File No. 130732 Committee Item No. 10
Board Item No. _____

# COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

**Committee:** Budget and Finance Committee **Date: 09/11/2013**

**Board of Supervisors Meeting** **Date:** _____

| Cmte | Board | |
|---|---|---|
| ☐ | ☐ | **Motion** |
| ☒ | ☐ | **Resolution** |
| ☐ | ☐ | **Ordinance** |
| ☐ | ☐ | **Legislative Digest** |
| ☒ | ☐ | **Budget and Legislative Analyst Report** |
| ☐ | ☐ | **Legislative Analyst Report** |
| ☐ | ☐ | **Youth Commission Report** |
| ☐ | ☐ | **Introduction Form** |
| ☒ | ☐ | **Department/Agency Cover Letter and/or Report** |
| ☐ | ☐ | **MOU** |
| ☐ | ☐ | **Grant Information Form** |
| ☐ | ☐ | **Grant Budget** |
| ☐ | ☐ | **Subcontract Budget** |
| ☒ | ☐ | **Contract/Agreement** |
| ☒ | ☐ | **Form 126 – Ethics Commission** |
| ☐ | ☐ | **Award Letter** |
| ☐ | ☐ | **Application** |
| ☐ | ☐ | **Public Correspondence** |

**OTHER** **(Use back side if additional space is needed)**

| | | |
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| ☐ | ☐ | _____ |
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**Completed by:** Victor Young **Date** September 6, 2013
**Completed by:** Victor Young **Date** _____

FILE NO. 130732 RESOLUTION NO.

[Real Property Lease - Port Commission - 295 Terry Francois - Seven Percent of Gross or $10,011.81 Monthly]

**Resolution approving Port Commission Lease No. L-15255 with East Street Ventures, LLC for restaurant space located at 295 Terry Francois Boulevard in the Central Waterfront with a 180 month term with one 60 month term extension option for an initial monthly rent of the greater amount of either seven percent of all gross revenue or $10,011.81.**

WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San Francisco Charter Section 4.114 and B3.581 empower the San Francisco Port Commission ("Port Commission") with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction; and

WHEREAS, On August 14, 2012, Port staff requested and received authorization from the Port Commission (Resolution No. 12-63) to issue a Request for Proposal ("RFP") for a restaurant operator for the renovation and the operation of the restaurant site located at 295 Terry Francois Boulevard, (the "Restaurant") formerly known as Jelly's a Dance Café; and

WHEREAS, As a result of the RFP, the Port negotiated a lease, L-15255, with East Street Ventures LLC, a California Limited Liability Company, for the renovation and operation of the Restaurant with a term of one hundred eighty (180) months with one sixty (60) month term extension option (the "Lease"), a copy of which is on file with the Clerk of the Board In File No. 130732; and

WHEREAS, The Port Commission approved lease L-15255 at its July 11, 2013 Meeting pursuant to Port Resolution No. 13-27, and

WHEREAS, The Lease has an Initial rent of the greater amount of either 7% of all gross revenue or $10,011.81 per month ($2.33 per sq. ft. for the interior space and $0.31 for

the exterior space) for the approximately 3,389 square feet of interior space and 6,824 square feet of exterior space. The Lease provides a 270-day rent abatement period to allow East Street Ventures to construct tenant improvements in the amount of approximately $2 million and

WHEREAS, The lease provides a one- time improvement credit in the amount of $380,000 for the construction of base building core and shell improvement only; and

WHEREAS, Pursuant to requirements under the California Environmental Quality Act (CEQA), the environmental effects of the Lease were reviewed and determined to be exempt from CEQA under a General Rule Exclusion issued by the San Francisco Planning Department on June 15, 2012, and

WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors' approval of real property leases with a term of ten (10) or more years, or having anticipated revenue to the City of One Million Dollars ($1,000,000.00) or more; and

WHEREAS, This Lease will have revenues that exceed One Million Dollars ($1,000,000.00) and the term will exceed ten (10) years; now, therefore, be it

RESOLVED, That the Board of Supervisors approves the Lease; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive Director of the Port (the "Executive Director") or her designee to execute the Lease in a form approved by the City Attorney and in substantially the form of the lease on file with the Clerk of the Board of Supervisors; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits and ancillary agreements) that the Executive Director, in consultation with the City Attorney, determines when taken as a whole, are in the best interest of the Port, do not

materially increase the obligations or liabilities of the Port or City or materially decrease the public benefits accruing to the Port, and are necessary or advisable to complete the transactions contemplated and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents; and, be it

FURTHER RESOLVED, That the Board of Supervisors approves, and ratifies all prior actions taken by the officials, employees and agents of the Port Commission, or the City with respect to the Lease.

| Item 10<br>File 13-0732 | Departments:<br>Port of San Francisco |
|---|---|

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed resolution would approve a new lease with one five-year option to extend between the City and County of San Francisco, as landlord, on behalf of the Port of San Francisco and East Street Ventures, LLC, as tenant, for restaurant space located at 295 Terry Francois Boulevard, for 15 years from October 1, 2013 through September 30, 2028.

### Key Points

- The restaurant space located on Port property at 295 Terry Francois Boulevard, is located near the Giants Ballpark and China Basin at Pier 50, was most recently operated as Jelly's-a Dance Cafe restaurant by Corzac, Inc. under a Port lease which terminated on November 7, 2011.
- On August 14, 2012, the Port Commission approved the issuance of a Request for Proposal (RFP) for a restaurant operator to develop and operate a high quality casual dining restaurant at 295 Terry Francois Boulevard and following the competitive RFP process, and failed negotiations with the most qualified respondent, the Port entered into negotiations East Street San Francisco, which subsequently formed a separate entity, East Street Ventures, LLC, for the execution of this subject lease.
- The proposed new 15-year lease is for 3,389 square feet of interior space and 6,824 square feet of exterior space. Under the proposed new lease, East Street Ventures is required to complete tenant improvements estimated to cost $2,000,000 and is provided (a) a 270-day rent abatement or approximately nine months to complete the improvements and (b) $380,000 rent credit for certain core and shell improvements. The capital investment of $2,000,000 would be amortized over the new 15-year lease term.
- Under the proposed new lease, East Street Ventures is required to pay the Port the greater of (a) base rent of $10,011.81 per month in the first year (following an initial 270 day rent abatement for renovations, see below), increasing by approximately 3% annually throughout the 15-year lease term, or (b) 7% of monthly gross revenues.
- Rent payments to the Port would commence on July 1, 2014, and the Port anticipates that it will receive percentage rent in every month of the proposed lease except for the month of July 2014, which is the first month following the 270-day rent abatement and preceding the expected opening of the restaurant on August 1, 2014.

