

9.15. Diversity, Equity, and Inclusion Goals. Tenant acknowledges that Port is committed to diversity, equity, and inclusion in all phases of projects on Port property. Accordingly, Tenant will comply with the Diversity, Equity, and Inclusion Plan attached as *Exhibit I* ("DEI Plan"). The DEI Plan includes goals for inclusion of small, local, and diverse Event Venue Users, Concessionaires, contractors, consultants, and other service providers for work on the Premises Plan includes goals for inclusion of small, local, and diverse Event Venue Users, Concessionaires, contractors, consultants, and other service providers for work on the Premises and for attracting diverse park and event patrons in park programming.

9.16. Annual Review of Operations. No later than May 1 of each year, Port and Tenant will meet to discuss the operation and use of the Premises during the prior year and what changes, if any, may be made going forward to improve the user experience at the Premises. Tenant's implementation of the DEI Plan during the prior year will also be included in the annual review.

9.17. BCDC Reporting. In addition to substantive regulations governing the uses and operation of the Premises, the BCDC Permit contains a requirement that the permittees thereunder submit by January 30 each year, a written annual report describing the prior year's special event program for China Basin Park and other areas within BCDC's jurisdiction (i.e., Terry Francois Boulevard and Channel Wharf). The BCDC Permit also contains a requirement that five (5) years following the date the BCDC Permit is issued or the opening of China Basin Park, whichever is later, and every five (5) years thereafter the permittees thereunder submit a sea-level rise and flooding monitoring report to BCDC. Tenant shall be responsible for preparing and submitting to BCDC the annual and five year reports described in the BCDC Permit, and Port hereby approves of the assumption of such responsibility by Tenant. Tenant shall copy Port on the submission of any reports or other communications with BCDC. Port acknowledges that Tenant shall have no obligation to perform or cause the Premises to comply with any adaptive measures that BCDC may require of the permittees as a result of reports to BCDC; provided however that the permittees may mutually use the Premises and any funds in the Mission Rock Long Term Reserve Fund to pay for or cause such compliance.

9.18. Security Cameras. Tenant may install, operate, and maintain security cameras on the Premises with Port's prior written approval.

10. EVENTS AND PROGRAMMING.

10.1. Generally. Tenant agrees and acknowledges that the primary purpose of Premises is to enrich the public experience as further described in the Parks Plan. Tenant will use commercially reasonable efforts to hold Events as permitted in the BCDC Permit and the Parks Plan.

10.2. Approvals; Notice.

(a) No more than sixty (60) and no less than thirty (30) days prior to the commencement of each month, Tenant shall submit to Port a calendar of proposed Events to take place on the Premises for the next fourteen (14) months and actual Events from the past month on a rolling basis (“**Annual Event Calendar**”). Tenant must obtain Port’s prior written approval for all large events and any medium events (each as defined in the BCDC Permit) that will last three (3) days or more, which approval shall be granted so long as: (i) the Event otherwise complies with all necessary approvals and obligations, (ii) the Event will attract people to the waterfront, (iii) the location is otherwise available with no conflict with a Civic Event, (iv) Port will not need to expend any resources (other than ordinary Port costs for event review and approval) or forgo revenue to support the Event, (v) any permits fees associated with the Event are paid in full, and (vi) the Event organizer(s) agree to and execute a form Event License that indemnifies the Port and accepts all event liability. Notwithstanding Port’s conditional approval obligation described above, Port may withhold written approval if permit fees or other costs for a prior event remain due and owing to the Port. In addition, Port and Tenant intend to define a streamlined approval process for repeat events.

(b) Tenant will obtain, or cause to be obtained, all Regulatory Approvals, including without limitation, and any necessary Port permits, for all Events. Port shall issue an annual master event license agreement (“**Master Event License**”) for Events identified on the Approved Annual Calendar of Port-approved Events (“**Approved Annual Calendar**”). For all Events not listed on an Approved Annual Calendar but still within the limitations of the BCDC Permit, Tenant may request as-needed Event Licenses (“**As-Needed Event Licenses**”) if Port approval for such Event is required, subject to procedures set forth in *Section 10.4*. Requests for As-Needed Event Licenses will be submitted at least seven (7) calendar days prior to the proposed Event. Port will consider requests for unexpected, as-needed Event Licenses submitted fewer than seven (7) calendar days prior to the proposed Event. In the event that a Bay Area sports team wins a championship event, Port will not unreasonably withhold approval for a medium to large Event (as defined in the BCDC Permit) related to such championship, even if submitted on less than seven (7) days’ notice.

(c) Tenant will be entitled to issue individual Event licenses (each, an “**Event License**”) to third parties for (i) all events on the Approved Annual Calendar, (ii) events for which Tenant has obtained an As-Needed Event License, and (iii) Events that do not require Port approval.

(d) Tenant will be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property, including, but not limited to musical or other performance rights, in connection with all Events. All Events must comply with the Port’s Zero Waste Policy for Special Events.

10.3. Other Approvals.

(a) Tenant will, at its sole cost and expense, obtain (or cause to be obtained) all other necessary permits and approvals issued by other governmental agencies. Proof of permits and approvals for all medium to large Events must be submitted to the Port three (3) days prior to the commencement of each Event (or as early as practicable, but under no circumstances after commencement of the Event). Evidence of permits and approvals for all Events shall be kept on file by Tenant for Port’s review upon request. Upon Tenant’s failure to submit to the Port the necessary permits and approvals by the required dates the Port may, at its

sole discretion, disallow any specific Event or Events. Examples of other permits and approvals which may be necessary for certain Events include, but are not limited to:

- (i) Building/Encroachment Permit from Port Building Department;
- (ii) Temporary Change of Occupancy Permit from Port Building Department;
- (iii) Fire Permit, Fire Watch and Temporary Place of Assembly Permit from the San Francisco Fire Department (SFFD);
- (iv) Security Plan from the San Francisco Police Department (SFPD);
- (v) Traffic Plan from the San Francisco Police Department (SFPD);
- (vi) Ride Share Drop Off and Pick Up Plan from the San Francisco Police Department (SFPD);
- (vii) Emergency Medical Plan from the Department of Public Health (DPH);
- (viii) Alcoholic Beverage Control License (ABC) from the California Alcohol Beverage Commission;
- (ix) Food Permit from the Department of Public Health (DPH);
- (x) Entertainment Related Permit(s) from the San Francisco Entertainment Commission;
- (xi) Any other permit or approval deemed necessary by the Port of San Francisco and/or any City Agency.

(b) Tenant must cause the removal of all items brought onto the Premises in connection with an Event at the end of such Event, including but not limited to: temporary structures, tables, chairs, stages, audio/visual, lighting, rigging, cameras, speakers, trusses, pipe and drape.

10.4. Event License. Except as otherwise provided in *Section 10.7*, each Event License issued by Tenant must satisfy the following conditions:

- (a) Event Venue Users represent and warrant to Tenant that they are not subject to an active debarment or suspension order from the City;
- (b) Event Venue Users represent and warrant to Tenant that they have not in the last ten (10) years, and are not currently, subject to an eviction or other enforcement order prosecuted by or for the Port;
- (c) Each Event License subjects the Event Venue Users to a cross-default provision with any contract with the Port, which cross-default provision may be prosecuted by Port in its sole and absolute discretion;
- (d) Each Event License includes indemnification and waiver of claims clauses from the Event Venue User benefitting the Port that are similar to the provisions in *Section 23* (Indemnity and Exculpation);
- (e) Each Event License states that Event Venue Users must comply with all applicable Laws and every applicable condition of this Lease;
- (f) Each Event License includes a provision where the Event Venue Users expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;

(g) Each Event License includes a provision where the Event Venue Users expressly agrees to report the Event License to the County Assessor in accordance with San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute);

(h) Each Event License is subject to every applicable term and condition of this Lease and is consistent with the DEI Plan attached hereto as *Exhibit I* and the Parks Plan attached hereto as *Exhibit F*;

(i) Each Event License is made available for Port review without redaction within thirty (30) days of execution;

(j) Each Event License includes the date(s) of the Event and if necessary, the days prior to and after such Event that are needed for set up and breakdown;

(k) Each Event License includes a description of the Event Venue being used;

(l) Each Event License includes insurance provisions requiring that all of the Event Venue User'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;**"

(m) Each Event License includes Tenant's right to terminate the Event License without charge or any liability in the event either (i) the Premises is required by Port, City, or other state agencies due to emergencies (such as natural disasters, wars, insurgencies, or terrorist attacks), or (ii) this Lease is terminated for any reason; and

(n) Each Event License includes the Event Venue User's agreement to comply with the Noise and Light Restrictions and the Good Neighbor Policy set forth in *Sections 10.8* and *10.9*.

10.5. Event Promoters. Tenant may enter into agreements with other parties, each of whom will be deemed to be Tenant's Agent, to use the Premises for Events, provided that such use complies with all the terms and conditions of this Lease. A breach by Tenant's Agent of the terms and conditions of this Lease constitutes a breach by Tenant. Tenant is solely responsible for ensuring that each of its Agents under this Lease is aware of and complies with all applicable provisions of this Lease and Tenant acknowledges that it will be subject to default and termination provisions under this Lease if its Agent fails to comply with the applicable terms and conditions of this Lease.

10.6. Port's Right to Use Premises for Civic Events.

(a) **Civic Events.** Subject to *Section 10.6(b)*, Port will have the right to use all or any portion of the Premises for Civic Events from time to time throughout the Term in accordance with this Section if it has not yet been reserved. Port will provide notice to Tenant of its intent to use all or any portion of the Premises for a Civic Event no more than sixteen (16) months and, generally, no less than seven (7) days prior to the Civic Event. Tenant will consider requests for unexpected, as-needed Civic Events submitted fewer than seven (7) calendar days prior to the proposed Civic Event. Port shall have the right to use the Premises (or such portion) without being subject to any charge; provided however, users of the Premises in accordance with this Section will still be subject to payment of Tenant's reasonable, out-of-pocket costs for security, janitorial and other reasonable out-of-pocket costs arising solely and directly from the applicable Civic Event.

"**Civic Events**" mean any event that the Port's Executive Director or the Executive Director's designee determines serves the policy goals of the Port and/or civic goals of the City and County of San Francisco, the State of California, or the U.S. Government, and that expressly brings people to the San Francisco waterfront.

(b) **Reservation for Civic Events.** Subject to *Section 10.6(a)*, Port may reserve all or any portion of the Premises for up to twelve (12) days in any calendar year, which

includes any set-up or break-down days. The twelve (12) available days may be used for one Civic Event or multiple Civic Events, as determined by Port in its sole discretion. Once Port reserves a specific space for a specific date or dates for one or more Civic Events, Tenant will have no right to relocate, terminate, or re-schedule use of such space on such specific date(s) for the Civic Event without the Port's written consent.

(c) **Port Commission Approval Required.** Port Commission approval is required for any reduction in the number of days that the Premises may be reserved without charge for Civic Events.

10.7. Lighting, Electrical, and Sound. It is critical that the setup of the electrical, sound, and/or lighting system (the "**LES Systems**") for any Event does not adversely impact any of the facility systems within the Premises. The LES Systems for any Event must therefore be installed, operated, and removed by skilled personnel familiar and knowledgeable with the facility systems within the space to be used. Accordingly, Tenant will ensure that the parties installing, operating, and removing the LES Systems are skilled, familiar and knowledgeable with the facility systems within each site.

10.8. Noise and Light Restrictions. Tenant will comply with, and use commercially reasonable efforts to cause all users to (a) comply with the San Francisco Police Code Sections 49 and 2909 regarding noise, as each may be amended or superseded, (b) ensure that no noise or sound from Events can be heard from outside the Premises after 10 pm and before 7 am, and (c) ensure that no additional light from Events is emitted from the Premises and visible to the west after 10 pm and before 5 am; provided, however, that Tenant shall be entitled to operate security lighting twenty-four (24) hours each day.

10.9. Good Neighbor Policy and DEI Plan. Tenant will comply, and use commercially reasonable efforts to cause all users to comply, with the Good Neighbor Policy attached hereto as *Exhibit J* and the DEI Plan attached hereto as *Exhibit I*. Tenant will comply with the DEI Plan with regard to the number and type of Events and Event Venue Users throughout the Term.

10.10. BCDC Permit. Notwithstanding anything to the contrary in this Lease, Events will be subject to the limitations set forth in the BCDC Permit and in the event of an inconsistency between this Lease and the BCDC Permit, the terms of the BCDC Permit, as it may be revised or amended, will supersede and govern.

11. CONCESSION OPERATIONS.

11.1. Active Edge Retail. Subject to the terms of this *Section 11.1* and the conditions in *Section 11.3*, Tenant has the exclusive right to grant licenses to ground-floor tenants of adjacent buildings (each, a "**Retail Licensee**") and enter into license and use agreements (each, an "**Active Edge Agreement**") with such Retail Licensee for the Active Edge Areas within the Premises, as depicted on [*Exhibit XX*].

11.2. Concession Operations. Subject to the terms of this *Section 11.2* and the conditions in *Section 11.3*, Tenant has the exclusive right to grant licenses to vendors, promoters or operators (each, a "**Concessionaire**") and enter into license and use agreements (each, a "**Concession Agreement**") with such Concessionaires for the Concession Areas within the Premises.

As used herein, "**Concession Areas**" means those areas within the Property that are subject to a Concession Agreement. Concession Areas may include up to two (2) restaurant or performance venue spaces not to exceed 6,000 square feet and up to four (4) kiosks of up to 200 square feet each, and one (1) human powered watercraft rental kiosk not to exceed 200 square feet; provided that if additional concession areas are permitted pursuant to the BCDC Permit and the Design Controls, Port may, in its sole discretion, expand the Concession Area to include all or a portion of the additional concession area. Tenant will select appropriate Concessionaires for Concession Areas, and will consider alignment with the greater Retail Strategy of the Mission

Rock Development and Tenant's DEI Plan in selecting Concessionaires. The rates and fees charged under Concession Agreements will be reasonable and customary as specifically determined by, or negotiated with, an independent third party.

11.3. Retail and Concession Conditions. Each Retail Licensee and Active Edge Agreement, and each Concessionaire and Concession Agreement are subject to, and shall be null and void unless compliant with, the following conditions:

- (a) Retail Licensee and/or Concessionaire is not subject to an active debarment or suspension order from the City;
- (b) Retail Licensee and/or Concessionaire has not in the last ten (10) years, and is not currently, subject to an eviction or other enforcement order prosecuted by or for the Port;
- (c) Each Active Edge Agreement and Concession Agreement subjects the Retail Licensee and/or Concessionaire to a cross-default provision with any contract with the Port, which cross-default provision may be prosecuted by Port in its sole and absolute discretion;
- (d) Each Active Edge Agreement and Concession Agreement includes indemnification and waiver of claims clauses similar to the provisions in **Section 23** (Indemnity and Exculpation);
- (e) Each Active Edge Agreement and Concession Agreement states that Retail Licensee and/or Concessionaires must comply with all applicable Laws and every applicable condition of this Lease;
- (f) Each Active Edge Agreement and Concession Agreement includes a provision where the Retail Licensee and/or Concessionaire expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws;
- (g) Each Active Edge Agreement and Concession Agreement includes a provision where the Retail Licensee and/or Concessionaire expressly agrees to report the Active Edge Agreement and/or Concession Agreement to the County Assessor in accordance with San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute);
- (h) Each Active Edge Agreement and Concession Agreement includes insurance provisions requiring that the Retail Licensee and/or Concessionaire'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**";
- (i) Each Active Edge Agreement and Concession Agreement is consistent with this Lease and Tenant's DEI Plan attached hereto as **Exhibit I** and the Mission Rock Parks Plan attached hereto as **Exhibit F**; and
- (j) Each Active Edge Agreement and Concession Agreement with a term of one year or more is fully disclosed without redaction to the Port within thirty (30) days of execution.
- (k) Tenant must receive no less than the applicable parameter rate (rent or fee) in effect at the time of execution of each Active Edge Agreement and Concession Agreement; except for Concessionaires that operate less than five (5) days per year within the Premises for temporary, community-oriented offerings such as farmers' markets, small craft markets, and food truck services. For the avoidance of doubt, the Parameter Rental Rate Schedule for Fiscal Year 2023-2024 to be applied to each Active Edge Agreement is identified within the "Open Land, Pier and Airspace Rates" category as "Improved Land & Sidewalk (including outdoor dining)."

11.4. Notice. Unless Port agrees to later advance notice, Tenant must provide at least thirty (30) calendar days written advance notice to Port of its desire to enter into any Concession Agreement or Active Edge Agreement with a term of one year or more for use of all or any portion of the Premises.

12. SPONSORSHIPS.

12.1. Generally. Tenant agrees and acknowledges that the primary use of the Premises is to enrich the public experience as further described in the Parks Plan. The Parties agree and acknowledge that Sponsorships will be a revenue source to support the operations, maintenance, and programming of the Premises.

(a) Sponsorship Requirements and Approvals.

(i) All Sponsorships shall comply with Port's Sponsorship Standards attached hereto as *Schedule 12.1(a)*.

(ii) Except for Temporary Signage, Tenant shall not install any Physical Element, or Major Physical Element related to any Sponsorship without obtaining the Port Director's approval with respect to the physical location of such Physical Element or Major Physical Element; provided such approval shall not be unreasonably withheld, conditioned or delayed. The Port shall have no approval right with respect to the name(s) or other content contained on the Physical Element or Major Physical Element except as set forth in this *Section 12*.

(iii) Unless the Port enters into a Recognition Agreement with respect to a Sponsorship Agreement, each Sponsorship Agreement shall include a right for the Port to terminate such agreement upon expiration or earlier termination of this Lease; provided, however that upon termination of this Lease, Port shall reasonably consider its assumption of each then-existing Sponsorship Agreement. For the avoidance of doubt, Sponsorship Agreements may also include a right for the sponsor to terminate such Sponsorship Agreement upon termination of this Lease.

(iv) Port and its representatives will have the right, from time to time, to examine and/or cause a complete audit (but not to make copies, unless in connection with discovery in the course of litigation) of any or all sponsorship agreements entered into by Tenant. The Parties shall be responsible for their own costs associated with routine examinations and routine audits.

(v) All Physical Elements and Major Physical Elements related to any sponsorship must either (1) comply with, or (2) receive an express waiver or exemption from, Mission Rock Design Controls, any other relevant Port design guidelines, and building permit requirements. Tenant must deliver to Port a written document identifying the proposed Major Physical Element(s) of a sponsorship at least sixty (60) days prior to the proposed installation or placement, for Port's approval, which approval will not be unreasonably withheld.

(vi) For the avoidance of doubt and without limiting the Port's reasonable discretion, the Parties agree that it will be reasonable for the Port to withhold approval if, the proposed sponsor: (A) is barred or suspended from bidding or entering into contracts with the City, (B) is a Port tenant that is not in good standing, or if (C) the installation or placement of a Major Physical Element regarding the sponsorship would violate any City Law or policy.

(vii) All signage and Physical Elements of sponsorship must be promptly removed from the Premises on or prior to expiration of the sponsorship agreement or the applicable event or programming.

(b) Preapproved Sponsorships. Tenant must provide Port with no less than fifteen (15) calendar days (or such shorter time as permitted pursuant to this Lease or by the Port

for Tenant to give notice of an Event) prior notice before installing or placing Temporary Signage on the Premises, but shall not be required to obtain any other approval from Port for Temporary Signage. “**Temporary Signage**” shall mean signage used in connection with an Event that (i) is temporary and/or seasonal in nature, and (ii) is used solely for information or notification purposes. The term of Temporary Signage cannot exceed six (6) months and may not be renewed or extended. Temporary Signage includes, without limitation, weekly programming A-frame sign(s), temporary public art, banners, non-affixed and movable signage, and other promotional materials.

(c) **Sponsorships subject to Port Director Approval.** A “**Sponsorship subject to Director discretion**” is a sponsorship that: (i) includes a Major Physical Element, and (ii) will be for a term of not less than six (6) months and no greater than ten (10) years, and (iii) requires the approval of the Port Director or the Port Director’s designee. No Major Physical Element may be installed or placed in connection with a Sponsorship subject to Director discretion unless and until Tenant has received the Port Director’s written approval. Tenant must submit to Port for approval the material terms of the sponsorship agreement at least sixty (60) calendar days prior to the proposed installation or placement of any related Major Physical Element. Upon receipt of the material terms of the sponsorship agreement, Port will have thirty (30) days to notify Tenant of the Port Director’s approval, disapproval, or any proposed conditions of approval for the sponsorship agreement. The Port Director may not unreasonably withhold its consent to the proposed sponsorship.

(d) **Sponsorships subject to Port Commission Approval.** A “**Sponsorship subject to Commission discretion**” is a sponsorship that: (i) includes a Major Physical Element, (ii) will be for a term greater than ten (10) years, and (iii) requires the approval of the Port Commission. No Major Physical Element may be installed or placed in connection with a Sponsorship subject to Commission discretion unless and until Tenant has received Port Commission approval. Tenant shall submit to the Port, for Port Commission deliberation, a recognition and signage plan for each proposed sponsorship subject to Commission discretion at least one hundred twenty (120) calendar days prior to the proposed installation or placement of any related Major Physical Element. Port staff may suggest revisions or modifications to the proposal, which Tenant may accept or reject in Tenant’s sole discretion, prior to presentation to the Port Commission for deliberation. Port will have reasonable time to place the items on the Port Commission calendar for deliberation. Notwithstanding anything to the contrary in this Lease, no Sponsorship subject to Commission discretion may be for a term that extends beyond the Term unless the Port has entered an applicable Recognition Agreement.

12.2. Other Approvals. Tenant will, at its sole cost and expense, obtain all other necessary Regulatory Approvals for the installation or placement of Physical Elements and/or Major Physical Elements. Proof of Regulatory Approvals, to the extent required, will be submitted to the Port for review not less than ten (10) Business Days prior to the first day of installation or placement; provided however, if Tenant receives any necessary Regulatory Approvals less than fifteen (15) calendar days prior to installation due to no fault of Tenant or applicable sponsor, then Tenant shall submit such Regulatory Approval to Port within one (1) Business Day of receipt. Upon Tenant’s failure to submit to Port the necessary Regulatory Approval(s) by the required date, the Port may, in its sole discretion, reject or disallow any installation or placement. Examples of necessary Regulatory Approvals include, but are not limited to:

- (a) Building/Encroachment Permit from Port Building Department;
- (b) Temporary Change of Occupancy Permit from Port Building Department;
- (c) Any other permit or approval deemed reasonably necessary by Port, BCDC, and/or any other Regulatory or City Agency.

12.3. Sponsorship Consultants. Tenant may enter into agreements with other parties (including affiliates of Tenant), each of whom will be deemed to be Tenant's Agent, to solicit sponsorships, provided that all Sponsorship Agreements comply with all the terms and conditions of this Lease. A breach of any term of this Lease by Tenant's Agent constitutes a breach by Tenant. Tenant is solely responsible for ensuring that each of its Agents under this Lease are aware of and comply with all of the provisions of this Lease and Tenant acknowledges that it will be subject to default and termination provisions under this Lease if its Agents fail to comply with the terms and conditions of this Lease. Sponsorship consultant fees or commissions must be commercially reasonable and may not exceed eighteen percent (18%) of Gross Sponsorship Revenue from the sponsorship agreement.

12.4. Revenues from Sponsorships. Other than payment of consultant fees in accordance with *Section 12.3*, all Sponsorship Revenue (other than Capital Improvement Sponsorships) will be applied to the operation and maintenance of the Park in accordance with *Section 5.5*.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

During the Term, Tenant, at Tenant's sole cost and expense, promptly will comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and will comply with all Laws relating to Tenant's specific use of the Premises 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; provided that if compliance with Laws requires any repairs, restoration, alterations, installations, improvements or additions to any Improvements or to the Premises ("**Compliance Improvements**"), such Compliance Improvements shall be subject to *Section 15*. 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; provided that if compliance with the ADA requires Compliance Improvements, such Compliance Improvements shall be subject to *Section 15*. Tenant will be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations strictly complies with all requirements of the ADA. Tenant shall obtain Port's prior written approval for any use or occupancy of the Premises that may trigger a requirement to remove barriers or perform other work to any Port property outside the Premises to comply with the ADA.

The Parties acknowledge and agree that Tenant's obligation to comply with all Laws (subject to *Section 15*) as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 13 will include, subject to Section 15, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, 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 13* will comply with the provisions of *Section 17*. 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, will 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. Except as expressly set forth in this Lease, 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.

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

14.1. *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, subject to **Section 8.1**, to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals, including but not limited to the terms and conditions described in **Section 8**. 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.

14.2. *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.

(a) Tenant will be solely responsible for obtaining any Regulatory Approvals, and Tenant will 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 will be borne solely and exclusively by Tenant. Port, at no cost to Port, will reasonably cooperate with Tenant in its efforts to obtain such Regulatory Approvals, including submitting letters of authorization for submittal of applications consistent with all applicable Laws and the further terms and conditions of this Lease. Port may elect in Port's sole discretion to participate as co-permittee for one or more Regulatory Approvals. Tenant will be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant will not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could adversely affect use or occupancy of the Premises or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe (other than fees that would be reimbursed by Tenant), unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

(b) Except as otherwise provided herein, Port will provide Tenant with its approval or disapproval of any matter requiring Port's approval in writing to Tenant as soon as reasonably practical after Tenant's written request and (i) not later than fifteen (15) calendar days for event-related requests, or (ii) not later than twenty-five (25) calendar days for all other requests, as calculated from Port's receipt of Tenant's complete written request; provided however that if Port's Executive Director, in consultation with the City Attorney's Office, reasonably determines that Port Commission or Board of Supervisors action is required under applicable Laws, then the approval or disapproval shall be offered for consideration at the first Port Commission and subsequent Board of Supervisors hearings after receipt of Tenant's written request, subject to notice requirements and reasonable staff preparation time. Port will join in any application by Tenant for any required Regulatory Approval and execute such permit where required, provided that Port has no obligation to join in any such application or sign the permit if Port does not approve the conditions or restrictions imposed by the Regulatory Agency under such permit as set forth above in this section.

(c) Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval will be promptly paid and discharged by Tenant, and Port will have no liability, monetary or otherwise, for any fines and penalties. Tenant in its sole discretion has the right to appeal or contest any condition in any

manner permitted by Law imposed by any such Regulatory Approval; provided, however, if Port is a co-permittee, then Tenant will have first obtained Port's prior consent, not to be unreasonably withheld, prior to commencing any such appeal or contest. Tenant will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. No Port Approval will limit Tenant's obligation to pay all costs of complying with any conditions or restrictions. 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, except to the extent that such Claim arises solely from the willful acts or omissions of Port acting in its proprietary capacity.

(d) Without limiting the terms and conditions of *Sections 14.1 and 14.2*, 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 Premises 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 will in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Premises. 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.

14.3. Compliance with City's Risk Manager's Requirements. Tenant will faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises, are commercially reasonable (as indicated by prudent commercial practices of other landlords), and are either generally applicable to parks and open spaces or are specific to a unique feature of the Premises.

15. MAINTENANCE AND REPAIRS.

15.1. Tenant Maintenance and Repair Obligations.

(a) Tenant will at all times during the Term, starting on the Commencement Date and at its sole cost and expense:

(i) Maintain, repair, and replace the Premises in good order and condition equal to or better than other first-class public waterfront parks and open space projects located in California, including completing any Capital Repairs and Replacements; and

(ii) Complete any Compliance Improvements in accordance with all applicable Laws; and

(iii) Complete any repairs or restoration to any Improvements or to the Premises if the Improvements or Premises is damaged by fire or other casualty ("**Casualty Improvements**") in accordance with *Section 21*.

Tenant's obligations under this *subsection 15.1(a)* shall be promptly undertaken and pursued with due diligence, subject to *subsection 15.1(c)*, below.

(b) Port will 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. In the event that Tenant, its Agents or Invitees cause any

damage to the Premises or any other property within Port's jurisdiction, Tenant will be responsible for repair and Port may repair the same at Tenant's sole cost and expense and Tenant will promptly reimburse Port therefor.

(c) Notwithstanding the obligations described in this *Section 15.1*, the Parties agree that such obligation may be extinguished upon termination of this Lease under *subsection 3.3(a)(iii)*. Prior to termination under *subsection 3.3(a)(iii)*, Tenant may submit a written notice to Port stating that Tenant has insufficient funds to complete necessary Capital Repairs and Replacements, Compliance Improvements, and/or Casualty Improvements. Port will review and respond to such written notice in accordance with *Section 14.2*. In its sole and absolute discretion and without any further obligation, Port may either provide additional funds to Tenant for Tenant's completion of, or cause the completion of, such necessary Capital Repairs and Replacements, Compliance Improvements, and/or Casualty Improvements. If Port does not provide additional funds or cause the completion of necessary Capital Repairs and Replacements, Tenant may:

(i) discontinue public access to the affected area (i.e., partially close a portion of the Premises) until such time that Port and Tenant cause the completion of the Compliance Improvement or agree to install alternative Improvements; or

(ii) pursue termination of this Lease under *subsection 3.3(a)(iii)*.

(d) Tenant will 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 a permit therefor.

(e) Tenant may, but is not obligated to, complete Subsequent Horizontal Construction and any additional Improvements that did not exist on the Commencement Date, subject to Port's prior written approval for Major Improvements.

15.2. Port's Right to Inspect. Without limiting *Section 28* 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 will not relieve Tenant of its independent responsibility to maintain such Premises and Improvements as described in *Section 15.1*. Except in case of emergency, Port shall provide reasonable prior notice to inspect any area of the Premises that is not readily accessible to the general public.

15.3. Port's Right to Repair. In the event Tenant fails to promptly commence efforts to maintain the Premises or repair any damage to the Premises as described in *Section 15.1*, Port may maintain or repair the same at Tenant's sole cost and expense and Tenant will promptly reimburse Port therefor (unless Tenant is contesting the Maintenance Notice in good faith). Except in the event of an emergency, Port will first provide no less than fourteen (14) calendar days prior notice to Tenant before commencing any maintenance or repair pursuant to this Section. If Tenant does not: (a) commence maintenance or repair of or provide assurances reasonably satisfactory to Port that Tenant will commence maintenance or repair of the same, or (b) exercise its rights under *Section 3.3, subsection 15.1(c)*, or *Section 21.1*, within such fourteen (14) calendar day period, then Port may proceed to take the required action, unless (c) within that fourteen (14) calendar day period Tenant provides Port written notice identifying (i) a conflict with a previously planned event or Sponsorship that would interfere with the non-emergency maintenance or repair and (ii) the reasonable extension of time necessary to commence the non-emergency maintenance or repair to avoid such conflict. 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 will pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" will include the cost of materials and installation, but will 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 will 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 15** ("**Maintenance Notice**"), Tenant will 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 15**, then Tenant will 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 will 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 will be due within thirty (30) days following delivery of the applicable Maintenance Notice.

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

15.4. Acts of Nature. Nothing contained herein will 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 will not affect any obligation to make repairs to the Premises pursuant to **Section 21** in the event of any damage or destruction of the Premises.

16. UTILITIES AND SERVICES.

16.1. Utilities. Tenant will make arrangements and will pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant; provided that Port shall take such actions as are reasonably necessary to enable Tenant to obtain Utilities. Tenant will procure all electricity and water for potable uses 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.

Subject to **Section 15.1**, Tenant will 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 will 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.

Concurrent with the execution of this Lease, Port will assign, and Tenant will accept the assignment of, the WPA between Port and Mission Rock Utilities to Tenant. During the Term, Tenant must purchase water for non-potable use on the Premises from Mission Rock Utilities pursuant to the WPA between Tenant and Mission Rock Utilities. The WPA is effective as of the Commencement Date and will be effective throughout the Term. Tenant will be solely responsible for all purchaser obligations under the WPA and Port will have no responsibility, obligation or liability related to the WPA; provided however, if one or more Specified Related Agreements terminate, then Port agrees to promptly compensate Tenant for the costs of non-

potable water used in the areas previously covered by the terminated Specified Related Agreement. Port has no liability or obligation to provide any water for the Premises.

Aside from any infrastructure that was previously permitted and approved by Port, Tenant will not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises using current in excess of 240 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises, including without limitation, electronic data processing machines. If Tenant requires electric current in excess of that usually furnished or supplied for the Premises, Tenant will first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof will be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the San Francisco Public Utilities Commission or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

The parties agree that any and all utility improvements (not including telephone or internet wiring and equipment) will 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 will 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 will 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 Sections 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. The foregoing does not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

In the event any Law imposes mandatory controls on Port, the Premises 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, such compliance and the making of such alterations will in no event entitle Tenant to any damages, relieve Tenant of the obligation to perform each of its covenants hereunder, or constitute or be construed as a constructive or other eviction of Tenant.

16.2. Services. Tenant will make arrangements and will 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, security service, janitorial service and extermination service.

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

17. IMPROVEMENTS AND ALTERATIONS.

17.1. Port Consent Required.

(a) Tenant may make Alterations or Improvements to the Premises without Port's written consent to the extent any such Alteration or Improvement does not require a Regulatory Approval. Tenant will not make nor cause or suffer to be made, any Alterations or Improvements to the Premises that require a Regulatory Approval (i) without the prior written

consent of Port, which consent will not be unreasonably withheld; provided, however, that Port will 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 or the facility systems or would adversely affect public access to, or the use or appearance of, the Premises (other than as reasonably necessary during performance of such Alterations or Improvements and only on a temporary basis), and (ii) until Tenant will have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) As a condition to giving consent to any Alterations or Improvements to be performed by Tenant that require Port's prior written consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees as the City's Risk Manager may reasonably deem necessary in connection with the Alteration or Improvement, including any guarantees required by Law such as payment and performance bonds from Tenant's Contractor(s) 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. The Parties agree that if no such guarantee is required by Law, then Tenant may comply with the financial guarantee obligation by establishing a restricted account containing funds from existing reserves sufficient to complete the Alteration or Improvement and to cover contingencies as reasonably determined by Port.