### Fiscal Impact

- The Port expects East Street Ventures to pay percentage, rather than base rent, rent based on annual gross revenues of $2,300,000 in the first full year of operations. Over the initial 15-year term of the lease, estimated rent revenues to the Port, net of the 270-day rent abatement and $380,000 rent credit, are $2,598,883.

### Recommendation

- Approve the proposed resolution.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

In accordance with City Charter Section 9.118(c), any lease for a period of ten years or more and/or having anticipated revenue of $1,000,000 or more is subject to approval by the Board of Supervisors.

### Background

The restaurant space located on Port property at 295 Terry Francois Boulevard was most recently operated as Jelly's-a Dance Cafe restaurant by Corzac, Inc. under a Port lease which terminated on November 7, 2011. Since this prior Port lease terminated, the space has not been occupied. 295 Terry Francois Boulevard is located near the Giants Ballpark and China Basin at Pier 50 (see Attachment).

On August 14, 2012, the Port Commission (Resolution No. 12-63) approved the issuance of a Request for Proposal (RFP) for a restaurant operator to develop, including design and renovation of the existing building, and operate a high quality casual dining restaurant with on-premises dining at 295 Terry Francois Boulevard. According to Mr. Jeff Bauer, Senior Commercial Leasing Manager for the Port, the Port received four responses to the RFP: (1) Bo's BBQ of SF, LLC (Bo's BBQ); (2) East Street San Francisco, LLC; (3) Stripes Tavern; and (4) Rocks & Brews San Francisco, LLC (Rocks and Brews). After the Port's initial negotiations with Bo's BBQ, the most qualified respondent, failed, the Port Commission directed Port staff to negotiate with the second most qualified respondent, East Street San Francisco, LLC.

Mr. Bauer advises that the principals of East Street San Francisco are the same principals of the Hi Dive Restaurant located at Pier 28 ½, which currently pays percentage rent per square foot of $67.81 which is in the top 5 percent of rent per square foot paid to the Port[1]. Mr. Bauer states that Hi Dive has been a Port tenant since 2002 and is a tenant in good standing.

Mr. Bauer notes that East Street San Francisco, LLC, subsequently formed a separate entity, East Street Ventures, LLC, for the execution of this subject lease for restaurant space located at 295 Terry Francois Boulevard.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease between the City and County of San Francisco, as landlord, on behalf of the Port of San Francisco and East Street Ventures, LLC, as tenant, for 15 years from October 1, 2013 through September 30, 2028, with one five-year option to extend, as summarized in Table 1 below:

[1] Under the lease between the Port and Hi Dive Restaurant, Hi Dive Restaurant pays the greater of percentage rent equal to 7 percent of gross revenues or base rent of $2.41 per square foot. Currently, Hi Dive Restaurant pays percentage rent equivalent to $5.65 per square foot per month ($67.81 per square foot per year).

**Table 1: Summary of Proposed Lease at 295 Terry Francois Boulevard**

| | |
|---|---|
| Term | 15 years (October 1, 2013 through September 30, 2028) |
| Square Feet (approximate) | 3,389 square feet of interior space<br>6,824[2] square feet of exterior space |
| Rent Structure | Greater of Base Rent or Percentage Rent |
| Initial Monthly Base Rent per Square Foot<br>Initial Total Monthly Base Rent | Approximately $2.33 for interior space<br>Approximately $0.31 for exterior space<br>$10,011.81 |
| Percentage Monthly Rent | $7% of gross revenues |
| Rent Abatement | 270 days (approximately 9 months – see below) |
| Annual Rent Increases | 3% |
| Security Deposit | $29,497.92 |
| Utilities and Services | Tenant Responsibility |
| Leasehold Improvements | Estimated $2,000,000 paid by the Tenant |
| One-Time Tenant Improvement Rent Credit | $380,000 for Core and Shell Improvements |
| Options to Further Extend | One five-year option, the minimum base rent will be adjusted by the greater amount of either 3% or the average of the three prior years' gross revenues, multiplied by the percentage rent of 7% then multiplied by 85% and divided by 12 months. |

Rent and Rent Abatement

Under the proposed new lease, East Street Ventures is required to pay the Port the greater of (a) base rent of $10,011.81 per month in the first year (following an initial 270 day rent abatement for renovations, see below), increasing 3% annually throughout the 15-year lease term, or (b) 7% of monthly gross revenues.

From the expected commencement date of the lease on October 1, 2013 through June 30, 2014, a period of nine months or 270 days, East Street Ventures will be completing renovations and upgrades at the tenant's expense and will not be subject to rent payments. Rent payments to the Port would commence on July 1, 2014.

[2]Under the proposed lease, the 6,824 for square feet of exterior space includes 3,570 square feet of revocable exterior space along Terry Francois Boulevard that may be realigned to the City as part of the potential Terry Francois Boulevard street improvements to become a pedestrian side walk. If 3,570 square feet of exterior space is realigned as part of the potential Terry Francois Boulevard street improvements. Subsequently, of the initial 6,824 square feet of exterior space, 3,254 square feet of exterior space will remain in the East Street Ventures restaurant proposed lease.

Tenant Improvements

Under the proposed new lease, East Street Ventures is required to make improvements at an estimated cost of $2,000,000, beginning on the expected commencement date of October 1, 2013. The proposed lease requires East Street Ventures to post a performance bond equal to at least 100 percent of the costs of the tenant improvements. According to Mr. Bauer, the proposed 15-year lease will provide East Street Ventures sufficient time to amortize the estimated $2,000,000 investment cost for the proposed restaurant at 295 Terry Francois Boulevard. The restaurant has a target date of opening on August 1, 2014.

The renovations and upgrade improvements are to include:

- Installation of new electrical service;
- Plumbing upgrades;
- Installation of new mechanical systems;
- Seismic bracing upgrades;
- Life safety upgrades, such as a fire suppression sprinkler system;
- Accessibility improvements required by the Americans with Disabilities Act (ADA) including the installation of an elevator lift, accessible bathrooms on the first and second floors, accessible paths of travel, accessible counter and bar heights; and
- Construction of ground level and second floor outdoor dining areas.

The $2,000,000 in estimated tenant improvement costs include a $380,000 one-time rent credit from the Port to East Street Ventures to partially offset the costs of the building core and shell improvements, such as the new electrical service and seismic bracing upgrades. Under the proposed lease, upon completion of the tenant improvements and following the commencement of rent expected to be on July 1, 2014, East Street Ventures may deduct up to 75% of the monthly base rent payable to the Port up to a total of a $380,000 one-time rent credit. The Budget and Legislative Analyst notes that although the rent commencement date is expected to be on July 1, 2014, the restaurant has a target date of opening on August 1, 2014, which will result in the minimum base rent payable to the Port for the month of July 2014 and the percentage rent expected to begin following the opening of the restaurant on August 1, 2014.

## FISCAL IMPACT

As shown in Table 2 below, under the proposed 15-year lease agreement, rent is the greater of (a) base rent of $10,011.81 per month in the first year (following the 270 day rent abatement), increasing 3% annually over the 15-year lease term, or (b) 7% of monthly gross revenues.

**Table 2: Base Rent under the Proposed Lease at 295 Terry Francois Boulevard**

| Base Rent | Square Feet | Rent per Square Foot Per Month | Rent per Month |
|---|---|---|---|
| Interior | 3,389 | $2.33 | $7,896.37 |
| Exterior | 6,824 | 0.31 | 2,115.44 |
| **Total** | **10,213** | | **$10,011.81** |

According to Mr. Bauer, the initial base rent of $10,011.81, or approximately $2.33 for 3,389 square feet of interior space and approximately $0.31 for 6,824 square feet of exterior space, is comparable to the market rates of similar Port restaurant properties. As shown in Table 3 below, comparable existing Port property restaurant leases have (a) an average base rent of $2.53 per square foot (interior space), ranging between $1.54 per square feet for Red's Java House to $3.52 per square feet for the Pier 23 Café, and (b) an average percentage rent of 7.33% of gross revenues, ranging between 6.34% for Red's Java House and 10.0% for Boudin Bakery & Café.

**Table 3: Comparison of Existing Port Property Restaurant Leases and the Proposed East Street Ventures Lease at 295 Terry Francois Boulevard**

| Tenant | Base Rent per Square Feet (Interior Space) | Percentage Rent[3] |
|---|---|---|
| Pier 23 Café | $3.52 | 7.00% |
| Boudin Bakery & Café | 3.13 | 10.00 |
| Lou's Pier 47 | 2.79 | 6.75 |
| Pompi's | 2.62 | 6.75 |
| Hi Dive | 2.41 | 7.00 |
| Java House | 1.69 | 7.50 |
| Red's Java House | 1.54 | 6.34 |
| **Average** | **$2.53** | **7.33%** |
| **East Street Ventures** | **$2.33** | **7.00%** |

As shown in Table 4 below, the Port projects that East Street Ventures will pay percentage rent based on annual gross revenues of $2,300,000 in the first full year of operations. Over the initial 15-year term of the lease, estimated rental revenues payable to the Port, net of the 270-day rent abatement and $380,000 rent credit, are $2,598,883.

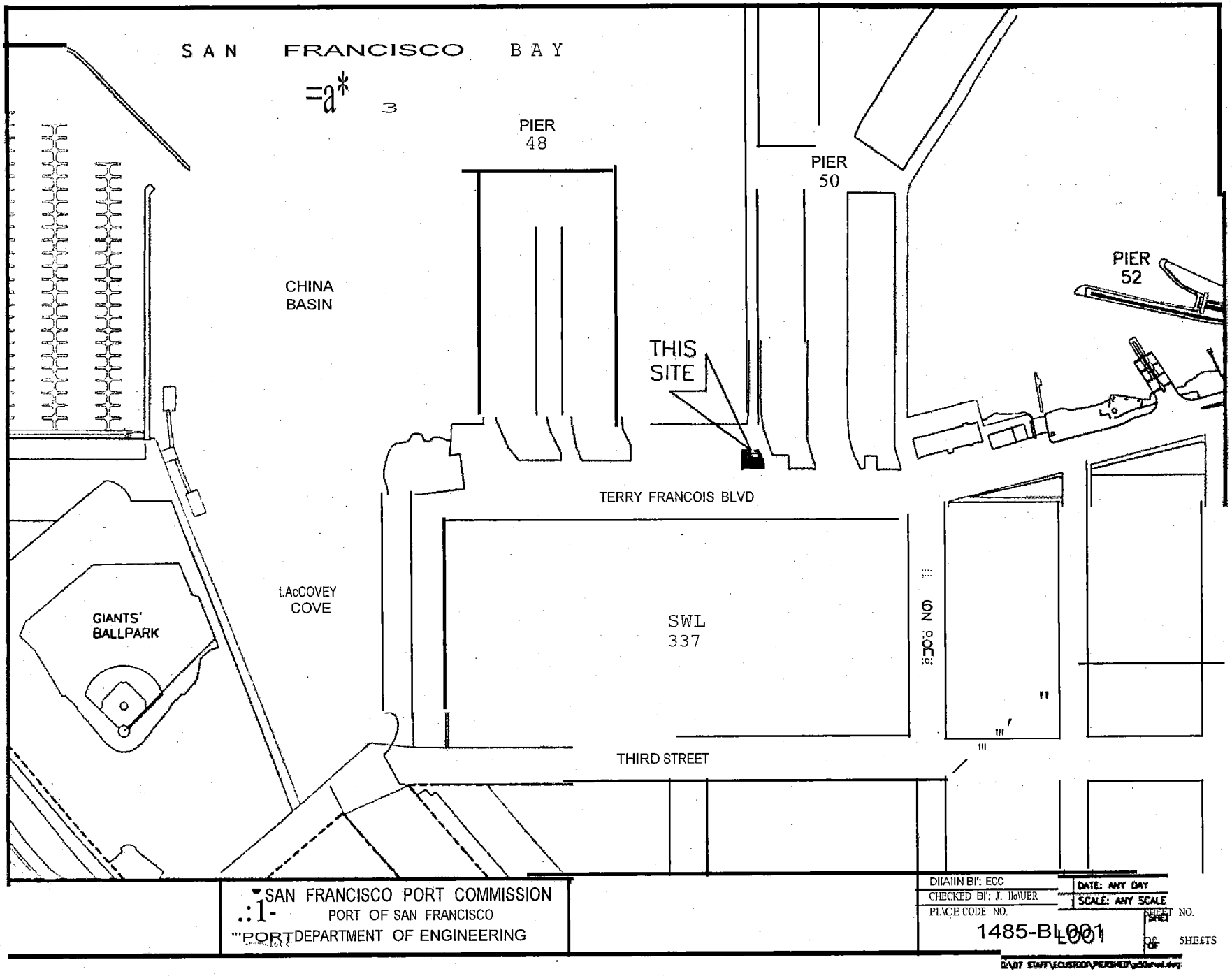
[3] Mr. Bauer states that participation rent in retail leases with the Port are determine by level of service provided For example, the participation rent at a restaurant that (a) serves fast food by untrained counter staff is typically around 10-12%; (b) provides casual dining with table service and food prepared by a chef is 7%; and (c) provides white table cloth dinning service is 5-6% due to the highest level of service available.