(c) Except in the event of an emergency, at least thirty (30) days before commencing any Alterations or Improvements to the Premises that requires a Regulatory Approval, Tenant will notify Port. Tenant's notice will be accompanied by final construction documents for the Alterations or Improvements, if applicable. Port will have the right to object to any of the Alterations or Improvements requiring Port's consent within thirty (30) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's consent within the thirty-(30) day period will be deemed Port's approval of the Alterations or Improvements.

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

17.2. Construction Requirements. All Alterations and Improvements to the Premises made by or on behalf of Tenant will be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements will be performed in a good and workmanlike manner 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. All Alterations and Improvements that require a Port permit or Port consent shall be performed in accordance with plans and specifications previously approved by Port.

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

(c) Tenant, while performing any subsequent construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), will undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises 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 will undertake commercially reasonable measures to minimize damage and the risk of injury, 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 will be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant will 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 that requires a building permit (but excluding temporary structures), Tenant will 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 ninety (90) days after completion of the Improvements, Port, after giving notice to Tenant will 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) Without limiting *Section 19* below (Hazardous Materials), in the event that asbestos-containing materials (“ACM”) are determined to exist in or about the Premises, Tenant will 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 will 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 will be performed without Port’s prior written consent in each instance.

(f) Tenant, on behalf of itself and its Agents or Invitees, will 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 will 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, will 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 *subsection 17.2(f)*, 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.

17.3. Port Proposed Alterations. If Port, in its proprietary capacity, desires any Alterations to the Premises during the Term, Port shall notify Tenant of such proposed Alterations (the “**Port Proposed Alterations**”), and Port and Tenant shall meet and confer to

discuss the proposal and determine whether the Port Proposed Alterations conflict with any previously-approved Sponsorship Agreement or Event. Tenant shall complete such Port Proposed Alterations if the cost of such Port Proposed Alterations are expressly included in the Budget, or if the Port Proposed Alterations are approved by Tenant (such approval not to be unreasonably withheld if the Port Proposed Alterations do not conflict with any previously-approved Sponsorship or medium to large event), and if the cost can be covered by another identified funding source. Port shall not complete any Port Proposed Alterations without Tenant's prior approval; provided however that this Section shall not limit Port's rights under *Section 15.3*.

17.4. Improvements Part of Realty. Except as set forth in *Section 17.5* below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant (but excluding temporary structures, trade fixtures and other personal property of Tenant and its subtenants other than Port) will immediately upon construction or installation become part of the realty owned by Port and will, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in *Section 29* (Surrender).

17.5. Removal of Improvements.

(a) 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 completed by or on behalf of Tenant and 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 will be required to remove and relocate or demolish and remove from the Premises in accordance with *Section 29*. 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 will deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant will be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal. Tenant will 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 will reimburse Port within ten (10) Business Days after demand therefor.

(b) Prior to commencing any Alterations or constructing new Improvements, Tenant may request that Port identify whether such Alteration or Improvement will be designated as Tenant's Property and, therefore, subject to removal, relocation, or demolition and removal from the Premises in accordance with this section and *Section 29*. If Port provides written notice that an Alteration or Improvement will not be designated as Tenant's Property (and therefore potentially subject to removal at Port's election), then Port may not later deliver a Notice of Removal so long as such Alteration or Improvement is maintained in accordance with *Section 15*.

17.6. Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements for which Port's consent was required without Port's prior written consent or without complying with *Section 17.2*, 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 will 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 17* will survive the expiration or earlier termination of this Lease.

17.7. All-Gender Toilet Facilities. If applicable, Tenant will 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.

18. LIENS.

Tenant will 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 will not, within sixty (60) days following the imposition of any such lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to Port, Port will have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it will 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) will be payable to Port by Tenant within ten (10) days following demand by Port. Port will have the right to post on the Premises any notices that Port may deem proper for the protection of Port, and the Premises from mechanics’ and materialmen’s liens. Tenant will 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 will not create, permit or suffer any liens or encumbrances affecting any portion of the Premises or Port’s interest therein or under this Lease, other than (i) this Lease, permitted subleases, and liens or other matters of record as of the Effective Date and (ii) liens for non-delinquent taxes, assessments, liens, levies, fees, charges or expenses of every description, levied, assessed, confirmed or imposed by a governmental entity on the Premises.

19. HAZARDOUS MATERIALS.

19.1. Requirements for Handling. Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, over, or under the Premises, subject only to the following exceptions and provided that Handling is at all times in full compliance with all Environmental Laws: (a) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency and are used in compliance with all applicable laws and any reasonable conditions or limitations required by Port, (b) janitorial, office, cooking, or landscaping supplies or materials in such amounts as are customarily used for purposes similar to the Permitted Uses, (c) standard building materials and equipment that do not contain asbestos or asbestos containing materials, lead, or polychlorinated biphenyl (PCBs) for use in connection with Alterations or Improvements in accordance with **Section 17**, and (d) Hazardous Materials that are or have been Handled for Remediation purposes under the jurisdiction of and as permitted by an Environmental Regulatory Agency.

19.2. 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 (other than Pre-Existing Hazardous Materials) to be present in, on, over, or under the Premises except as permitted under *Section 19.1*;

(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, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

19.3. *Tenant's Environmental Condition Notification Requirements.*

(a) Tenant must notify Port as soon as practicable, 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 19.1*, Handled, in, on, over, or under the Premises, or emanating from the Premises, or from off-site conditions or events affecting receptors or the environmental condition in, on, over, or under the Premises, or from any vehicle or vessel that Tenant or its Agents or Invitees use on the Premises during Tenant's occupancy of the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises 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 as soon as practicable, 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, over, or under the Premises 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 with respect to the Premises;

(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, over, or under the Premises, or from any vehicles or vessels Tenant, or its Agents and Invitees uses on the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises 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, over, or under the Premises, or from any vehicles or vessels Tenant, or its Agents and Invitees uses on the Premises, or to transport Hazardous Materials that existed on the Premises prior to the Term from the Premises 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 concerning the Premises. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval concerning the Premises or Tenant's or its Agents' or Invitees' operations at the Premises. Tenant's notice to Port must state the 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 non-privileged 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 an explanation of the basis for any claim of privilege and summary information regarding the parties to, the quantity and extent of, and the subject of such communications.

(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.

19.4. Requirement to Remediate.

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

(i) After notifying Port in accordance with *subsection 19.3(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 caused by Tenant or Tenant's Agent's or Invitees Handling of Hazardous Materials during Tenant's occupancy of any or all of the Premises, provided Tenant may take any immediate actions to address an emergent Hazardous Material Condition to confine or limit the extent or impact of such Hazardous Material Condition and will then provide notice to Port in accordance with *subsection 19.3(a)*. 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 the applicable Regulatory Agency.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost and in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling of 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. Port shall approve or disapprove of such Hazardous Materials Remediation plan promptly, but in any event within thirty (30) days, after receipt thereof. If Port disapproves of any such Hazardous Materials Remediation plan, Port shall specify in writing the reasons for its disapproval.

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

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

19.5. 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 28** (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.

19.6. 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 19.6** 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 23** (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises 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 the removal or non-removal by Port of all or a portion of the asbestos in the Premises, will not, however, (a) entitle Tenant to any Claim, (b) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (c) constitute or be construed as a constructive or other eviction of Tenant.

Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for Tenant's acts or omissions that result in (y) asbestos-related enforcement actions related to the Premises, including both administrative or judicial proceedings, and (z) any Claims related to the

Premises arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

19.7. Notification of Lead. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises. 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 23** below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of lead in or about the Premises 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 the removal or non-removal by Port of all or a portion of the lead, whether in the Premises, will not, however, (a) entitle Tenant to any Claim, (b) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, or (c) constitute or be construed as a constructive or other eviction of Tenant. Notwithstanding any other provisions of this Lease, Tenant agrees to Indemnify Port for Tenant's acts or omissions that result in (y) lead-related enforcement actions related to the Premises, including both administrative or judicial proceedings, and (z) any Claims related to the Premises arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

19.8. 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, and shall comply with the Mission Rock District Storm Water Pollution Prevention Plan ("SWPPP"), which is attached as **Exhibit K**.

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

19.9. 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 19.9**, 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 78700 and related Laws. Tenant must disclose the information contained in this **Section 19.9** 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 78700 as well as the penalties that apply for failure to meet such obligations.

19.10. Survival. The provisions of this **Section 19** (other than **Sections 19.6** and **19.7**) will survive the expiration or earlier termination of this Lease, provided however that (a) Tenant's obligations under **Section 19.4** shall survive only with respect to Remediation

obligations that first arise during the Term or are caused by Tenant or Tenant's Agents carrying out Tenant's surviving obligations under *Section 19.4* and this section after the Term, and (b) Tenant's obligations under *Sections 19.1, 19.2, 19.3, and 19.8* shall survive only with respect to Tenant and Tenant's Agents who are carrying out Tenant's surviving obligations under *Section 19.4* and this section.

20. INSURANCE.

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

(a) Commercial General Liability Insurance. Comprehensive or "Commercial General Liability" insurance, with limits not less than Forty Million Dollars (\$40,000,000.00) each occurrence combined single limit for bodily injury (including death) and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards; personal and advertising liability, and the products-completed operations. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) Liquor Liability and Food Products Liability. If Tenant has (or is required under Laws to have) a liquor license and is selling or distributing or allows (irrespective of whether Tenant has a liquor license) alcoholic beverages on the Premises, or is selling or distributing food products on the Premises, then liquor liability coverage with limits not less than Five Million Dollars (\$5,000,000) each occurrence, and food products liability insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence, and Tenant will require any Operator, Agent, or Subtenant (including licensees or concessionaires) who has (or is required under Laws to have) a liquor license and who is selling, allowing, or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Tenant's policies.

(c) Automobile Insurance. Tenant will maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Tenant's use and occupancy of, and activity at, the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than the limits required for commercial general liability insurance for each occurrence combined single limit.

(d) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant will maintain, or require by written contract that its remediation contractor or remediation consultant will maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Five Million Dollars (\$5,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of Port (such approval not to be unreasonably withheld, conditioned or delayed).

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

(i) Tenant will cause Tenant's Agents (including Tenant's contractor) to carry such insurance coverage and limits as will be reasonably approved by Port and the City's Risk Manager, taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Tenant will 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 will 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 Five Million Dollars (\$5,000,000.00) each claim and Ten Million Dollars (\$10,000,000) in the aggregate, with respect to all professional services provided to Tenant therefor.

(f) Special Events/Participants. For any Event at the Premises, Tenant, Event Venue Users, Concessionaires or Agents, as applicable, must maintain Special Events/Participants Liability Insurance (GL) acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(g) Workers' Compensation; Employer's Liability. Tenant will carry (if applicable) and will require Tenant's Agents to carry Worker's Compensation 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 (if any).

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

(i) Sexual Molestation. For any Event where minors are present, sexual molestation and abuse coverage with minimum limits of Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate. Coverage may be held as a separate policy or included by endorsement in the Commercial General Liability or Errors and Omissions policy.

(j) Other Coverage. Not more often than every year and upon not less than sixty (60) days prior written notice, in connection with the annual budget process 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: (i) required by Law, (ii) reasonably required by the City's Risk Manager, or (iii) as is reasonably prudent for private operators of public parks and open spaces similar in size, character, age and location as the Premises with respect to risks comparable to those associated with the use of the Premises.

20.2. Claims-Made Policies. If any of the insurance required in *Section 20.1* is provided under a claims-made form of policy, Tenant will 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 will be covered by such claims-made policies.

20.3. Annual Aggregate Limits. If any of the insurance required in *Section 20.1* 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 will be double the occurrence limits specified herein.

20.4. Payment of Premiums. Tenant will pay the premiums for maintaining all required insurance.

20.5. 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 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 Premises; provided, the failure to obtain any such endorsement will not affect the above waiver.

20.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Tenant hereunder will contain a cross-liability clause, will name as additional insureds by written endorsement the “**CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, COMMISSIONERS EMPLOYEES AND AGENTS,**” will be primary and non-contributory to any other insurance available to the additional insureds with respect to claims arising under this Lease, and will 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) All insurance policies required to be maintained by Tenant hereunder will 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 will in no way relieve or decrease Tenant’s liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder will 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.

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

21. DAMAGE AND DESTRUCTION.

21.1. Damage and Destruction. If the Premises is damaged by fire or other casualty, then all repairs and restoration of the Premises arising from such casualty shall constitute Casualty Improvements. Tenant will repair the same provided that (a) funds for such Casualty Improvements are expressly included in the Budget, or available to Tenant from insurance proceeds, or otherwise identified for such purpose (while allowing Tenant to operate and maintain the Premises in accordance with *Section 15* of this Lease), and (b) that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease will remain in full force and effect. In the event such conditions are not satisfied, Tenant may:

(i) discontinue public access to the affected area until such time that Port and Tenant cause the completion of the Casualty Improvement or agree to install alternative Improvements; or

- (ii) pursue termination of this Lease under *subsection 3.3(a)(iii)*.

Tenant will use commercially reasonable efforts to notify Port within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, Tenant will have the option to notify Port of: (x) Tenant's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, in which event this Lease will continue in full force and effect; or (y) discontinue public access to the affected area until such time that Port and Tenant cause the completion of the Casualty Improvement or agree to install alternative Improvements; or (z) Tenant's election to terminate this Lease in accordance with *subsection 3.3(a)(iii)* as of the date specified in such notice, which date will be not less than thirty (30) nor more than sixty (60) days after notice is given by Tenant.

Notwithstanding anything to the contrary in this Lease, Tenant will not be entitled to terminate this Lease in the event the damage or destruction is attributable to any gross negligence or willful misconduct of Tenant or its Agents. Port may choose to, but will never be required to, repair the Premises. In no event will 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.

21.2. Waiver. Port and Tenant intend that the provisions of *Section 21* 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.

22. EMINENT DOMAIN.

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

22.2. Partial Takings. If (a) a part of the Premises will 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 will remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking will 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 will specify the date of termination, which will be not less than thirty (30) nor more than sixty (60) days after the date of notice.

22.3. Total Taking. If Tenant's leasehold estate is taken under the power of eminent domain or conveyance in lieu thereof, this Lease will terminate as of the Date of Taking.

22.4. Temporary Takings. Notwithstanding anything to the contrary contained in *Section 22*, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease will remain unaffected thereby and Tenant will continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease.

22.5. Award; Waiver; Termination of Lease; Rent. Upon termination of this Lease in its entirety pursuant to *Section 22.3*, or pursuant to an election under *Section 22.2*, then: (i) Tenant's obligation to pay Rent will continue up until the date of termination and thereafter will cease, and (ii) Port will 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 will 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 will 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 22** will 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.

23. INDEMNITY AND EXCULPATION.

23.1. General Indemnity. Subject to **Section 23.6**, Tenant will Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "Indemnified Parties") from, and will 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 Concessionaire, or loss or damage to or destruction of any property occurring in, on, over, or under the Premises during Tenant's occupancy, (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 24**, (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, Invitees, or Concessionaires during Tenant's occupancy, (d) any construction or other work on the Premises permitted by Tenant during Tenant's occupancy, or (e) any acts, omissions, or negligence of Tenant, its Agents, Invitees, or Concessionaires, in, on, over, or under the Premises.

23.2. Hazardous Materials Indemnity.

(a) Subject to **Section 23.6**, in addition to its obligations under **Section 23.1**, Tenant 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 existing or occurring during the Term or pursuant to Tenant's obligations under **Section 19.10**, and (ii) Tenant's or Tenant's Agent's Exacerbation of any Hazardous Material Condition during the Term and any occupancy of the Premises by Tenant after the Term.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) actual costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) actual damages for diminution in the value of the Premises; (iii) actual damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; (iv) actual damages arising from any adverse impact on marketing the space; (v) actual sums paid in settlement of Claims, Hazardous Material Claims, Environmental Regulatory Actions, including fines and penalties; (vi) actual natural resource damages; and (vii) reasonable 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 five (5) Business Days after Port's payment demand and evidence reasonably supporting the demand.

23.3. Scope of Indemnities. Subject to **Section 23.6**, the Indemnification obligations of Tenant set forth in this Lease will 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 will 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 will 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 will begin from the first notice that any claim or demand is or may be made and will continue at all times thereafter until finally resolved.

23.4. Exculpation and Waiver. To the fullest extent permitted by law, Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any Claims caused solely by the Indemnified Parties' willful misconduct or gross negligence. The Indemnified Parties will not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims, whether direct or indirect, known or unknown, foreseen or unforeseen, 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, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective systems, (v) construction defects, (vi) damages to goods, wares, goodwill, merchandise, equipment or business opportunities, (vii) Claims by persons in, upon or about the Premises, 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 Commencement Date, (ix) inability to use all or any portion of the Premises due to sea level rise, and (x) any other acts, omissions or causes in, on, over, or under the Premises to the fullest extent permitted by law, but excluding any Claims arising from the Indemnified Parties' willful misconduct or gross negligence.

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 will 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Initials:

Name:

Title:

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.