**Table 4: Total Estimated Rent under the Proposed Lease at 295 Terry Francois Boulevard**

| Years | Estimated Gross Sales (Based on Annual 3% to 5% Increase) | Minimum Base Rent (Based on Approximately 3% Annual Increase) | Percentage Rent (7% of Gross Sales) | Rent Credit | Total Estimated Rental Revenues |
|---|---|---|---|---|---|
| Month 1-9 | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 |
| Month 10 | 0 | 10,012 | 0 | (7,509) | 2,503 |
| Month 11-12 | 450,000 | 20,024 | 31,500 | (15,018) | 16,482 |
| 2 | 2,300,000 | 123,396 | 161,000 | (92,551) | 68,449 |
| 3 | 2,415,000 | 127,056 | 169,050 | (95,300) | 73,750 |
| 4 | 2,535,750 | 130,728 | 177,503 | (105,991) | 71,512 |
| 5 | 2,662,538 | 134,388 | 186,378 | (63,633) | 122,745 |
| 6 | 2,795,664 | 138,060 | 195,697 | | 195,697 |
| 7 | 2,879,534 | 142,128 | 201,567 | | 201,567 |
| 8 | 2,965,920 | 146,196 | 207,614 | | 207,614 |
| 9 | 3,054,898 | 150,276 | 213,843 | | 213,843 |
| 10 | 3,146,545 | 154,344 | 220,258 | | 220,258 |
| 11 | 3,240,941 | 158,424 | 226,866 | | 226,866 |
| 12 | 3,338,169 | 162,900 | 233,672 | | 233,672 |
| 13 | 3,438,315 | 167,376 | 240,682 | | 240,682 |
| 14 | 3,541,464 | 171,852 | 247,902 | | 247,902 |
| 15 | 3,647,708 | 176,976 | 255,340 | | 255,340 |
| **Total** | **$42,412,446** | **$2,114,135** | **$2,968,871** | **($380,000)** | **$2,598,883** |

## RECOMMENDATION

Approve the proposed resolution.


SAN FRANCISCO BAY
PIER 48
PIER 50
PIER 52
CHINA BASIN
THIS SITE
TERRY FRANCOIS BLVD
t.AcCOVEY COVE
GIANTS' BALLPARK
SWL 337
THIRD STREET
SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING
DRAWN BY: ECC
CHECKED BY: J. HoUER
DATE: ANY DAY
SCALE: ANY SCALE
PLACE CODE NO.
1485-BL001
SHEET NO.
OF 5 SHEETS

# SAN FRANCISCO
# PLANNING DEPARTMENT

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
**415.558.6378**

Fax:
**415.558.6409**

Planning
Information:
**415.558.6377**

## Certificate of Determination
## EXEMPTION FROM ENVIRONMENTAL REVIEW

| | |
|---|---|
| *Case No.:* | **2012.0099E** |
| *Project Title:* | **Various Properties of the Port of San Francisco** |
| *Project Sponsor* | Kanya Dorland, Port of San Francisco |
| *Staff Contact:* | Brett Bollinger – (415) 575-9024<br>brett.bollinger@sfgov.org |

### PROJECT DESCRIPTION:

The Port, in the course of managing its maritime and non-maritime properties, often enters into leases or similar agreements with tenants who continue an existing land use, with no substantial physical changes to the site or substantial intensification of use. This document, prepared on a three-year basis, shall serve as the CEQA determination for such Port Projects.

### EXEMPT STATUS:

General Rule Exclusion [State Guidelines, Section 15061 (b)(3)]

### REMARKS:

No new construction or other physical change, other than repair or renovation of existing facilities, would be involved. There would be no change or substantial intensification in the on-going activities occurring on the site. Therefore, it can be seen with certainty that there would be no significant environmental impacts.

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

Bill Wycko
Environmental Review Officer

February 2, 2012
Date

cc: Project Sponsor

130732

# SAN FRANCISCO
# PLANNING DEPARTMENT

## Certificate of Determination
## EXEMPTION FROM ENVIRONMENTAL REVIEW

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| | |
|---|---|
| *Case No.:* | 2013.0182E |
| *Project Title:* | Special Events on Port of San Francisco Property |
| *Zoning:* | Varies |
| *Height:* | Varies |
| *Block/Lot:* | All Port Properties |
| *Project Sponsor* | Kanya Dorland, Port of San Francisco |
| *Staff Contact:* | Monica Cristina Pereira – (415) 575-9107<br>monica.pereira@sfgov.org |

### PROJECT DESCRIPTION:

Special events, public gatherings, athletic events, filming, commemorations, market places, and fairs on Port of San Francisco property, for a duration of up to two-weeks, which may include construction of temporary tents, structures and facilities to accommodate such activities and events. See Remarks which present descriptions of the types of special events entailed.

### EXEMPT STATUS:

These activities are determined to be categorically exempt under State CEQA Guidelines Section 15304(e) or Class 4(e) and Section 15311(c) or Class 11(c). This categorical exemption applies for 12 months from the date of this determination, and must be reviewed for renewal on a yearly basis.

### REMARKS:

The Port regularly reviews and issues Port building permits and other Port approvals for special events and public gatherings on piers, wharfs and other property under the jurisdiction of the Port of San Francisco. The issuance of Port building permits or other approvals for special events and public gatherings, as described below, would be categorically exempt from review. To maintain oversight of these activities, this exemption applies for a 12 month period, and the Port may apply to renew this exemption on an annual basis.
(continued on next page)

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

BILL WYCKO
Environmental Review Officer

February 21, 2013
Date

cc: Kanya Dorland, Port of San Francisco, Diane Oshima, Port of San Francisco

## REMARKS (CONTINUED):

*CLASS 4: MINOR ALTERATIONS TO LAND*

California Environmental Quality Act (CEQA) State Guidelines Section 15304(e), Class 4(e), provides an exemption from environmental review for Categorical Exemption Class 4(e) for minor temporary use of land having negligible or no permanent effect on the environment, including carnivals, sales of Christmas trees, etc. Such uses might have certain temporary effects of a nuisance nature, but such effects are to be controlled by the regulatory department issuing permits for such uses.

Class 4(e) includes Port of San Francisco special events, public gatherings, athletic events, filming, commemorations, market places, fairs, and construction of temporary tents and buildings to accommodate such uses.

*CLASS 11: ACCESORY STRUCTURES*

California Environmental Quality Act (CEQA) State Guidelines Section 15311(c), Class 11(c), provides an exemption from environmental review for Categorical Exemption Class 11(c) for the construction, or replacement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including, but not limited to, placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

This item includes temporary structures associated with public events of up to a two-week duration, such as music festivals, and includes sporting events, such as the ESPN Extreme Games (X-Games), on Port property.

The Port would provide MEA with monthly reports of projects approved using this CEQA exemption for special events and public gathering project types listed above.

## CONCLUSION:

The above Port projects would not result in permanent effects on the environment and would have negligible and no permanent effect on the environment and would therefore be exempt under Sections 15304(e) and 15311(c).

No new permanent construction or other physical change, other than minor alterations to land and accessory temporary structures would be involved. There would be no change or substantial intensification in the on-going activities occurring on the Port properties.

CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no other unusual circumstances surrounding the current proposals that would suggest a reasonable possibility of a significant environmental effect. The Port projects would be exempt under the above-cited classifications. Therefore, it can be seen with certainty that there would be no significant environmental impacts.

# SAN FRANCISCO
# PLANNING DEPARTMENT

## Certificate of Determination
## EXEMPTION FROM ENVIRONMENTAL REVIEW

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Information:
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| | |
|---|---|
| *Case No.:* | 2013.0183E |
| *Project Title:* | Building Permits for Minor Maintenance, Repair and Alteration and Encroachment Permits on Port of San Francisco Property |
| *Zoning:* | Varies |
| *Height:* | Varies |
| *Block/Lot:* | All Port Properties |
| *Project Sponsor* | Kanya Dorland, Port of San Francisco |
| *Staff Contact:* | Monica Pereira – (415) 575-9107<br>monica.pereira@sfgov.org |

### PROJECT DESCRIPTION:

Minor maintenance, repair and alteration projects to buildings, piers, and other waterfront facilities under the jurisdiction of the Port of San Francisco and which, for historic resources, are consistent with the Secretary of the Interior Standards for Historic Rehabilitation and the Port's Historic Preservation Review Guidelines, which require issuance of Port building permits or other approvals; and minor activities and public safety improvements within sidewalks or other Port right-of-way areas which require issuance of a Port encroachment permit. See Remarks (next page) which present detailed description of the types of repairs and encroachments entailed.

### EXEMPT STATUS:

These activities are determined to be categorically exempt under State CEQA Guidelines Section 15301(d) or Class 1(d), Section 15305(b) or Class 5(b), and Section 15306 or Class 6. This categorical exemption applies for 12 months from the date of this determination, and must be reviewed for renewal on a yearly basis.

### REMARKS:

(see next page)

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

BILL WYCKO
Environmental Review Officer

February 21, 2013
Date

cc: Kanya Dorland, Port of San Francisco
Diane Oshima, Port of San Francisco

## REMARKS (CONTINUED):

The Port regularly reviews and issues Port building permit and other Port approvals for minor maintenance, repair, alterations, and encroachment improvements and utility installations on piers, wharfs and other property under the jurisdiction of the Port of San Francisco. Many of these facilities have been listed on the National Register of Historic Places as part of the Embarcadero Waterfront National Register Historic District, and/or determined eligible for listing on the National Register or California Register of Historic Places. As part of the establishment of the Embarcadero Historic District, the Port prepared and secured approval by the California State Office of Historic Preservation of the Port of San Francisco Historic Preservation Review Guidelines, which provides specific direction on how minor repairs and alterations to historic pier and bulkhead wharf substructures should be conducted to meet Secretary of the Interior Standards for Historic Rehabilitation. The Port's Planning & Development Division has historic preservation technical expertise to review and administer these Historic Preservation Review Guidelines for substructures, and the Secretary of the Interior's Standards for superstructures and piers and wharves outside the Embarcadero Historic District, to ensure that the Port's historic resources are not adversely impacted by maintenance, repair and minor alteration projects. Given the preservation review procedures specific to Port historic resources, which are incorporated into the Port regulatory review process, the issuance of Port building permits or other approvals for the types of repairs, maintenance, alteration and encroachment projects, as described below, would be categorically exempt from review. To maintain oversight of these activities, this exemption applies for a 12 month period, and the Port may apply to renew this exemption on an annual basis.

### *Maintenance, Repair, and Minor Alteration Permits*

Ordinary maintenance, repair and minor alteration which involves:

- Minor alterations that would not impact character defining features of listed and eligible historic resources.
- In-kind replacement of deteriorated features when repair is infeasible.
- Replacement of deteriorated character defining features with substitute materials deemed compatible and consistent with the Secretary Standards when repair is infeasible.

Example projects include but are not limited to:

1. Removing and replacing pilings in a manner that does not alter historic deck aprons consistent with the Port's Historic Preservation Review Guidelines.
2. Removal of deteriorated piles, stringers, girders and decks for safety purposes with no replacement involved.
3. Installing (fender, bearing or dolphin) pilings, stringers, girders, decking or other materials to strengthen or increase the utility of existing aprons or substructures in a manner that does not alter historic material present.
4. Repair of spalling concrete on the underside of pier structures and at the top of pilings consistent with the Port's Historic Preservation Review Guidelines.
5. Installing rip rap to existing seawall structures to maintain integrity of structures.
6. Roof repair and maintenance that does not significantly alter the historic material or character of historic buildings.
7. Façade repair and maintenance that does not significantly alter the historic material or character of historic buildings.

8. Building and deck repair and maintenance that does not significantly alter the historic material or character of historic buildings or pier decks.
9. Interior alterations that do not impact character defining features of the resource including but not limited to installation or upgrade of utilities, rest rooms, and tenant improvements.
10. Security Projects: Installing security fencing, cameras, lighting and alarms to address Home Land Security and waterfront security needs.
11. American Disabilities Act (ADA) projects: installing railings and posts, adding curb ramps and accessible ramps, altering bathrooms, doors, stairs and public improvements to meet with ADA safety codes.
12. Seismic upgrade of pier and bulkhead wharf substructures that is consistent with the Port's Historic Preservation Review Guidelines.