23.5. Not Limited by Insurance. Tenant's Indemnification obligations set forth in *Section 23.1* and all of Tenant's other Indemnification obligations set forth in this Lease will not be limited by the amount of insurance proceeds that are available pursuant to the insurance coverage that Tenant is required to maintain pursuant to this Lease.

23.6. Exclusions from Indemnifications, Waivers, and Releases.

(a) Nothing in this *Section 23* relieves the Indemnified Parties from liability, nor will the Indemnities set forth in *Section 23.1*, (General Indemnity), *Section 23.2* (Hazardous Materials Indemnity), or the defense obligations set forth in *Sections 23.3* (Scope of Indemnities), or any other indemnification obligation of Tenant under this Lease extend to Claims:

(i) to the extent such Claim(s) exceed the limit defined in subsection (a) of *Section 20.1* for Tenant's Commercial General Liability insurance, as applicable at the time of the Claim; or

(ii) caused by the gross negligence or willful misconduct of the Indemnified Parties; or

(iii) from third parties' claims for exposure prior to the Commencement Date to either Pre-Existing Hazardous Materials or to Hazardous Materials.

(b) If it is reasonable for an Indemnified Party to assert that a claim for Indemnification under this *Section 23* is covered by a pollution liability insurance policy, pursuant to which such Indemnified Party is an insured party or a potential claimant, then Port will reasonably cooperate with Tenant in asserting a claim or claims under such insurance policy but without waiving any of its rights under this *Section 23*. Notwithstanding the foregoing, if an Indemnified Party is a named insured on a pollution liability insurance policy obtained by Tenant, the Indemnification from Tenant under this *Section 23* will not be effective unless such Indemnified Party has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Tenant pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any Indemnified Party to pursue a claim for insurance through litigation prior to seeking indemnification from Tenant. For the avoidance of doubt, Tenant shall have no obligation to obtain a pollution liability insurance policy.

23.7. Survival. The provisions of *Section 23* will survive the expiration or earlier termination of this Lease.

24. ASSIGNMENT PROHIBITED.

Port is entering into this Lease in reliance upon Tenant's stated and unique expertise, skill and experience. Accordingly, except for any ancillary agreements entered into in accordance with *Sections 10.4* and *11*, Tenant will not assign, transfer or encumber its interest in this Lease or any other right, privilege or license conferred by this Lease, either in whole or in part, without obtaining the prior written consent of Port, which Port may give or withhold in its sole and absolute discretion; provided that Sponsorship Agreements entered into in accordance with *Section 12* shall not violate this provision. Any assignment or encumbrance without Port's consent will be voidable and, at Port's election, will constitute a material default under this Lease. A sale or transfer of the stock, assets or other equitable interests of Tenant that has the effect of a material change in Tenant's ownership, determined by Port in its sole discretion, will constitute a transfer of this Lease requiring Port's prior written approval pursuant to this Section.

25. DEFAULT BY TENANT.

Any of the following will 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 five (5) Business Days following written notice from Port; or
- (b) abandonment or vacation of the Premises by Tenant, which abandonment or vacation is not cured within seventy-two (72) hours of written notice from Port of Port’s belief of Tenant’s abandonment or vacation; or
- (c) failure of Tenant or its Agents to use the Premises solely for the Permitted Use, as determined by Port in its reasonable discretion, and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that if such default cannot reasonably be cured within such twenty-four (24) hours, Tenant will not be in default of this Lease if Tenant commences to cure the default within such period and diligently and in good faith continues to cure the default; or
- (d) failure of Tenant to take commercially reasonable steps generally consistent with other public parks and open space in San Francisco to prevent the occurrence of Prohibited Uses by Persons other than Tenant or Tenant’s Agents, in conjunction with the occurrence of such Prohibited Uses, and such failure continues for a period of ten (10) days following written notice from Port; or
- (e) an Event of Default under the WPA (as defined under the WPA), which Event of Default continues without cure for five (5) Business Days after written notice from Port; provided, however, if such Event of Default cannot reasonably be cured within such five (5) day period, Tenant will not be in default of this Lease if Tenant commences to cure the Event of Default within such five (5) day period and diligently and in good faith continues to cure the Event of Default, provided, however, without limitation of the foregoing, the Parties agree for purposes of this subsection that Tenant’s internal meetings to determine the path to cure such Event of Default will be deemed to be a commencement of cure; or
- (f) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by **Section 35**, and Tenant’s failure to cure the foregoing default within five (5) days following written notice from Port; or
- (g) an assignment or transfer of this Lease or sublease or license of the Premises by Tenant contrary to the provisions of **Sections 10, 11, or 24**, and such sublease, license, assignment, or transfer continues without cure for a period of five (5) Business Days after written notice by Port. For the avoidance of doubt, Port will notify Tenant of its conclusion that an assignment, transfer, sublease, or license is in violation of **Sections 10, 11, or 24**, which conclusion may be revised after meeting and conferring with Tenant regarding the assignment, transfer, sublease, or license as well as Tenant’s actions in response to notice of Port’s conclusion; or
- (h) failure by Tenant to maintain any insurance required to be maintained by Tenant under this Lease, or failure by Tenant or Tenant’s broker to provide evidence of required insurance, or if any such insurance will be canceled or terminated or will expire or be reduced or materially changed, except as permitted in this Lease, and Tenant’s or Tenant’s broker’s failure to either maintain, or to deliver evidence of, such coverage or failure to reinstate such coverage, all within three (3) Business Days following written notice from Port; or
- (i) failure by Tenant to comply with the provisions of **Section 19**, above, and Tenant’s failure to cure the foregoing default within one (1) Business Day following written notice from Port; provided however, if such default cannot reasonably be cured within such one (1) Business Day, then Tenant will not be in default of this Lease if Tenant commences to cure

the default within such one (1) Business Day (which commencement includes Tenant's internal meeting that determines the path to cure such default), and diligently and in good faith continues to cure the default, provided further, Tenant will have no more than six (6) months to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days; or

(j) failure by Tenant to discharge any lien or encumbrance placed on the Premises or any part thereof in violation of this Lease, and such violation or failure continues without cure for a period of thirty (30) days following Tenant's knowledge of such lien or encumbrance, including but not limited to written notice from Port specifying the nature of such violation or failure; or

(k) 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 25*, and such failure continues without cure for a period of thirty (30) days after written notice by Port that specifies the nature of such failure; provided that if such failure is not capable of cure within such thirty (30) day period, Tenant will have a reasonable period to complete such cure if Tenant promptly undertakes action to cure and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port; provided further, Tenant will have no more than ninety (90) days to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days. ; or

(l) Tenant becomes 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 one hundred eighty (180) days thereafter; or

(m) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within one hundred eighty (180) days; or

(n) this Lease or any estate of Tenant under this Lease will be levied upon by any attachment or execution and such attachment is not stayed or lifted within one hundred eighty (180) days; and

(o) without limiting the provisions of *subsections 25(c), 25(d), or 25(i)*, 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; provided however, if such default cannot reasonably be cured within such forty-eight (48) hour period, Tenant will not be in default of this Lease if Tenant commences to cure the default within such forty-eight (48) hour period and diligently and in good faith continues to cure the default, provided further, Tenant will have no more than thirty (30) days to cure such default unless Port provides one or more written consents to extend this period in Port's reasonable discretion and each consent may not extend the cure period for more than three hundred sixty-five (365) calendar days.

26. PORT'S REMEDIES.

Upon an Event of Default by Tenant, Port will, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

26.1. *Intentionally Omitted.*

26.2. *Termination of Tenant's Right to Possession.* Port may terminate Tenant's right to possession of the Premises by giving written notice thereof if Port has the right to terminate

this Lease pursuant to **Section 3.3(b)**. No act by Port other than giving notice of termination to Tenant will 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 will 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 will 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 **subsections 26.2(a)** and **26.2(b)** above will 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 **subsection 26.2(c)** above will be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

26.3. Intentionally Omitted.

26.4. Port's Right to Cure Tenant's Default. At any time after Tenant commits or permits an Event of Default (and after any applicable notice and cure period has lapsed), Port may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's Event of 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 will be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date will bear interest at the lesser of the 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.

26.5. No Accord and Satisfaction. No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease will be deemed to be other than "on account" of the earliest Rent due; nor will 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. No payment by Tenant of any amount claimed by Port to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) will be deemed to waive any claim which Tenant may be

entitled to assert with regard to the making of such payment or the amount thereof, and all such payments will be without prejudice to any rights Tenant may have with respect thereto, so long as such payment is clearly identified as having been made “under protest” (or words of similar import).

26.6. 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 Event of Default of Tenant hereunder.

26.7. Intentionally Omitted.

26.8. Remedies Not Exclusive. The remedies set forth in *Section 26* 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 under *Section 26* will survive any termination of this Lease.

27. LITIGATION EXPENSES; ATTORNEYS’ FEES.

27.1. 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, will be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys’ fees, which will be payable whether or not such action is prosecuted to judgment. “**Prevailing party**” within the meaning of this Section will 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.

27.2. Appeals. Attorneys’ fees under this Section will include attorneys’ fees and all other reasonable costs and expenses incurred in connection with any appeal.

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

28. PORT’S ENTRY ON PREMISES.

28.1. Entry for Inspection. Port and its authorized Agents will 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 where notice is not practical), 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. Port agrees to give Tenant reasonable prior notice of Port’s entering on the Premises except in an emergency for the purposes set forth in this *Section 28*. Such notice shall be not less than twenty-four (24) hours’ prior notice, except in the event of emergency. Tenant shall have the right to have a representative of Tenant accompany Port or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for Port’s entry onto public areas of the Premises.

28.2. General Entry. In addition to its rights pursuant to *Section 28.1* above, Port and its authorized Agents will have the right to enter the Premises at all reasonable times and upon reasonable notice to Tenant for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises or to a Horizontal Construction Area, 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) 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

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

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

28.4. No Liability. Port will not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Port's entry onto the Premises as provided in **Section 28** 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; provided however that: (a) Tenant's waiver excludes damage resulting solely from the willful misconduct or gross negligence of Port or its authorized representatives, and (b) Port shall at its own cost and expense, and as soon as reasonably practicable, repair such damage and/or restore the Premises to substantially the same condition prior to the occurrence of damage caused by Port's or Port's Agent's non-emergency entry pursuant to **Sections 9.17, 28.1, and 28.2**.

28.5. Nondisturbance. Port will use its commercially reasonable efforts to conduct its activities on the Premises as allowed in **Section 28** in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant and its Event Venue Users, Concessionaries, Agents, and Invitees.

29. SURRENDER AND QUITCLAIM.

29.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant will surrender to Port the Premises in the condition required by and consistent with **Section 15** (subject to ordinary wear and tear, and so long as Tenant is in compliance with **Sections 21 and 22**). Ordinary wear and tear will 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 will be surrendered clean, free of debris, waste, and Hazardous Materials (other than Pre-Existing Hazardous Materials), and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the Commencement Date and any other encumbrances created or approved in writing by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost will 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 will 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 29** and **Section 17.5**, Tenant will continue to have the Indemnification obligations under **Section 23** as if this Lease had not expired until Tenant surrenders the Premises in accordance with this Section and Tenant will further 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.

Only a written notice from Port to Tenant confirming surrender of the Premises by Tenant will constitute surrender of the Premises, whether upon expiration or earlier termination of this Lease.

29.2. Quitclaim. Upon the expiration or earlier termination of this Lease, the Premises will automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and will be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant will promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise 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.

29.3. Abandoned Property. Any items, including Tenant's Property, not removed by Tenant as required herein will 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 will 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 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.

29.4. Tenant Assets and Funds. Upon expiration or early termination of this Lease, Tenant shall comply with **Section 5.6**.

29.5. Bay Trail Restoration Obligation. No less than ninety (90) days prior to the expiration or earlier termination of this Lease, and within ninety (90) days of Port's notice to Tenant terminating this Lease, Tenant shall remove all pavers installed on that certain portion of the Bay Trail pursuant to Port Permit Number B-2025-0002 (and any subsequent or successor permits approved by Tenant authorizing the installation, repair, maintenance, and/or removal or relocation of sponsored pavers) and shall restore the Bay Trail in accordance with the China Basin Park As-Built Drawings on file with the Port and associated with Permit Number B-2021-0061; provided however, that Port shall waive Tenant's obligation to perform under this **Section 29.5** so long as Port has received adequate assurance, as determined by Port in its sole and absolute discretion, of compliance with this Bay Trail restoration obligation by an approved third-party.

29.6. Survival. Tenant's obligation under this **Section 29** will survive the expiration or earlier termination of this Lease.

30. 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.

In accordance with the provisions of Sections 2 and 3.5(c) of the Burton Act, Tenant and Port hereby acknowledge that the State has reserved the right to explore, drill for and extract such subsurface minerals, including oil and gas deposits, solely from a single point of entry outside of the Premises, provided that such right will not be exercised so as to disturb or otherwise interfere with Tenant's leasehold estate or the use of the Premises, including the ability of the Premises to support the Improvements, but provided further that, without limiting any remedies the Parties may have against the State or other parties, any such disturbance or interference that causes damage or destruction to the Premises will be governed by **Section 21**. In no event will Port be liable to Tenant for any Claims arising from the State's exercise of its rights nor will such action entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

31. CITY AND PORT REQUIREMENTS.

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

31.1. 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) **Contracts.** Tenant will include in all Event Licenses, Concession Agreements, Sponsorship Agreements and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of **subsection 31.1(a)** above. In addition, Tenant will 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 will require all subtenants and other contractors to comply with such provisions.

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

(d) CMD Form. On or prior to the Lease Commencement Date, Tenant will 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.

31.2. 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 will 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(e) of the HCAO, it will have no obligation to comply with *subsection 31.2(a)* above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City will have the remedies set forth in Section 12Q.5(f). Each of these remedies will 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 will require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and will contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant will notify the Office of Labor Standards Enforcement (“OLSE”) when it enters into such a Sublease or Contract and will 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 will 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 OLSE has first provided Tenant with notice and an opportunity to cure the violation.

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

(h) Upon request, Tenant will 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 will 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 will 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.

31.3. 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 will be a default of this Lease.

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

31.5. 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.

31.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

31.7. Prohibition of Alcoholic Beverages Advertising. Unless otherwise permitted by Law, Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" will be defined as set forth in California Business and Professions Code Section 23004, and will not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing

alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

31.8. *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 will not use or apply or allow the use or application of any pesticides on the Premises, and will 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 will comply, and will require all of Tenant’s contractors to comply, with the IPM plan approved by the City and will 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 will 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>.

31.9. *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.

31.10. *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 will 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 will 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.

31.11. *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” will 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” will mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

31.12. 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 31.12** will apply. Through its execution of this Lease, Tenant acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Tenant further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Tenant; each member of Tenant’s board of directors, and Tenant’s principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) percent in Tenant; and any subcontractor listed in the Tenant’s bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to the Lease and any subtenant(s). Additionally, Tenant certifies that if this **Section 31.12** applies, Tenant has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract and has provided to City the names of the persons required to be informed.

31.13. 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.

31.14. 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 will immediately notify the Port.

31.15. 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.

31.16. Prevailing Wages and Working Conditions. Tenant will comply with all applicable prevailing wage requirements, including but not limited to any such requirements in

the California Labor Code, the City and County of San Francisco Charter or the City and County of San Francisco Municipal Code. Any undefined, initially-capitalized term used in this Section will have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant will 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 will include and will 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 will 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 will constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek any remedy provided by Law, including those specified in San Francisco Administrative Code Section 23.61 against the breaching party.

Tenant will also pay, and will 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).

31.17. Local Hire. Any undefined, initially-capitalized term used in this Section will 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 will 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 will include, and will 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 will 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 will 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 will 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.

31.18. *Public Transit Information.* Tenant will 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 Premises and encouraging use of such facilities, all at Tenant's sole expense.

31.19. *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 will not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

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

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

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

31.22. Prevailing Wage Rate Requirement For Theatrical Workers. City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Premises, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b). Capitalized terms in this Section will have the meanings provided in Section 21.C4. Accordingly, Tenant, as a condition of this Lease, agrees that:

(a) Tenant will comply with the obligations in San Francisco Administrative Code Section 21C.4, and will require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, the City will have all available remedies against Tenant to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Lease.

(b) The City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Premises, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Premises.

(c) Tenant will provide to the City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Premises.

For current Prevailing Wage rates, see the Office of Labor Standard Enforcement's website or call the Office of Labor Standard Enforcement at 415-554-6235.

31.23. Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings. Tenant will 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 will be deemed a material breach of this Lease. Without limiting Port’s other rights and remedies under this Lease, Port will 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.

31.24. Tenant’s Compliance with City Business and Tax Regulations Code.

Tenant acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment Port is required to make to Tenant under this Lease is withheld, then Port will not be in breach or default under this Lease, and the Treasurer and Tax Collector will authorize release of any payments withheld under this *Section 31.24* to Tenant, without interest, late fees, penalties, or other charges, upon Tenant coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

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

32. 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 will 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.

33. MISCELLANEOUS PROVISIONS.

33.1. California Law; Venue. This Lease is governed by, and will be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease will be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

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 will 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 will 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 will, 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, will not be affected thereby, and each other provision of this Lease will be valid and be enforceable to the fullest extent permitted by law unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

33.5. Interpretation of Lease.

(a) Unless otherwise specifically stated in this Lease, where a Party has a right of approval or consent, such approval or consent shall not be unreasonably withheld, conditioned, or delayed.

(b) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees but excludes members of the general public unless the context requires or specifically stated otherwise.

(c) 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.

(d) 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.

(e) 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.

(f) 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.”

(g) 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.

(h) 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.

(i) 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.).

(j) 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 will bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their successors and assigns.

33.7. Real Estate Broker’s Fees. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no other claims or rights for brokerage commissions or finder’s fees in connection with the transactions contemplated by this Lease; provided that Tenant may use and compensate brokers or finders to identify subtenants and Concessionaires. If any person brings a claim for a commission or finder’s fee based on any contact, dealings, or communication with either Party, then such Party will defend the other Party from such claim, and will Indemnify the Port or Tenant and its officers, employees, directors, owners, heirs, successors, legal representatives and assigns (“Tenant Parties”), as applicable, from, and hold the Indemnified Parties or Tenant Parties, as applicable, against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys’ fees and disbursements) that the Port or Tenant Parties, as applicable, incur in defending against the claim. The provisions of this Section will survive the termination of 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, will constitute one complete Lease. This Lease may be executed in any number of counterparts each of which will be deemed to be an original and all of which will constitute one and the same Lease.

33.9. Authority. 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 reasonable request, Tenant will 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 will 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 will 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 will 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 will be cumulative, except as may otherwise be provided herein.

33.13. Survival of Indemnities. Termination or expiration of this Lease will 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 (but solely as to matters that occurred during the Term or Tenant's use or occupancy of the Premises), the ability to collect any sums due, nor will it affect any provision of this Lease that expressly states it will survive termination or expiration hereof.

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

33.15. No Recording. Tenant will 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, "**Concession**") without a written agreement executed by the Executive Director of Port or his or her designee authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

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 will not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Premises (as encumbered by this Lease). Tenant will 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 will 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 will 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 will 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 Premises, 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; provided however, that Port (or such subsequent transferor) has transferred to the transferee any funds in Port's (or subsequent transferor's) possession immediately prior to the transfer that are dedicated to or for the Premises, and such transferee has assumed all liability for such funds.

34.4. *Waiver of Indirect or Consequential Damages.* As a material part of the consideration for this Lease, Tenant shall not be liable to Port, and Port shall not seek and Port hereby waives any claims against Tenant, for any punitive, indirect, consequential or special damages (including lost profits) due to the acts or omissions of Tenant under this Lease. Tenant would not be willing to enter into this Lease in the absence of a complete waiver of liability for punitive, indirect, consequential and special damages (including lost profits) due to the acts or omissions of Tenant, and Port expressly assumes the risk resulting from such waiver.

34.5. *Nonliability of Tenant's Members, Officers, Partners, Shareholders, Directors, Agents, and Employees.* No direct or indirect affiliate of Tenant, or member, officer, partner, shareholder, director, board member, agent, or employee of Tenant or a direct or indirect affiliate of Tenant, shall be personally liable to Port, or any successor, for any default by Tenant under this Lease, and Port agrees that it shall have no recourse against any such Person with respect to any obligation of Tenant under this Lease, or for any amount that may become due Port or its successor or for any obligation or claim based upon this Lease. No personal judgment shall be sought or obtained against any of the foregoing Persons in connection with this Lease. Notwithstanding the foregoing, this **Section 34.5** shall in no way supersede federal, state, or municipal law (including but not limited to Chapter 28 of the San Francisco Administrative Code, the San Francisco Campaign and Governmental Conduct Code, and the San Francisco Police Code).

35. ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, will 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**.

Port shall execute, acknowledge and deliver to Tenant within fifteen (15) days after written request from Tenant, a certificate stating to the best of Port's actual knowledge after diligent inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), and (b) whether or not, to the knowledge of Port, there are then-existing defaults under this Lease (and if so, specifying the

same). In addition, if requested, Port shall attach to such certificate a copy of this Lease and any amendments thereto.

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 WILL 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 WILL 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 WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

37. 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.

"Active Edge Areas" is defined in *Section 11.1*.

"Additional Rent" or **"Rent"** means all sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to *Section 4*.

"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.

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

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

"Annual Event Calendar" is defined in *Section 10.2*.

"Annual Reconciliation" is defined in *Section 5.4*.

"Annual Report" is defined in *Section 4.3*.

"Audit Period" is defined in *Section 5.7*.

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

"BCDC Permit" means Permit No. 2017.004.02 issued by BCDC, as amended from time to time.

"Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents

used in Tenant's business operations for the Premises, whether maintained by Tenant or a third-party contractor.

"Budget" is defined in *Section 5.2(a)*.

"Business Day" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

"Capital Expenses" means expenses that are incurred in acquiring or upgrading physical assets with an anticipated useful life of greater than five (5) years.

"Capital Needs Amount" is defined in *Section 5.6(b)*.

"Capital Repairs and Replacements" is defined in *Section 5.6(b)*.

"Capital Improvement Sponsorships" means any Sponsorship revenue received by Tenant which is designated for the construction or maintenance of specified capital improvements.

"CASp" is defined in *Section 2.3*.

"Casualty Improvements" is defined in *Section 15.1*.

"CBP Sign Guidelines" means a master signage plan for China Basin Park, mutually agreed to by Port and Tenant.

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

"Civic Events" is defined in *Section 10.7*.

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

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

"Compliance Improvements" is defined in *Section 15.1*.

"Commission" means the San Francisco Port Commission.

"Concessionaire" is defined in *Section 11*.

"Concession Agreement" is defined in *Section 11*.

"Concession Area" is defined in *subsection 11.3(i)*.

"Concession Operations" means all the various duties, obligations, and operations set forth in *Section 11* related to and in connection with Concession Agreements.

"Concession Revenues" means any revenues received by Tenant as a result of Concession Operations.

"Contingent Services Special Tax" is defined in the RMA.

"Core Benefits" is defined in *subsection 31.1(c)*.

"County Assessor" means the Assess-Recorder of the City and County of San Francisco.

"CPI" means the Consumer Price Index for All Urban Consumers, Series ID CUURS49BSA0, as published by the U.S. Department of Labor, Bureau of Labor Statistics, applicable to San Francisco, California (or similar successor Series ID or index).

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

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

“DEI Plan” is defined in *Section 9.14*.

“Design Controls” means the Design for Development for Mission Rock approved by the Commission and the San Francisco Planning Commission.

“Donation” means a tax-deductible donation, gift, or contribution received by Tenant for the management, operation, maintenance, event planning, repair, replacement or improvement of the Premises consistent with this Lease.

“Encroachment Area” is defined in *subsection 2.5(a)*.

“Encroachment Area Charge” is defined in *subsection 2.5(a)*.

“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 Premises. Environmental Laws include the Risk Management Plan, Mission Bay Area, San Francisco, California as approved by the Regional Board on May 11, 1999, as amended and as interpreted by Regulatory Agencies with jurisdiction (“**RMP**”), deed restrictions recorded against the Premises and the Site Mitigation Plan approved by the San Francisco Department of Health, all as presently in effect or as further amended during the Term of this Lease.

“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, Exacerbation or discovery 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 Operations” means all the various duties, obligations, and operations set forth in **Section [x]** related to and in connection with Events.

“Event Revenues” means any revenues received by Tenant as a result of Event Operations.

“Events” include, but are not limited to, conferences, promotions, trade shows, meetings, exhibitions, conventions, public and private gatherings, parties, weddings, receptions, and Civic Events.

“Event Venue” means, with respect to any Event, that portion of the Premises designated for use by the Event Venue User in an Event License.

“Event License” is defined in *Section 9.3*.

“Event Venue User” means the Person that is a party to the applicable Event License and the Person using the Event Venue for a particular Event (other than a Civic Event) described in such Event License.

“Exacerbate” or **“Exacerbating”** when used with respect to Hazardous Materials means any act or omission that (i) increases the quantity or concentration of Hazardous Materials in the affected area, (ii) 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 (iii) otherwise requires Investigation or Remediation that would not have been required but for the act or omission, it being understood that the mere discovery of Hazardous Materials does not constitute **“Exacerbation.”** 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.

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

“Event of Default” is defined in *Section 25*.

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

“fiscal year” means the period beginning on January 1 of any year and ending on December 31 of such year.

“Flagpoles” is defined in *Section 9.8*.

“Gross Revenues” means, collectively, gross Concession Revenues, Event Revenues, Sponsorship Revenues, any payments received by Tenant pursuant to the Master CC&Rs, and any other revenues received by Tenant related to the Premises.

“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 15.3*.

“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, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence (other than the un-Exacerbated presence of Pre-Existing Hazardous Materials) or Release or Exacerbation 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 or other Port property, the loss or restriction of the use or any amenity of the Premises or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Condition" means the presence (other than the un-Exacerbated presence of Pre-Existing Hazardous Materials), Release, or threatened Release of Hazardous Materials in, on, over or under the Premises, or from any vehicles or vessels Tenant, or its Agents and Invitees uses on the Premises during Tenant's occupancy of the Premises.

"Horizontal Developer" means Seawall Lot 337 Associates, LLC, a Delaware limited liability company (together with its successors and assigns with respect to the Master Lease).

"Horizontal Development Costs" is defined in the Financing Plan to the DDA.

"Horizontal Improvements" is defined in the Appendix to the DDA.

"Hours of Operation" is defined in *Section 9.5*.

"Improvements" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises, 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); provided that, for the avoidance of doubt, Subsequent Horizontal Construction shall not constitute Improvements unless and until the land on which such Subsequent Horizontal Construction are located has been added back or otherwise included in the Premises in accordance with *Section 2.2*, as applicable.

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

"Indemnified Parties" is defined in *Section 23.1*.

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

"Initial Budget" is defined in *Section 5.1*.

"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, 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, including members of the public.

"IPM" is defined in *Section 31.8*.

"IPM Ordinance" is defined in *Section 31.8*.

“**Late Charge**” means a fee of one hundred dollars (\$100.00).

“**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 Premises, 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.

“**LES Systems**” is defined in *Section 10.8*.

“**Maintenance Notice**” is defined in *Section 15.3*.

“**Maintenance Reserve Account**” is defined in *Section 5.5*.

“**Major Physical Element**” means: (a) any Physical Element that individually or collectively equals or exceeds five square feet, regardless of medium, that requires Port approval for installation pursuant to this Lease, and (b) any Physical Element that emits or projects light if either the source or projection equals or exceeds two square feet. For the avoidance of doubt, multiple Physical Elements grouped, placed, or installed together shall constitute a Major Physical Element. For example, an individual tile, brick, or placard that otherwise constitutes a Physical Element that does not equal or exceed the five square feet shall be deemed a Major Physical Element if one or more additional tiles, bricks, or placards are proposed for concurrent or subsequent adjacent installation and they, collectively, equal or exceed the five square feet.

“**Master Lease**” means that certain Master Lease No. L-16417 dated August 15, 2018, by and between Horizontal Developer and Port (as the same may be amended, supplemented, modified and/or assigned from time to time).

“**Master Association**” shall mean the Master Association as defined in the Master Declaration.

“**Master Declaration**” is defined in the preamble to this Lease.

“**Maximum Contingent Services Special Tax Revenues**” is defined in the RMA.

“**Mission Rock Long Term Reserve Fund**” is defined in *subsection 5.6(c)*.

“**Mission Rock STD**” means (i) the STD as defined in the RMA, and (ii) any areas which are contemplated for potential annexation into the Mission Rock STD pursuant to the terms of the RMA, regardless of whether or not such areas have been annexed.

“**Notice of Removal**” is defined in *Section 17.4*.

“**Notice to Cease Prohibited Use**” is defined in *Section 8.3*.

“**Notice to Vacate**” is defined in *subsection 2.5(a)*.

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

“**Operating Expenses**” means expenses relating to the Premises other than Capital Expenses, and shall be accounted for separate and apart from the operating expenses of other areas managed by Tenant within the Mission Rock STD.

“**Operating Expense Fluctuations**” is defined in *subsection 5.6(a)*.

“**Operating Reserve Account**” is defined in *subsection 5.6(a)*.

“**Park Evaluation**” is defined in *Section 9.3*.

“Park Evaluation Report” is defined in *Section 9.3*.

“Parks Plan” is defined in *Section 9.1*.

“Permitted Contingent Services Special Tax Levy Amount” is defined in *Section 4.2*.

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

“Physical Element” means any permanent or quasi-permanent feature or component that is (a) in, on, over, or under the Premises that (b) advertises, displays, includes, or identifies a brand, logo, image, mark, name, or slogan, or otherwise communicates for or on behalf of the parties to a Sponsorship, regardless of its method of manifestation, and includes physical and digital media and projections.

“Port” means the San Francisco Port Commission.

“Port Director” means the Executive Director of the Port, or such other Port employee as the Executive Director or Port may designate from time to time.

“Port Loan” is defined in *Section 7*.

“Port Loan Due Date” is defined in *Section 7.2*.

“Port Loan Excess Proceeds” is defined in *Section 7.5*.

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

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

“Port’s Sponsorship Standards” means those standards with respect to Port Director Sponsorships and Port Commission Sponsorships set forth in *Schedule 12.1(a)*.

“Pre-Existing Hazardous Materials” means any Hazardous Material existing in, on, or under the Premises as of the Commencement Date.

“Premises” means the real property described in the Basic Lease Information and described and depicted on *Exhibit A-1* and *Exhibit A-2* respectively, and all Improvements thereon.

“Prevailing party” is defined in *Section 27.1*.

“Prohibited Use(s)” is defined in *Section 8.2*.

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

“Public Access Areas” are the areas designated in the BCDC Permits applicable to the Property that must be accessible to the public during the hours designated in such permits.

“Recognition Agreement” means an agreement entered into by the Port, in a form approved by the Port Commission, which obligates the Port to recognize and assume a Sponsorship Agreement upon termination of the Park Lease, which Port may enter into in its sole and absolute discretion.

“Records Default” is defined in *Section 5.8*.

“Records Request” is defined in *Section 5.8*.

“Regulatory Agency” means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, commissioners, 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, over, or under the Premises.

“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.

“Renewal Options” is defined in *Section 3.2(a)*.

“Renewal Term” is defined in *Section 3.2(a)*.

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

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

“RPD” is defined in *Section 9.2*.

“Rules and Regulations” means the Rules and Regulations, if any, applicable to the Premises, as may be amended from time to time.

“Second Budget Notice” is defined in *Section 5.2(c)*.

“Soil Management Plan” means that certain Soil Management Plan dated as of [XXXX] and prepared by [XXXX] for the Project Site, approved by Port, the Department of Public Health, and the California Department of Toxic Substances Control.

“Specified Related Agreements” means the Port Paseo and Open Spaces Management Agreement and those certain other agreements (if any) identified by mutual agreement between Port and Tenant to be related to this Lease.

“Sponsorship Agreement” means an agreement between Tenant and a sponsor with respect to a Sponsorship affecting the Premises, as further defined in *Section 12.1*.

“Sponsorship Revenues” means any revenues received by Tenant pursuant to each Sponsorship Agreement with respect to the Premises.

“Sponsorship subject to Commission Approval” is defined in *Section 12.1*.

“Sponsorship subject to Director Approval” is defined in *Section 12.1*.

“Sponsorship” or **“Sponsorships”** means each and every agreement between Tenant and a Person (sponsor) in which Tenant receives consideration from the sponsor for sponsor’s use or

occupancy of the Premises (such as Temporary Signage identifying the sponsor) and includes each Sponsorship subject to Commission Approval and each Sponsorship subject to Director Approval.

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

“**Submission Period**” is defined in *Section 5.8*.

“**Subsequent Horizontal Construction**” means any Horizontal Improvements to be constructed after the Effective Date which are located within the area constituting the Premises.

“**SWPPP**” is defined in *Section 19.8(a)*.

“**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.

“**Temporary Signage**” is defined in *Section 12.1*.

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

“**Tenant Parties**” is defined in *Section 33.7*.

“**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.

“**Term**” is defined in *Section 3.1*.

“**trade fixtures**” means those items of personal property, 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.

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

“**WPA**” means that certain water purchase agreement for the purchase of water for the Premises, as defined in the Basic Lease Information.

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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: _____

Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **[INSERT NAME OF TENANT]**

By: _____

Name: _____

Title: _____

Date Signed: _____

By: _____

Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____

Name:
Deputy City Attorney

Lease Prepared By: _____, Commercial Property Manager _____
(initial)

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EXHIBIT A-1

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT A-2

DEPICTION OF PREMISES

[Attachment on following page]

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CHINA BASIN PARK

BLOCK A

DR. MAYA ANGELOU PASEO

BLOCK G

BRIDGEVIEW PASEO

BLOCK K
(MASTER
LEASE AREA)

PIER 4

TONI STONE CROSSING

BLOCK B

DR. MAYA ANGELOU WAY

BLOCK F

BRIDGEVIEW WAY

TERRY A. FRANCIOIS BLVD

CHANNEL LANE

LOT A
(MASTER LEASE AREA)

CHANNEL
WHARF

 Premises (China Basin Park Lease and Loan Agreement)

EXHIBIT B

RESERVED

DRAFT

EXHIBIT C

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

Premises: [_____, Suite _____]
San Francisco, California

The Commencement Date of the Lease is hereby established as _____, 20____, the
Anniversary Date is hereby established as _____, 20____ and the Expiration Date as
_____, 20____.