These activities are exempted from environmental review under Categorical Exemption Class 1(d): "*Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood.* . . . This class includes maintenance and repair of pier aprons, piers, boat ramps and other pile-supported structures in areas that are not environmentally sensitive." The above Port projects would not result in permanent effects on the environment and would have negligible and no permanent effect on the environment and would therefore be exempt under Section 15301(d), or Class 1(d).

### *Encroachment Permits*

Below is a description of the types of encroachment projects that the Port proposes to have covered by this proposed Categorical Exemption. Encroachment permits are routinely required by the Port for the following types of work:

- Directional and temporary/seasonal signage.
- Installation, alteration and repair of utilities including utility lines, poles and street lights.
- Temporary parking of vehicles and equipment (i.e. generators and scaffolding).
- Temporary and permanent installation of testing/monitoring equipment.
- Sampling/testing related to soil and ground water contamination, as well as geo-technical investigations.
- Boring, drilling, trenching and installation of monitoring wells for investigative purposes.
- Maintenance and repair of streets and sidewalks.
- Alterations required to meet ADA and public safety requirements.
- Installation of ceremonial monuments and temporary public art.
- Temporary placement and use of scaffolding and equipment to carry out work on adjacent structures.

California Environmental Quality Act (CEQA) State Guidelines Section 15305, Class 5, provides an exemption from environmental review for Categorical Exemption Class 5(b): "Minor Alterations in Land Use Limitations, Issuance of Minor Encroachment Permits". The above Port projects would not result in permanent effects on the environment and would have negligible and no permanent effect on the environment and would therefore be exempt under Section 15305(b), or Class 5(b).

The Port's Historic Preservation Technical Specialist would review all building and encroachment permits to determine whether the particular property, site, or waterfront feature is historic, or potentially eligible. In cases where it has been determined that there is a potential impact, the Port would consult with the project sponsor, to modify the proposal to eliminate or reduce the potential impact in order to comply with the Secretary of the Interior's Standards. The Historic Preservation Technical Specialist would document how the work is consistent with the Standards. This documentation may involve some or all of the following types of reviews:

- Review for consistency with the historic preservation policies in the Port's Waterfront Land Use Plan Design and Access Element, and the adopted Port Commission Policy which recognizes that projects involving listed and eligible historic resources should be implemented in accordance with the Secretary of the Interior's Standards for rehabilitation;

- Review for consistency with the Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures for projects involving pier or bulkhead wharf substructures.

Port review and evaluation would be recorded and documented for future reference. If it is infeasible to modify any Port proposal (including building permit and encroachment applications) to comply with the Standards, such proposals would not be able to rely on this or any other Categorical Exemption, project sponsors would instead be directed to apply for individual CEQA environmental evaluation from the Planning Department.

### *Information Gathering*

Below is a description of the types of information gathering projects that the Port proposes to have covered by this proposed Categorical Exemption. Information gathering permits are routinely required by the Port for the following types of work:

- Test borings.
- Soil, water, and vegetation sampling.
- Materials testing in facilities and structures.

California Environmental Quality Act (CEQA) State Guidelines Section 15306, Class 6, provides an exemption from environmental review for Categorical Exemption Class 6: "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource." The above Port projects would not result in permanent effects on the environment and would have negligible and no permanent effect on the environment and would therefore be exempt under Section 15306, or Class 6.

The Port would provide MEA with monthly reports of projects approved using this CEQA exemption for maintenance, repair, alteration, and encroachment project types listed above.

## CONCLUSION:

No new construction or other physical change, other than maintenance, repair or minor alteration of existing facilities, and encroachment permits would be involved. There would be no change or substantial intensification in the on-going activities occurring on the Port properties.

CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. There are no other unusual circumstances surrounding the current proposals that would suggest a reasonable possibility of a significant environmental effect. The Port projects would be exempt under the above-cited classifications. Therefore, it can be seen with certainty that there would be no significant environmental impacts.

June 15, 2012

Monica Pereira, Environmental Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: Monthly CEQA Exemption Report for Port Lease Agreements & Permits

Dear Ms. Pereira:
I am writing to inform your department of the anticipated Port lease agreements that will be entered into by relying on the General Rule Exclusion (GRE) category issued by Environmental Planning on February 2, 2012, effective through 2015; in addition Port Repair and Maintenance Projects, Encroachments and Special Events Permits that will be approved by relying on the Exemption from Environmental Review for these types of projects issued by Environmental Planning on March 1, 2012 effective through March 1, 2013 for the month of June 2012.

**June GRE Leases**
The Port is completing or has completed negotiations for sixteen new property agreements for the month of June 2012. This lease agreements fall within the scope of routine leasing activities on Port property with tenants that (1) continue an existing land use, (2) will not make any substantial physical changes to their leased site, and (3) will not generate a substantial intensification of the existing use through their operations. Please find below site information for these new lease agreements.

| LEASE TYPE | TENANT NAME | LOCATION | USE | SF or LF |
|---|---|---|---|---|
| **New** | **Cannon Constructors North, LLC** | **Pier 26** | **Storage** | **1,780** |
| Previous | Cincotta | Pier 26 | Storage | 1,780 |
| **New** | **Bock Wines** | **Pier 26** | **Storage** | **5,500** |
| Previous | UPS | Pier 26 | Storage | 5,500 |
| **New** | **Barulich Insurance Agency** | **Pier 29** | **Office** | **1,000** |
| Previous | John Doyle | Pier 29 | Office | 1,000 |
| **New** | **Perdido Production, Inc.** | **501 Cesar Chavez** | **Office** | **5,347** |
| Previous | For Whom Productions | 501 Cesar Chavez | Office | 5,347 |
| **New** | **China Basin Ballpark Company LLC** | **Pier 62** | **Park** | **86,029** |
| Previous | China Basin Ballpark Company LLC | Pier 62 | Park | 86,029 |
| **New** | **Novus Optimum Lab** | **Pier 26** | **Office** | **3,275** |
| Previous | Underwater Resources | Pier 26 | Office | 3,275 |
| **New** | **Golden Bear Restaurant Co.** | **Pier 64 ½** | **Restaurant Patio** | **9,143** |
| Previous | Mission Rock Restaurant | Pier 64 ½ | Restaurant<br>Patio | 7,340<br>5,347 |
| **New** | **Ship Supply** | **Piers 30-32** | **Maritime** | **421,930** |
| Previous | Imperial Parking | Piers 30-32 | Parking | 479,160 |