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

By: _____

Deputy Director, Real Estate and Development

Date Signed: _____

Tenant:

By: _____

Name: _____

Title: _____

Date Signed: _____

EXHIBIT D
INITIAL BUDGET

DRAFT

Mission Rock Commons

DRAFT Initial Operations & Programming Budget - 2025 Split

Draft: February 6, 2025

	Split*				
	75%	25%			
GENERAL					
	2025 CBP	2025 Streets + Paseos	2025 Total		Notes
BASELINE REVENUE					
Vertical Parcel Dues / Special Services Tax Equivalent	\$ 1,116,770	\$ 372,257	\$ 1,489,026		3% Escalation
ADDITIONAL ASSUMED REVENUE					
Parkside Restaurant Outdoor Use	\$ 10,000		\$ 10,000		License fee from adjacent restaurant retailers
Paseo Restaurant Outdoor Use		\$ 2,000	\$ 2,000		License fee from adjacent restaurant retailers
Street Restaurant Outdoor Use		\$ 1,000	\$ 1,000		License fee from adjacent restaurant retailers
Parcel K Rent to CBP			\$ -		To be negotiated in a future agreement
	\$ 1,126,770	\$ 375,257	\$ 1,502,026		
EXPENSES					
Site					
Facilities & Engineering					
Facilities Staffing	\$ 198,185	\$ 66,062	\$ 264,247		0.75 FTE
Facilities Office	\$ 4,629	\$ 1,543	\$ 6,172		
Maintenance & Repairs					
Sprinkler Testing	\$ 1,275	\$ 425	\$ 1,700		
Plumbing Repairs & Maintenance	\$ 13,600		\$ 13,600		
Door Maintenance & Repairs	\$ 3,000		\$ 3,000		
Sidewalk Repair	\$ 4,050	\$ 1,350	\$ 5,400		
Metal Maintenance	\$ 9,000	\$ 3,000	\$ 12,000		
Painting	\$ 4,500	\$ 1,500	\$ 6,000		
Security Equipment & Maintenance	\$ 17,507	\$ 5,836	\$ 23,343		
Fire Alarm & Equip. Testing	\$ 3,500		\$ 3,500		
Exterior Landscaping	\$ 63,113	\$ 21,038	\$ 84,150		Under partial warranty
Radio Maintenance	\$ 2,550	\$ 850	\$ 3,400		
Permits	\$ 113	\$ 38	\$ 150		
Custodial					
Day Cleaning	\$ 216,736	\$ 72,245	\$ 288,981		Pressure Washing/Steam Cleaning: (1x week); Litter/debris collection, sweeping (3x week/ 2x day- min) CBP restroom service: (7-day/ week, min 2x day service on non-peak demand times and min 3x day service on high-peak demands); Disposal: (7 day-week); Street Sweeper: (1x week); Graffiti Removal: As needed
Exterminating	\$ 2,673	\$ 891	\$ 3,564		
Janitorial/Cleaning Supplies	\$ 4,500	\$ 1,500	\$ 6,000		
Rubbish Removal	\$ 2,250	\$ 750	\$ 3,000		
Utilities / Other					
Electric	\$ 13,500	\$ 4,500	\$ 18,000		
Water & Sewer	\$ 488,727	\$ 162,909	\$ 651,636		
CBP Capital Assessment Report	NA	NA	-		Assessment to inform capital planning , to be completed in 2026
Administrative					
Management Fee		\$ 10,000	\$ 10,000		
Administrator	\$ 43,002	\$ 1,001	\$ 44,002		Accounting, reporting, and contract management
Audit + Legal + Filing Fees	\$ 6,165	\$ 2,055	\$ 8,220		
Insurance					
Commercial General Liability	\$ 180,000	\$ 60,000	\$ 240,000		\$40M GL
TOTAL BASELINE OPERATING COSTS	\$ 1,282,573	\$ 417,491	\$ 1,700,065		
NET OPERATING DEFICIT WITH ADDITIONAL REVENUE	\$ (155,804)	\$ (42,235)	\$ (198,039)		
PROGRAMMING & SPONSORSHIPS					
	2025 CBP	2025 Streets + Paseos	2025 Total		
REVENUE					
Concessions + F&B	\$ 53,000		\$ 53,000		Food trucks, alcohol
CBP Sponsorships	\$ 150,000		\$ 150,000		Programming and naming sponsorships
CBP Event Usage Rental (3rd Party Events)	\$ 177,000		\$ 177,000		3rd Party event rentals
SUBTOTAL	\$ 380,000		\$ 380,000		
EXPENSES					
Programming + Permitting					

DRAFT Initial Operations Programming Budget - 2025 Split

Programming + Permitting + Day-Of Activation Staffing	\$ 400,000		\$ 400,000	2.35 FTE. Staff includes concessions coordination, sales outreach, marketing, administration, permitting, SF Port communications, event planning + programming, day-of event managers.
Programming Costs	\$ 67,500		\$ 67,500	Programming fees to support the execution of programming sponsorships (estimate, dependent on deal structure)
Programming Office + Supplies	\$ 5,000		\$ 5,000	Office, licenses
Sponsorship Commission	\$ 27,000		\$ 27,000	Commission to entity securing sponsorships (18%)
Marketing				
Marketing / Social Media Staff	\$ 38,667		\$ 38,667	0.35 FTE
Signage	\$ 5,000		\$ 5,000	General park signage
Website Maintenance	\$ 3,333		\$ 3,333	CBP site maintenance, ongoing calendar updates, event inquiry intake
SUBTOTAL	\$ 546,500	\$ -	\$ 546,500	
PROGRAMMING & SPONSORSHIPS NET	\$ (166,500)	\$ -	\$ (166,500)	
NET OPERATING DEFICIT WITH SPONSORSHIPS	\$ (322,304)	\$ (42,235)	\$ (364,539)	

MASTER ASSOCIATION ADDITIONAL EXPENSES

	2025 CBP	2025 Streets + Paseos	2025 Total	
EXPENSES				
Security / Ambassadors			\$ 150,509	6am-10pm daily roamer, spotter at night
TDM			\$ 50,000	
Administrative				
Administrator			\$ 54,002	Accounting, reporting, and contract management
Audit + Legal + Filing Fees			\$ 8,200	
Insurance				
Commercial General Liability			\$ 17,931	
Reporting				
LCC			\$ 2,500	
Marketing				

EXHIBIT E
BCDC PERMIT

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EXHIBIT F
MISSION ROCK PARKS PLAN

DRAFT

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EXHIBIT G

DETAILED MAINTENANCE TABLES

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Mission Rock
 Maintenance Tables
 Updated: October 21, 2024

General Maintenance + Operations							
Item	Only	Q/W	Weekly	Monthly	Q/Year	As Needed	Comments
Liter Control							
Control litter	X						Minimum 1 time/day, Focus concentrated around food areas
Empty trash receptacles	2x						Additional janitorial staff will be hired to manage litter during and after events.
Pavement (asphalt, concrete, sewers)							As needed
Sweep			X				As needed
Pressure Wash			X				As needed
Buff Clean - Floors							As needed
Inspect for lifts/cracks			X				Provide condition report
Walls and Interior/Exterior Surfaces							As needed
Remove postings/signs							As needed
Site Furniture							
Clean	X						Wipe down park tables, especially after food/drink spills
Wash light fixtures			X	X			
Wash drinking fountains			X				
Wash movable tables/chairs			X				
Signage							
Inspect	X						As needed
Remove postings/signs			X				As needed
Restroom spaces							
Storage room			X				Tidy and inventory
Mechanical Room				X			Tidy and inventory
Other incidental spaces				X			Tidy and inventory
Empty trash receptacles	X						Minimum 1 time/day, Focus concentrated around food areas
Restrooms							
Flush	2x						
Stocked	2x						
Sign zone							
Sign zone			X				Spray down weekly
Stocked			X				
Sand Area /							
Control litter	X						

Landscape							
Item	Only	Q/W	Weekly	Monthly	Q/Year	As Needed	Comments
Leaf-Litter							
1 Leaf Litter Removal			X				
2 Clipping Removal			X				
3 Weat Appearance			X				
4 Weed Control - Hand Pull			X				
5 Irrigation Check					4X		
6 Irrigation Programming			X				
7 Fertilize					X	X	
8 Post Control					X		
9 Monitor			X				
10 Treat turf with fertilizer including Dimension					X		
11 Mow			X				Remove grass clippings
12 Edge			X				
13 Irrigation					X		
14 Reoc/Reseed					X		As needed
15 Overseed turf after events					X		Low report costs will be included as part of event costs
Ground Cover Care							
1 Leaf Litter Removal			X				
2 Trash Removal			X				
3 Weat Appearance			X				
4 Weed Control - Hand pulling			X				As needed
5 Irrigation Check			X		4X		
6 Fertilize					X		
7 Post Control					X		
8 Monitor			X				
9 Snails					X		
10 Other Treatments					X		As needed
11 Snails					X		Based on observations
12 Edge					X		
13 Cultivate					X		
14 Replace ground covers					X		
Tree & Shrub Care							
1 Leaf Litter Removal			X				
2 Trash Removal			X				
3 Weat Appearance			X				
4 Weed Control - Hand pulling			X				
5 Irrigation Programming			X				
6 Irrigation Check					4X		
7 Check tree rootball moisture			X				Irrigation Controller
8 Supplemental hand water							As needed
9 Fertilize					X		As needed
10 Irrigation Risk Management					X	2x	Guided by soil testing
11 Monitor					X		
12 Snails					X		
13 Treat trees							As needed
14 Pruning Site							Based on observations and testing
15 Pruning Site							As needed
16 Pruning Tree Roots							As needed
17 Inspect trees					X		
18 Replace trees and shrubs					X		As needed
19 Maintain mulch depth					X		
20 Water trees/shrubs near site							As needed

Specialty Repairs & Hardscape							
Item	Only	Q/W	Weekly	Monthly	Q/Year	As Needed	Comments
Pavement							
Inspect for lifts/cracks						4X	
Repair							As Needed
Wood Deck + Stormwater Pathway							
Inspect						4X	
Repair							As Needed
Colored Asphalt							
Inspect						4X	
Repair							As Needed
Billboards							
Inspect						4X	
Repair							As needed
Walls and Exterior Surfaces							
Inspect						4X	
Touch up or repaint							As needed
Site Furniture							
Maintain						4X	
Inspect					X		As needed
Lighting and Electrical							
Inspectors all light bulbs and ballast					2x		bi-annual and on-going basis
Replace lamps						As needed	As necessary
Inspect for maintenance						4X	Per manufacturer's recommendations
Preventive Maintenance					X		As necessary
Perform a preventative maintenance program for landscape lighting					1X		
Plumbing							
Inspect toilets						2X	
Backflow device testing						X	
Inspect water meters						X	
Inspect all restroom faucets					X	X	
Inspect all restrooms faucets & toilets							As needed
Storm System, Sanitary System, City Water & Fire Loop							
Inspect to ensure working order						4X	Stormwater & Fire Hydrants belongs to PORT
Report any malfunctions							Sanitary system and City Water belongs to MROA.
Other pipes and clean outs							As needed
Clear lines							As needed
Irrigation Oversight							
Maintenance					X		As needed
Inspect subcontractors maintenance					X		As needed
Signage							
Inspect					X		
Replace							As needed
Repair							As needed
Change information as necessary							

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EXHIBIT H

PARK MAINTENANCE STANDARDS

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FY22 Park Evaluation Standards

Feature	Element	Standard
Athletic Field	Cleanliness	hypodermic needle, condom, dead animal, feces, feces-filled bag, or broken glass
Athletic Field	Cleanliness	large abandoned item (fallen trees or limbs, furniture, luggage, tent-like structure, etc.)
Athletic Field	Cleanliness	grime, filth, soil or debris build-up prevents full access to a table, seat, or field area
Athletic Field	Cleanliness	litter: 3 different spots has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Athletic Field	Cleanliness	organic debris: leaf litter, seed pods, etc., lie 2" deep continuously for a distance of 5' within play area
Athletic Field	Drainage	1 large pool (5' long or larger) or 2 smaller pools (each 3' long)
Athletic Field	Equipment	any other type of equipment is missing or damaged
Athletic Field	Equipment	home plate or pitching rubber missing
Athletic Field	Equipment	soccer goal: frame is cracked or broken, or missing a wheel, net has 1 hole or gap 11" wide and long, or net is missing
Athletic Field	Equipment	windscreens: 2 windscreens are unanchored or damaged
Athletic Field	Fencing	chain link bulges 8.5" from vertical or has completely separated from fence poles
Athletic Field	Fencing	fence pole is bent or leans 8.5" or more from vertical
Athletic Field	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Athletic Field	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Athletic Field	Fencing	unstable or unanchored fence pole or horizontal bar
Athletic Field	Fencing	sharp edge, protrusion, rot, or splintering
Athletic Field	Graffiti	non-wood surface has graffiti on it
Athletic Field	Graffiti	sticker is on a field structure
Athletic Field	Graffiti	wood surface has graffiti on it
Athletic Field	Paint	multiple colors: touch-up paint does not match original color
Athletic Field	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Athletic Field	Seating	all-metal table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Athletic Field	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Athletic Field	Seating	wood or synthetic table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Athletic Field	Signage	no signage present at the athletic field
Athletic Field	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Athletic Field	Signage	unanchored or upside down sign
Athletic Field	Signage	sign text is illegible
Athletic Field	Structures	light poles or other permanent structures are damaged
Athletic Field	Surface Quality	ball diamond: 2" deep depression lies within 3' of either home plate or the pitching rubber
Athletic Field	Surface Quality	natural turf: 1 hole 4.5" wide and deep or larger
Athletic Field	Surface Quality	natural turf: all brown turf area 10' wide and long or larger
Athletic Field	Surface Quality	natural turf: bare areas: 1 large area (5' wide and long or larger) or 3 small areas (each 3' wide and long or larger)
Athletic Field	Surface Quality	natural turf: hardscape is 2" higher or lower (or more) than adjacent field turf for a distance of five feet
Athletic Field	Surface Quality	natural turf: mounds created by a gopher or other animal rise 2" above the surrounding turf
Athletic Field	Surface Quality	natural turf: tire rut 4.5" deep and 5" long or longer
Athletic Field	Surface Quality	synthetic turf: 2 edges frayed or unanchored, or 1 hole or tear inside the field
Athletic Field	Turf Maintenance	bench, pole, or sign has turf around it which is 4.5" higher than the rest of the field
Athletic Field	Turf Maintenance	curb, pavement, or path is covered by 4.5" or more or turf overgrowth or turf soil for a distance of 5'
Athletic Field	Turf Maintenance	fence, retaining wall, or structure has turf along it which is 4.5" taller than the rest of the field for a distance of 5'
Athletic Field	Turf Maintenance	infield turf is more than 4.5" high at any location
Athletic Field	Turf Maintenance	outfield or other turf is more than 4.5" high at any location, whether in the outfield or outside of the play area
Athletic Field	Weeds	11" long strip of weeds in any part of the athletic field
Buildings & General Amenities	Cleanliness	grime, soil, or debris build-up on a drinking fountain, seating, or other amenity impedes use
Buildings & General Amenities	Drinking Fountains	no drinkable stream of water; drips or leaks; overshoots its bowl; or standing water that does not drain
Buildings & General Amenities	Fencing	chain link bulges 8.5" from vertical or has completely separated from fence poles
Buildings & General Amenities	Fencing	fence pole is bent or leans 8.5" or more from vertical
Buildings & General Amenities	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Buildings & General Amenities	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Buildings & General Amenities	Fencing	unstable or unanchored fence pole or horizontal bar
Buildings & General Amenities	Fencing	sharp edge, protrusion, rot, or splintering
Buildings & General Amenities	Free-Standing Walls	concrete/brick/stone wall has large crack or break 2" wide and long (or larger); leans 8.5" or more from vertical; or is unstable

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Feature	Element	Standard
Buildings & General Amenities	Free-Standing Walls	metal wall leans 8.5" or more from vertical; or has breakage, deterioration, or rot that impairs the wall's functionality
Buildings & General Amenities	Free-Standing Walls	skateboarding guard is loose, broken or bent
Buildings & General Amenities	Free-Standing Walls	wooden or synthetic wall leans 8.5" or more from vertical; or has breakage, deterioration, or rot that impairs the wall's ability to contain a slope
Buildings & General Amenities	Graffiti	sticker is on a building or general amenity
Buildings & General Amenities	Graffiti	graffiti is on a building or general amenity
Buildings & General Amenities	Miscellaneous Infrastructure	crack or dent 1" wide and deep, or larger
Buildings & General Amenities	Miscellaneous Infrastructure	electrical wiring exposed and accessible to park users
Buildings & General Amenities	Miscellaneous Infrastructure	missing piece or other damage impedes use of the structure or access to a park area
Buildings & General Amenities	Miscellaneous Infrastructure	sharp edge, protrusion, rot or splintering
Buildings & General Amenities	Miscellaneous Infrastructure	unstable or insufficiently sturdy structure
Buildings & General Amenities	Paint	multiple colors: touch-up paint does not match original color
Buildings & General Amenities	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Buildings & General Amenities	Seating	concrete bench or chair: unstable; or has a leg which is missing, broken or unanchored
Buildings & General Amenities	Seating	metal bench or chair: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Buildings & General Amenities	Seating	wood bench or chair: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Buildings & General Amenities	Signage	no general signage at this site
Buildings & General Amenities	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Buildings & General Amenities	Signage	unanchored or upside down sign
Buildings & General Amenities	Signage	sign text is illegible
Buildings & General Amenities	Waste Receptacles	no recycling or dual-stream receptacle is available at this site
Buildings & General Amenities	Waste Receptacles	receptacle is full to the point of overflowing
Buildings & General Amenities	Waste Receptacles	waste receptacle is damaged or missing a part where it impedes use
Children's Play Areas	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Children's Play Areas	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Children's Play Areas	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Children's Play Areas	Cleanliness	soil or debris build-up prevents full access to a table, seat, or field area
Children's Play Areas	Fencing	fence pole is bent or leans 8.5" or more from vertical
Children's Play Areas	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Children's Play Areas	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Children's Play Areas	Fencing	unstable or unanchored fence pole or horizontal bar
Children's Play Areas	Fencing	sharp edge, protrusion, rot, or splintering
Children's Play Areas	Graffiti	non-wood surface has graffiti on it
Children's Play Areas	Graffiti	sticker is on a CPA surface
Children's Play Areas	Graffiti	wood surface has graffiti on it
Children's Play Areas	Paint	multiple colors: touch-up paint does not match original color
Children's Play Areas	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Children's Play Areas	Sand	hard/compacted sand
Children's Play Areas	Sand	object protrudes from sand and may cause tripping
Children's Play Areas	Sand	sand spills: sand is on a surface 5 feet or more away from a sandbox edge; or completely covers any play structure landing
Children's Play Areas	Sand	sandbox litter: 5 pieces of litter/debris of any size
Children's Play Areas	Seating	concrete bench or chair: unstable; or has a leg which is missing, broken or unanchored
Children's Play Areas	Seating	metal bench or chair: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Children's Play Areas	Seating	wood bench or chair: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Children's Play Areas	Signage	no CPA-related signage at this site
Children's Play Areas	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Children's Play Areas	Signage	unanchored or upside down sign
Children's Play Areas	Signage	sign text is illegible
Children's Play Areas	Structures	rust and/or denting: 3 strips, each 4.5" long and 1" wide, or larger
Children's Play Areas	Structures	unstable, tilted, sunken, or deformed piece of play equipment
Children's Play Areas	Structures	bolt, screw or other fastener is missing or loose
Children's Play Areas	Structures	footing, handrail, ladder rung or play structure platform slat is loose, broken, bent or missing
Children's Play Areas	Structures	sharp edge, protrusion, rot or splintering

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Feature	Element	Standard
Children's Play Areas	Surface Quality	rubber surface: edge is curled 1" above grade, or a seam has a vertical drop of 1/2"
Children's Play Areas	Surface Quality	rubber surface: object protrudes from rubber and may cause tripping
Children's Play Areas	Surface Quality	rubber surface: unstable surfacing, rubber moves under foot
Children's Play Areas	Surface Quality	rubber surface: worn area 4.5" long and wide and 1/2" deep
Children's Play Areas	Surface Quality	sand: depth is 6" or less deep, in any location
Children's Play Areas	Surface Quality	sand: top of sand is or more below an adjacent curb or surface, in any location
Children's Play Areas	Surface Quality	synthetic turf: 2 edges are frayed or unanchored, or there is 1 hole or tear inside the synthetic turf
Children's Play Areas	Water Feature	CPA water feature does not work or has drips/leaks that cannot be stopped
Children's Play Areas	Weeds	11" long strip of weeds in any part of the CPA
Dog Play Area	Cleanliness	feces or feces-filled bag
Dog Play Area	Cleanliness	hazardous litter: hypodermic needle, condom, or broken glass
Dog Play Area	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Dog Play Area	Cleanliness	litter: 1 spot has 5 pieces of larger litter
Dog Play Area	Cleanliness	soil or debris build-up prevents full access to a bench or chair
Dog Play Area	Drainage	pools of water: 2 large pools (each 5 feet long or larger)
Dog Play Area	Equipment	dog bag dispenser has a missing piece or other damage that impedes use
Dog Play Area	Equipment	windcreens: 2 windcreens are unanchored or damaged
Dog Play Area	Fencing	fence pole is bent or leans 8.5" or more from vertical
Dog Play Area	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Dog Play Area	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Dog Play Area	Fencing	unstable or unanchored fence pole or horizontal bar
Dog Play Area	Fencing	sharp edge, protrusion, rot, or splintering
Dog Play Area	Graffiti	non-wood surface has graffiti on it
Dog Play Area	Graffiti	sticker is on a DPA surface
Dog Play Area	Graffiti	windscreen or wood surface has graffiti on it
Dog Play Area	Seating	all-metal table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Dog Play Area	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Dog Play Area	Seating	wood or synthetic table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Dog Play Area	Signage	no dog-use signage at this site
Dog Play Area	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Dog Play Area	Signage	unanchored or upside down sign
Dog Play Area	Signage	sign text is illegible
Dog Play Area	Surface Quality	dirt, sand, wood chips, decomposed granite, or turf: 5 large holes, each 4.5" wide and 4.5" deep, or larger
Dog Play Area	Surface Quality	synthetic turf: 2 edges are frayed or unanchored, or there is 1 hole or tear inside the synthetic turf
Greenspace	Cleanliness	hazardous litter: hypodermic needle, condom, dead animal, feces, feces-filled bag, or broken glass
Greenspace	Cleanliness	large abandoned item (fallen trees or limbs, furniture, luggage, tent-like structure, etc.)
Greenspace	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Greenspace	Graffiti	non-wood surface has graffiti on it
Greenspace	Graffiti	sticker is on a Greenspace surface
Greenspace	Graffiti	wood surface has graffiti on it
Greenspace	Pruning	impeded use: a Greenspace plant impedes an athletic court, athletic field, or CPA, prevents clear access to any handrail, seat or amenity
Greenspace	Pruning	obstructed viewing: a Greenspace plant blocks any lamp, sign or art installation
Greenspace	Pruning	path intrusion: a Greenspace plant causes a sactioned path or trail to be less than 3 feet wide and head height
Hardscape	Cleanliness	curb is covered by 4.5" of eroded soil, gravel or mulch, continuously for a distance of 5'
Hardscape	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Hardscape	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Hardscape	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Hardscape	Cleanliness	soil or debris build-up prevents full access to a table, seat, or field area
Hardscape	Curbs	crack or hole 2" wide, or larger, going completely through a curb
Hardscape	Curbs	curb no longer functions due to breakage and deterioration
Hardscape	Curbs	parking block no longer functions due to breakage and deterioration
Hardscape	Drainage	impeded access: standing water prevents travel on a path or across a Hardscape area, use of a parking lot or road, or access to another Feature

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Feature	Element	Standard
Hardscape	Drainage	pools of water: 2 large pools (each 5 feet long or larger)
Hardscape	Graffiti	asphalt or wood surface has graffiti on it
Hardscape	Graffiti	concrete, brick, metal, or rubbery/synthetic surface has graffiti on it
Hardscape	Graffiti	sticker is on a hardscape surface
Hardscape	Paint	crosswalk or stop sign limit line has a 5' section which fails to clearly delineate where travel or stopping should occur
Hardscape	Paint	illegible text/symbol painted onto a hardscape; or any non-court game area that has a missing play line or a 5' section which fails to clearly delineate whether a ball or player would be in play
Hardscape	Paint	public parking lot has no striping or has 1 stall dividing line which fails to clearly delineate where cars should park
Hardscape	Parking & Road Signs	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Hardscape	Parking & Road Signs	unanchored or upside down sign
Hardscape	Parking & Road Signs	sign text is illegible
Hardscape	Paths & Plazas	asphalt has a crack 2" wide or with a 1/2" vertical drop; a hole 2" wide and deep; or has a 2" uplifted ridge or crumbling surface that is 3' wide or longer
Hardscape	Paths & Plazas	concrete, rubber, or other non-asphalt pavement has a crack 2" wide or with a 1/2" vertical drop; a hole 2" wide and deep; or has a 2" uplifted ridge or crumbling surface that is 3' wide or longer
Hardscape	Roads & Lots	potholes & ridges: 1 road/lot has 3 locations where: crumbling and loose asphalt 5' wide & long (or larger); pothole 4.5" wide and deep (or larger); or uplifted ridge rising 4.5" above grade
Hardscape	Stairways	concrete/stone stair: step is broken, unstable or 11" or more higher than the surface below it
Hardscape	Stairways	handrail is unanchored, unstable, has missing rails or posts, or is missing from any stairway that has 3+ steps
Hardscape	Stairways	wooden stair: step is broken, unstable or 11" or more higher than the surface below it
Hardscape	Walkway Clearance	leaves 2" deep or plant trimmings on a path reduces the clean area for travel to less than 3' wide
Hardscape	Walkway Clearance	spill of decomposed granite, gravel, mulch, sand or soil on a path reduces the clean area for travel to less than 3' wide
Hardscape	Weeds	strip of continuous weeds rises above grade for a distance of 5'
Lawns	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Lawns	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Lawns	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Lawns	Drainage	1 large pool (5' long or larger)
Lawns	Drainage	access impeded: turf saturation prevents access to a lawn area or to another Feature
Lawns	Surface Quality	all brown turf area 10' wide and long or larger
Lawns	Surface Quality	bare areas: 1 large area (5' wide and long or larger) or 3 small areas (each 3' wide and long or larger) where the field has exposed soil and no grass
Lawns	Surface Quality	hardscape is 2" higher or lower (or more) than adjacent lawn turf for a distance of five feet
Lawns	Surface Quality	holes: 2 holes 4.5" wide and deep or larger
Lawns	Surface Quality	mounds created by a gopher or other animal rise 2" above the surrounding turf
Lawns	Surface Quality	tire rut 4.5" deep and five" long or longer
Lawns	Turf Maintenance	unmowed: all Lawn turf within 10' of you is more than 4.5" high
Lawns	Turf Maintenance	bench, pole, or sign has turf around it which is 4.5" higher than the rest of the lawn
Lawns	Turf Maintenance	curb, pavement, or path is covered by 4.5" or more or turf overgrowth or turf soil for a distance of 5'
Lawns	Turf Maintenance	fence, retaining wall, or structure has turf along it which is 4.5" taller than the rest of the lawn for a distance of 5'
Ornamental Beds	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Ornamental Beds	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Ornamental Beds	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Ornamental Beds	No Mow Grass	all-brown turf area 10' wide and long, or larger
Ornamental Beds	No Mow Grass	bare areas: 3 bare areas (each 3' wide and long, or larger) with exposed soil and virtually no grass
Ornamental Beds	Plants	dead plants are throughout 1/4 of 1 bed
Ornamental Beds	Plants	damaged plants: 2 broken or uprooted plants are in 1 ornamental bed
Ornamental Beds	Pruning	impeded use: a plant impedes an athletic court, athletic field or CPA, or prevents clear access to a handrail, seat or amenity
Ornamental Beds	Pruning	obstructed viewing: a plant blocks a lamp, sign or art installation
Ornamental Beds	Pruning	path intrusion: a plant causes a path or trail to be less than 3' wide and head height
Ornamental Beds	Weeds	vines: 2 plants within a single bed are overtaken by blackberry, ivy, or poison oak
Ornamental Beds	Weeds	weeds exist in more than 1/4 of a bed
Outdoor Courts	Cleanliness	grime or spillage on seating, equipment, or court surface impedes its use
Outdoor Courts	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Outdoor Courts	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Outdoor Courts	Cleanliness	litter: 1 spot has 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Outdoor Courts	Cleanliness	organic debris: leaf litter, seed pods, etc., lie 2" deep continuously for a distance of 5'
Outdoor Courts	Cleanliness	soil or debris: build-up prevents full access to a table, seat, or court area

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Feature	Element	Standard
Outdoor Courts	Drainage	pool of water: 1 small pool 22" long or larger
Outdoor Courts	Equipment	any other type of equipment at the outdoor court is missing or damaged
Outdoor Courts	Equipment	fitness court equipment is damaged or missing
Outdoor Courts	Equipment	golf cage synthetic turf tee pad is missing or damaged
Outdoor Courts	Equipment	horseshoe stake is missing or unanchored
Outdoor Courts	Equipment	tennis net center hangs 4-1/2 inches below horizontal or lower
Outdoor Courts	Equipment	windcreens: 2 windcreens are unanchored or damaged
Outdoor Courts	Equipment	basketball, golf, volleyball, or tennis net is missing, unanchored, or worn to an extent that play would be affected
Outdoor Courts	Fencing	chain link bulges 8.5" from vertical or has completely separated from fence poles
Outdoor Courts	Fencing	fence pole is bent or leans 8.5" or more from vertical
Outdoor Courts	Fencing	gate does not open fully or cannot be closed enough to latch, or gate latch is missing or not operational
Outdoor Courts	Fencing	hole or gap: any opening 4.5" wide or larger within a fence or at its edge
Outdoor Courts	Fencing	unstable or unanchored fence pole or horizontal bar
Outdoor Courts	Fencing	sharp edge, protrusion, rot, or splintering
Outdoor Courts	Graffiti	asphalt, windscreen, or wood surface has graffiti on it
Outdoor Courts	Graffiti	metal or concrete surface has graffiti on it
Outdoor Courts	Graffiti	sticker is on a court surface
Outdoor Courts	Paint	multiple colors: touch-up paint does not match original color
Outdoor Courts	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger on any court surface or equipment
Outdoor Courts	Paint	play lines: there is no play line striping or a 5' section of line fails to clearly delineate whether a ball or player would be in or out of bounds
Outdoor Courts	Seating	all-metal table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Outdoor Courts	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Outdoor Courts	Seating	wood or synthetic table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering
Outdoor Courts	Signage	no sports signage at this court
Outdoor Courts	Signage	sign pole is unstable, or is bent or leans 8-1/2" or more from vertical
Outdoor Courts	Signage	unanchored or upside down sign
Outdoor Courts	Signage	sign text is illegible
Outdoor Courts	Structures	light poles or other permanent structures are damaged
Outdoor Courts	Structures	crack or hole 1/2" wide or larger, or any vertical drop-off or uplift that is 1/2" or more
Outdoor Courts	Weeds	3 strips of continuous weeds that each rise above grade for a length of 11"
Restrooms	Cleanliness	fixture: a toilet, sink, diaper changing station, or waste receptacle has filth or spillage on it
Restrooms	Cleanliness	floor has filth or spillage on it
Restrooms	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass is present
Restrooms	Cleanliness	litter: 5 pieces of litter of any size and in any location (on floor, wall, ceiling, etc.)
Restrooms	Equipment	diaper-changing station is broken or unanchored
Restrooms	Equipment	electric hand dryer does not work or is unanchored
Restrooms	Equipment	plumbed fixture (a toilet, urinal, faucet or sink) leaks, does not work, does not drain, or is unanchored
Restrooms	Equipment	sink faucet does not deliver a usable stream of water
Restrooms	Equipment	soap dispenser is missing, broken or unanchored
Restrooms	Equipment	toilet paper dispenser is missing, broken or unanchored
Restrooms	Equipment	toilet seat is missing, broken or unanchored
Restrooms	Graffiti	non-wood surface has graffiti on it
Restrooms	Graffiti	sticker is on a restroom surface
Restrooms	Graffiti	wood surface has graffiti on it
Restrooms	Lighting	no lighting in this restroom; too dark to see surroundings
Restrooms	Lighting	light is not working
Restrooms	Paint	multiple colors: touch-up paint on a door, partition, walls, or ceiling does not match original color
Restrooms	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Restrooms	Signage	gender or hours of operation not posted
Restrooms	Signage	unanchored or upside down sign
Restrooms	Signage	sign text is illegible
Restrooms	Structures	crack or dent 1" wide and deep, or larger