| LEASE TYPE | TENANT NAME | LOCATION | USE | SF or LF |
|---|---|---|---|---|
| **New** | **Ammunition** | **SWL 318** | **Office** | **9,652** |
| Previous | Jones and Stokes | SWL 318 | Office | 7,477 |
| Previous | UASI | SWL 318 | Office | 2,175 |
| **New** | **Barulich Insurance Agency** | **Pier 29** | **Office** | **1,000** |
| Previous | John Doyle | Pier 29 | Office | 1,000 |
| **New** | **Marcus Clark** | **Pier 80** | **Office & Storage** | **1,544** |
| Previous | HBO | Pier 80 | Office & Storage | 2,684 |
| **New** | **IDEO, LLC** | **Pier 26 ½** | **Office** | **7,467** |
| Previous | City Building | Pier 26 1/2 | Office | 7,467 |
| **New** | **Rebuilding Together San Francisco** | **Pier 28** | **Storage** | **1,336** |
| Previous | Shell Cellar | Pier 28 | Storage | 1,324 |
| **Renewal** | **Rebuilding Together San Francisco** | **Pier 28** | **Storage** | **2,904** |
| **Cell Agreement** | **New Cingular Wireless** | **Pier 50** | **Cell Antenna** | **N/A** |
| **MOU** | **San Francisco Police Dept.** | **Hyde Street Pier** | **Office & Maritime** | **3495** |

**June Special Events Exemptions**
These activities are determined to be categorically exempt under State CEQA Guidelines Section 15304(e) or Class 4(e) and Section 15311(c) or Class 11(c)

| Location | Name/Sponsor | Date & Duration | Attendees | Event Type |
|---|---|---|---|---|
| Pier 39 | 75th Anniversary of the Golden Gate Bridge at Pier 39/Pier 39 | 5/27/12<br>2 pm - 9:30 pm | 3,000 | Temporary Improvements |
| The Embarcadero | Walk with Us to Cure Lupus/Alliance for Lupus Research | 9/22/12<br>9 am – 12 pm | 400 | Temporary Improvements |
| Pier 7 | Film Shoot/HH Production Co. | 5/22/12<br>7 pm – 9 pm | 100 | Temporary Improvements |
| Indiana & Islais Creek | Superhero Street Fair | 9/22/12<br>2 pm – 2 am | 1,500 | Temporary Improvements |
| Pier 39 | 4th of July | 7/4/12 | 3,000 | Temporary Improvements |
| AT&T | Private Concert | 6/16/12 | 25,000 | Temporary Improvements |
| SWL 337 | Vans Warped Tour | 6/23/12 | 25,000 | Temporary Improvements |

Our intent is to provide Environmental Planning monthly reports on proposed lease agreements, basic repair and maintenance, encroachment and special event projects that the Port intends to permit before they are approved by staff or the Port Commission. We are providing this lease information to Environmental Planning pursuant to Section 31.08 (f) of Chapter 31 of the Administrative Code, which provides for posting and noticing of General Rule Exclusions. We are providing this basic repair and maintenance, encroachment and special event project information in accordance with the conditions of the Port Exemption from Environmental Review issued for these types of projects.

Please do not hesitate to contact me at (415) 274-0264, if you have any questions regarding these projects, or if you require any additional information. Thank you for your assistance.

Sincerely,

Kanya T. Dorland, Planner

PORT OF SAN FRANCISCO

TEL 415 274 0400 | TTY 415 274 0587 | ADDRESS Pier 1

FAX 415 274 0528 | WEB sfport.com | San Francisco, CA 94111

**MEMORANDUM**

July 3, 2013

**TO:** MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

**FROM:** Monique Moyer
Executive Director

**SUBJECT:** Request approval of Retail Lease No. L-15255 between the Port of San Francisco and East Street San Francisco, a Limited Liability Company for a term of fifteen (15) years, with one (1) five-year renewal option for the development and the operation of the restaurant site located at 295 Terry François Boulevard, subject to the Board of Supervisors' approval

**DIRECTOR'S RECOMMENDATION**: Approve Attached Resolution

**Executive Summary**
Port staff is requesting approval of a lease with East Street San Francisco, LLC ("ESSF") for the restaurant site located at 295 Terry François Boulevard, subject to the Board of Supervisors' approval.

**Background**
On August 14, 2012, Port staff requested and received authorization from the Port Commission (Resolution No. 12-63) to issue a Request for Proposal ("RFP") for a restaurant operator for the development and operation of the restaurant site located at 295 Terry François Boulevard, formerly known as Jelly's, a Dance Café.

The Port solicited proposals from qualified restaurant operators ("Respondents") for the design and renovation of the existing building and operation of a new restaurant at the site located near Pier 48.

The Port's objective is to select the most qualified Respondent that has the demonstrated ability to finance, design, construct, and operate a restaurant on the site, with the goal of negotiating a lease and related documents for the development and lease of the site.

Negotiations with the most qualified Respondent failed and at the direction of the Port Commission, staff began negotiations with the second most qualified Respondent, ESSF.

The principles of ESSF are the developers of Hidive Restaurant located at Pier 28½. Hidive has been a top tier performing revenue generating Port restaurant. It currently pays the second highest total rent per square foot of $67.81 and the highest amongst Port property restaurants. Hidive has been a tenant since 2002 and is a tenant in good standing.

**LEASE PROPOSAL**

Port staff and ESSF have mutually agreed on acceptable terms and conditions for Lease L-15255. The Lease provides for a term of fifteen years with one five-year extension option at the tenant's option (providing they are a tenant in good standing). The premise comprises 3,389 square feet of interior space, and 6,824 square feet of exterior space. The Lease includes an initial minimum base rent of $10,011.81 per month (or $2.33 per square foot per month) for the interior space and $0.31 per square foot per month for the exterior space (increased annually by 3%) or 7% of all gross sales, whichever amount is greater. At the exercise of the renewal option, the minimum base rent will be adjusted by the greater amount of either 3% or the average of the three prior years' gross revenues, multiplied by the percentage rent of 7% then multiplied by 85% and divided by 12 months. This is a standard industry methodology for determining base rent for retail leases.

ESSF is making a significant capital investment into Port property. The total required project cost is $2 million and includes base building core and shell and tenant improvements. The Lease provides for a nine (9) month construction period in which no rent is paid plus a maximum rent credit amount of $380,000 for base building core and shell upgrades only.

In general, core and shell improvements consist of the base building envelope and building level systems. Tenant improvements in general are alterations made to rental premises in order to customize it for the specific needs of a tenant such as painting, installing partitions, changing the flooring, putting in customized light fixtures and so on. Typically, these improvements increase the value and the marketability of rental space.