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Feature	Element	Standard
Restrooms	Structures	door or latch is missing or does not work
Restrooms	Structures	impeded access due to damage to a door, floor area, partition, or wall
Restrooms	Supplies	no paper towels or soap in entire restroom
Restrooms	Supplies	no toilet paper in a stall
Restrooms	Waste Receptacles	no trash can is inside the restroom
Restrooms	Waste Receptacles	receptacle is full to the point of overflowing (and is thus too full to use)
Trees	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass inside a tree well
Trees	Cleanliness	tree litter: a kite, plastic bag, or other abandoned object is in a tree branch
Trees	Cleanliness	tree well litter: a tree well has either 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Trees	Graffiti	graffiti is on a tree
Trees	Graffiti	sticker is on a tree
Trees	Pruning	impeded use: a living tree or tree well plant impedes an athletic court, athletic field or CPA, or prevents clear access to a handrail, seat or amenity
Trees	Pruning	obstructed viewing: a living tree or tree well plant blocks a lamp, sign or art installation
Trees	Pruning	path intrusion: a living tree or tree well plant causes a path or roadway to be less than 3' wide and head height
Trees	Tree Condition	dead standing tree
Trees	Tree Condition	dead limbs: 3 dead limbs (each 4.5" in diameter or larger) on one living tree
Trees	Tree Condition	hanger: tree limb 4.5" in diameter or larger is hanging from a tree
Trees	Weeds	ivy is growing 5+ feet up the trunk of a tree, or is in the branches of a small tree
Trees	Weeds	tree well: patch of weeds 11" wide and long in a tree well
Table Seating Areas	Cleanliness	coals/ash fill a grill to the point of overflowing
Table Seating Areas	Cleanliness	grime or spillage on a table, seat, or grill impedes use
Table Seating Areas	Cleanliness	hazardous litter: hypodermic needle, condom, feces, or broken glass
Table Seating Areas	Cleanliness	large abandoned item: fallen trees or limbs, furniture, luggage, tent-like structure, etc.
Table Seating Areas	Cleanliness	litter: 1 table seating area has either 5 pieces of larger litter or 10 pieces of small litter (1" or smaller)
Table Seating Areas	Cleanliness	soil or debris build-up prevents full access to a table, seat, or grill
Table Seating Areas	Graffiti	non-wood surface has graffiti on it
Table Seating Areas	Graffiti	sticker is on a table or seat
Table Seating Areas	Graffiti	wood surface has graffiti on it
Table Seating Areas	Grills	grill broken or missing, but the grill's support structure is still present
Table Seating Areas	Grills	sharp edge or protrusion on a grill structure
Table Seating Areas	Paint	multiple colors: touch-up paint does not match original color
Table Seating Areas	Paint	peeling, chipped, or missing paint strip 4.5" long and 1" wide or larger
Table Seating Areas	Seating	all-metal table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has a sharp edge or protrusion
Table Seating Areas	Seating	concrete or stone table or seat: unstable; or has a leg which is missing, broken or unanchored
Table Seating Areas	Seating	wood or synthetic table or seat: unstable or unsteady; has a leg or slat which is missing, broken or unanchored; or has rot or splintering

EXHIBIT I

DEI PLAN

DRAFT

Exhibit I: China Basin Park DEI Plan

CHINA BASIN PARK DIVERSITY, EQUITY AND INCLUSION GOALS & PRIORITIES

China Basin Park will be an inclusive, equitable and high-quality public space for all San Franciscans, but especially for residents of the Southeastern waterfront. Designed with deep community input, Tenant will continue to be committed to engaging local communities to deliver culturally relevant programs, provide opportunities for historically underrepresented communities to co-create activations and provide inclusive everyday management to ensure everyone feels welcome in China Basin Park.

China Basin Park's Diversity, Equity and Inclusion plan reflects Port goals to increase racial diversity and engagement at Port parks and open spaces. Outlined in the Racial Equity Action Plan, key Port priorities for inclusive open spaces include:

- Engage southern waterfront residents of all abilities, especially youth to experience the waterfront.
- Provide publicly accessible and well-maintained parks and open space in the Southern Waterfront.
- Provide variety of free user experiences for residents in adjacent communities to enjoy outdoor activities.

At China Basin Park, Tenant will build upon these priorities, along with aligning with the Mission Rock Community Pillars:

- **Building Sustainability:** Creating an environmentally sustainable neighborhood and supporting natural systems.
- **Creating Connections:** Creating bridges between community assets, community organizations, and service providers.
- **Fostering Health & Wellbeing:** Creating and activating spaces to support mental and physical health in our community.
- **Advancing Economic Vitality:** Supporting small, local business owners and nonprofits.

Guided by the Port Racial Equity Action Plan ("REAP") and the Mission Rock Community Pillars, the following outlines core priorities and strategies to create a diverse and inclusive China Basin Park:

High Quality and Inclusive Everyday Park Management

- **Well Maintained Park:** China Basin Park will be well maintained through consistent hardscape, landscape and sanitation maintenance, ensuring high quality park spaces and amenities are accessible to the community.

- Safe and Inclusive Stewardship: Training park stewards and security staff to be welcoming to all communities and encouraging park resources and amenities to be shared equitably is a key priority. Park stewards and security staff are the daily representatives of China Basin Park and their inclusive approach to park patrons will foster an environment where everyone feels they can enjoy this public space.

Program Dynamic Free Events and Activations

- Free Events: A variety of free events will be offered to the general public throughout the year, varying in size and targeted audiences from fitness classes, busking, concerts, art programming, sustainability seminars, kids education and much more. Scale of free event programming will be dependent on revenue generation and sponsorships. Mission Rock Commons aims to produce or co-produce twenty percent (20%) of annual programs geared towards underrepresented communities and youths, at minimum.
- Community Engagement: To ensure Mission Rock Commons will produce culturally relevant events, community input will be solicited to help inform the annual calendar of free events. Events will be evaluated on patron participation to track communities being served.

Create Opportunities for Community Co-Creation

- Community Rate Card: Mission Rock Commons will develop a non-profit / community rate for venue rentals to lower the cost of entry for executing an event at China Basin Park. This reduced rate card will be geared towards event producers programming events free to the community and/or activations directed towards historically underrepresented populations in San Francisco. Mission Rock Commons aims to rent China Basin Park at the reduced community rate for twenty percent (20%) of all 3rd Party Event rentals, at minimum.
- Community Partnerships: Solicit partnerships with community-based organizations, neighborhood groups and culturally districts to co-produce events with Mission Rock Commons for relevant programming geared towards groups historically underserved in San Francisco's public spaces. Leverage heritage nights at adjacent Oracle Park, Chase Center or other event venues to produce concurrent programming directed at communities being targeted at these larger venues.

Foster Small Businesses and Creators

- Maker Markets: Seasonal farmers, craft and holiday markets provide opportunities for local farmers and makers to showcase their talents, expand their audience and increase economic opportunity for small business owners. Mission Rock Commons will seek to build markets at China Basin Park with sponsorship funding and community partnerships.

EXHIBIT J
GOOD NEIGHBOR POLICY

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EXHIBIT J

GOOD NEIGHBOR POLICY FOR SPECIAL EVENTS

1. Tenant shall provide notice of the following pending Special Events at least one week prior to such Special Event to the Central Waterfront Advisory Group (or its successor advisory group), neighbors or neighborhood organizations requesting notice and others as requested by Port: Special Events with a duration of five (5) days or more (excluding set up and take down) or Special Events with an estimated attendance of 5,000 people on the Premises at a given time.
2. Except as otherwise permitted by a permit issued by the Entertainment Commission or other governmental agency of competent jurisdiction, all Special Events in non-enclosed areas on the Premises involving music or other events where the Special Event may involve similar noise impacts shall conclude by 10:00 p.m.
3. Tenant shall remove from the Premises and adjacent Port facilities all debris and refuse resulting from the Special Event within 18 hours of the conclusion of any Special Events.
4. Tenant shall comply with the good neighbor policy below:
 - a. For Special Events with a duration of five (5) days or more (excluding set up and take down) or Special Events with an estimated attendance of 5,000 people on the Premises at a given time:
 - i. Notices shall be prominently displayed at entrances to and exits from the Premises urging patrons to leave the establishment and neighborhood in a quiet, peaceful and orderly fashion and to please not litter or block driveways in the neighborhood.
 - ii. Event Licensee shall provide a phone number to all interested neighbors that will be answered at all times by a representative of Event Licensee.
 - iii. In addition, a representative of the Event Licensee shall answer a phone for at least two hours after the conclusion of a Special Event to allow for police and emergency personnel or other City personnel to contact that person concerning incidents.
 - b. For all Special Events:
 - i. If permits are required for the Special Event, such Special Event shall be conducted in accordance with permits issued by the Entertainment

Commission or other governmental agency of competent jurisdiction and as reasonably necessary to accommodate the nature of the event.

- ii. Event Licensee agrees to be responsible for all operation under which an entertainment commission permit is required and granted, including associated conditions of such permit.
- iii. Sufficient toilet facilities and hand washing stations shall be made accessible to patrons within the Premises. If additional toilet facilities and hand washing stations are needed beyond the permanent facilities located on the Premises, Event Licensee must bring temporary facilities to the Premises for the duration of the Special Event.
- iv. Event Licensee shall take all reasonable measures to ensure the sidewalks adjacent to the Premises are not blocked or unnecessarily affected by patrons or employees due to the operations of the Premises.

The parties may mutually agree to update these policies from time to time as may be appropriate.

EXHIBIT K

MISSION ROCK DISTRICT STORM WATER POLLUTION PREVENTION PLAN

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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 said Lease is _____, 20____.
5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$_____.
6. The security deposit held by Port under the terms of the Lease is \$_____ and Port holds no other deposit from Tenant for security or otherwise.
7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned’s knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.
8. That, to the undersigned’s actual knowledge after diligent inquiry, 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 undersigned’s actual knowledge after diligent inquiry, 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 undersigned’s actual knowledge after diligent inquiry, 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 will be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20____.

[Name of Tenant]

By:

Name:

Title:

SCHEDULE 1

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

[Attachment on following page(s)]

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SCHEDULE 2.9

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

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

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

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:
<https://onesanfrancisco.org/san-francisco-floodplain-management-program>

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

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

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SCHEDULE 7

FORM PORT LOAN PROMISSORY NOTE

PROMISSORY NOTE (China Basin Park - Mission Rock)

By executing and delivering this **PROMISSORY NOTE** (“**Note**”), ____ [Entity] ____ (“**Borrower**”), promises to pay to the **CITY AND COUNTY OF SAN FRANCISCO** (“**City**”), a municipal corporation acting by and through the **PORT COMMISSION OF SAN FRANCISCO** (“**Port**”), the principal amount of each Port Advance that the Port makes from time to time to Borrower in accordance with, and subject to the terms and conditions defined in that certain Lease No. L-____ and Loan Agreement between Borrower and Port dated for reference purposes as of _____, 2025 (the “**Lease and Loan Agreement**”).

Unless otherwise defined in this Note, initially capitalized and other terms are defined in the Lease and Loan Agreement.

This Note evidences the promise to pay to Port the principal amount of each Port Advance (each, an “**Advance**”) that Port will from time to time deliver to the Borrower. On payment in full of the amount of all principal and interest payable hereunder, this Note shall be surrendered to the Borrower for cancellation.

1. Within five business days after delivering each Advance, the Port will enter the information identified in the allonge attached to this Note.
2. In addition to all remedies provided by law, on an Event of Default, Port may, at its option: (a) exercise any and all remedies provided for in the Lease and Loan Agreement, and (b) if Port terminates the Lease and Loan Agreement pursuant to its terms, declare this Note immediately due and payable.
3. Borrower may prepay the principal balance and accrued interest, if any, on this Note without penalty.
4. Borrower promises to pay interest on the unpaid principal amount of each Advance from the Port Loan Due Date until the principal amount is paid in full, at the annual rate defined in the Lease and Loan Agreement.
5. Unless the Port directs otherwise, each payment to the Port must be made by wire according to wire instructions provided by the Port. The Port will make entries on the allonge to reflect the date and application of each payment.
6. This Note has been executed and delivered in, and shall be governed by and construed in accordance with the laws of, the State of California. Borrower hereby irrevocably submits to the jurisdiction of any state or any federal court sitting in San Francisco County, California, in any action or proceeding brought to enforce, or otherwise arising out of or relating to, this Note and hereby waives any objection to venue in any such court and any claim that such forum is an inconvenient forum.
7. Borrower waives presentment for payment, protest, and notice of protest for nonpayment of this Note and waives trial by jury in any action under or relating to this Note. Any

notice, other communication, or payment required or permitted hereunder shall be in writing and shall be deemed to have been given on delivery to the address provided in the Lease and Loan Agreement.

[SIGNATURE PAGE FOLLOWS]

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Borrower has duly executed this Promissory Note (China Basin Park - Mission Rock) as of the date written below.

Executed at San Francisco, California on _____.

[Borrower Name],
[Borrower Entity Description]

[Signature Block(s)]

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SCHEDULE 12.1(a)

PORT'S SPONSORSHIP STANDARDS

Mission Rock Parks Sponsorship Guidelines

The Port of San Francisco is a public enterprise agency of the City and County of San Francisco. The Port is responsible for 7.5 miles of San Francisco waterfront from Hyde Street Pier in the north to India Basin in the south. The Port develops, markets, leases, administers, manages, and maintains over 1,000 acres of land. The Port does not intend by accepting advertising to convert its property into an open public forum for public discourse, debate or expressive activity. Rather, because of the Port's role as part of the economic backbone of the City, the Port is committed to supporting the growth of waterfront jobs and providing space for new and expanding businesses on Port property. The Port accepts sponsorships as a means of generating revenue to support its operations. In furtherance of this discrete and limited objective, the Port retains control over the nature of Sponsorships accepted for posting on Port property and maintains its advertising and sponsorship opportunities as a limited public forum. As set forth in subsequent sections, these Guidelines prohibit advertisements and sponsorships that could detract from the Port's goal of generating revenue or interfere with the safe and welcoming environment for the public. Through these Guidelines, the Port intends to establish uniform, viewpoint-neutral standards for the display of advertising and sponsorships on Port property. These Guidelines may be amended from time to time, provided that Port shall meet and confer with Tenant regarding potential impacts to the Budget before amending these Guidelines as applicable to Tenant and the Premises.

Standards

A. Permitted Sponsorship Content

The following classes of advertising are authorized on Port property if the advertising does not include any material that qualifies as Prohibited Sponsorships, as described in subsection (B) below:

1. Commercial and Promotional Sponsorships. Sponsorships that promote or solicit the sale, rental, distribution or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for commercial or noncommercial purposes or more generally promotes an entity that engages in such activities.
2. Governmental Sponsorships. Notices or messages from government entities, meaning public entities specifically created by government action, that advance specific government purposes.
3. Public Service Announcements and Sponsorships. Announcements which are sponsored by either a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which are directed to the general public or a significant segment of the public and relate to:
 - Prevention or treatment of illnesses;
 - Promotion of safety or personal well-being;
 - Education or training;
 - Art or culture;
 - Provision of children and family services;
 - Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
 - Provision of services and programs that provide support to low income residents, seniors and people with disabilities.

B. Prohibited Sponsorship Content

Advertising and sponsorships are prohibited on Port property if it includes any content that falls under one or more of the following categories:

1. Political and Public Issue. Any material that promotes or opposes a political party, promotes or opposes any state or local ballot measure or the election of any candidate or group of candidates for federal, state, judicial or local government offices.
2. False or Misleading. Any material that is or the sponsor reasonably should have known is false, fraudulent, misleading, deceptive, or would constitute a tort of defamation or invasion of privacy.
3. Copyright, Trademark or Otherwise Unlawful Infringement. Any material that infringes on any copyright, trade or service mark, title or slogan.
4. Obscenity or Pornographic. Any material that is obscene or pornographic.
5. Defamation or Lawless Action. Any material that is clearly defamatory or advocates imminent lawlessness or violent action.
6. Tobacco or Nicotine Advertising. Any material that constitutes commercial advertising of tobacco or nicotine.
7. Firearm Advertising. Any material that constitutes commercial advertising of firearms or ammunition.
8. Alcohol. Any material that constitutes commercial advertising of alcohol. However, Port or City property, including the Premises, used for operation of a concessionaire, kiosk, restaurant, concert or sports venue, or other facility or event where the sale, production, or consumption of alcoholic beverages is permitted by Law, shall be exempt from the alcoholic beverage advertising prohibition.
9. Profanity and Violence. Any material that contains any profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, the act of killing, mutilating or disfiguring human beings or animals, or intentional infliction of pain or violent action towards or upon a person or animal, or that depicts weapons or devices that appear to be aimed or pointed at the viewer or observer in a menacing manner.
10. Port Graphics and References. Any material that contains Port graphics, logos or representations without the express written consent of the Port.
11. Cannabis. Any material that constitutes commercial advertising of cannabis, cannabis products, cannabis businesses, or cannabis services.

Sponsorship Administration

Tenant shall be responsible for the daily administration of the sponsorship program in a manner consistent with these guidelines and with the terms and conditions of their lease with the Port.

Tenant shall post the following language with every advertisement, in a size and location approved by the Port (such approval not to be unreasonably withheld, conditioned or delayed):
"The views expressed in this advertisement do not necessarily reflect the views of the Port of San Francisco."

Every sponsor or permittee on the premises must comply with the advertising standards set forth in this Policy, as they may be amended from time to time. Every sponsor or permittee on the premises must display only those sponsorships that are in compliance with these guidelines.

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SCHEDULE 19.9
HAZARDOUS MATERIAL DISCLOSURE

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