The project includes a general renovation and upgrade of the entire premises. Specifically, installation of new electrical service, plumbing upgrades, installation of new mechanical systems, seismic bracing upgrades, life safety upgrades such as a fire suppression sprinkler system, and accessibility improvements required by the Americans with Disabilities Act ("ADA") improvements will also include installation of an elevator lift, accessible bathrooms on the first and second floors, accessible paths of travel, accessible counter and bar heights, and construction of ground level and second floor outdoor dining areas.

The Lease includes Rules and Regulations for Restaurants, which includes among other guidelines the management of fats, oils and grease that could enter the City's sewer system ("FOG Program"). The FOG Program is a City-based program aimed at

the elimination of fats, oil, and grease being introduced into the City's combined sewer system.

The FOG Program requires ESSF to adopt Best Management Practices to control the introduction of fats, oils, and grease into the City's Sewer System. By controlling the introduction of these substances into the sewer system, the Port can realize savings by minimizing maintenance expenditures to address down-stream sewer issues that are the responsibility of the Port.

## ANALYSIS

The Lease requires ESSF to invest a minimum of $2 million in base building core and shell, all of which benefit the Port and will remain with the facility. ESSF's gross investment is $590 per square foot. The rent abatement period and tenant improvement credits represent a maximum credit of $138 per square foot. The net capital investment into Port property is $452 per square foot or $1.53 million in direct capital investment into Port property.

Under the proposed Lease, the monthly rent is the greater amount of either the minimum base rent of $10,011.81 or 7% of all gross sales. ESSF estimates its first year sales to be approximately $2.4 million. The total rent paid to the Port in the first year of operation is anticipated to be $168,000 annualized which is $14,000 per month or $49.57 per square foot annualized. The average range for similarly-sized Port restaurants is from $21 to $38 per square foot per year.

Over the term of the Lease, Port staff anticipates a direct and corresponding increase in ESSF sales as a result of its investment in the premises which is described in detail below. First, by integrating the first and second floors, ESSF will create a more unified restaurant operation and better utilization of space. Secondly, by creating a more inviting restaurant atmosphere, ESSF will provide an enhanced dining and entertainment experience for its customers. The Port believes that all improvements will enhance sales and therefore revenue to the Port.

### Restaurant Concept

San Francisco Architectural firms The Design Partnership and IS Architects designed a conceptual restaurant project which won the America Institute of Architects green award in 2013. This project is the model that the design of the 295 Terry Francois restaurant is based on. This restaurant will be the first stand-alone LEED-CI restaurant on Port property. The focus will be on creating meaningfully sustainable space that engages the public and supports ESSF's focus on Green building. The restaurant space will be sustainably focused and will further enhance the building, the neighborhood and the experience of diners. With a menu focused on causal sustainably and seasonally harvested food and beverages, within a space designed to highlight this philosophy, the restaurant both broadens and intensifies the customers' understanding of sustainable strategies.

**LEASE TERMS - SUMMARY**

| | |
|---|---|
| ***Tenant:*** | East Street San Francisco, LLC |
| ***Lease Number:*** | L-15255 |
| ***Premises:*** | Approximately 3,389 square feet of interior space and approximately 6,824 square feet of exterior space. |
| ***Term:*** | 15 years |
| ***Term Extension Option:*** | One 60 month term extension option |
| ***Lease Commencement Date:*** | Anticipated by October 1, 2013. |
| ***Rent Commencement Date:*** | Anticipated June 1, 2014. |
| ***Lease Expiration Date:*** | Anticipated September 30, 2028 unless extended by option |
| ***Initial Monthly Rent:*** | $10,011.81 |
| ***Percentage Rent*** | 7% of all gross revenue |
| ***Rent Adjustment*** | 3% increase on each anniversary of the Rent Commencement Date. |
| ***Use:*** | Development and operation of casual dining restaurant to include alcohol service and entertainment. |
| ***Tenant Improvements:*** | No less than $2 million of core and shell and tenant improvements |
| ***Rent Abatement Period:*** | 270 days (9 months) |
| ***Rent Credit:*** | Tenant shall receive a maximum rent credit in the amount of $380,000 that may be deducted from the monthly rent at a rate of 75% starting in the later of month 9 or the date Port issues a certificate of completion for the Improvements until expiration of the term. Rent credit is only for base building core and shell improvements and contingent on the completion of the improvements. |
| ***Maintenance and Repairs:*** | Tenant's sole responsibility |
| ***Security Deposit:*** | Tenant shall provide a Security Deposit equal to two (2) month's Base Rent due in the last year of Lease. |
| ***As Is:*** | The Premises shall be accepted in its "As Is" condition. |
| ***Insurance:*** | Tenant shall provide standard insurance coverage acceptable to Port and City Risk Manager. |

| | |
|---|---|
| ***City Requirements:*** | The lease includes provisions requiring Tenant to comply with all applicable City laws, including but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws. |

**STAFF RECOMMENDATION**

Port staff recommends that the Port Commission approve the attached Resolution authorizing approval of Lease No. L-15255 with East Street San Francisco, LLC for the development and operation of the restaurant site located at 295 Terry François Boulevard on such terms and conditions as are described in this staff report, subject to the Board of Supervisors' approval.

Prepared by: Jeffrey A. Bauer, Senior Commercial Leasing Manager

For: Susan Reynolds, Deputy Director, Real Estate

Attachment A: Site Map

**PORT COMMISSION**
**CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 13-27**

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, pursuant to Port Commission Resolution No. 93-52 as amended by Resolution No. 11-15 in March 2011 (the Retail Leasing Policy), it is the policy of the Port Commission to competitively bid retail leasing opportunities; and

WHEREAS, on August 15, 2012, the Port issued a Request for Proposals ("RFP") (Port Commission Resolution No. 12-63), for a restaurant site located at 295 Terry François Boulevard for the development and operation of a restaurant at the site; and

WHEREAS, on the basis of certain selection criteria to evaluate each proposal including, as a result of the review, scoring, and interview of the Respondents and their proposals, the Port Commission authorized negotiations with East Street, San Francisco, LLC ("ESSF") by Port Commission Resolution No. 12-95; and

WHEREAS, Port staff and ESSF have mutually agreed on terms and conditions described in the staff report for a fifteen year retail lease with one-five year extension option for the development and the operation of the restaurant site located at 295 Terry François Boulevard, subject to the Board of Supervisors' approval; and

WHEREAS, the Lease requires ESSF to make a capital investment for base building core and shell and tenant improvements in the amount of $2 million; the Lease further provides for a 270 day (9 months) rent abatement period for the purpose of constructing such improvements and a maximum rent credit in the amount $380,000; and

WHEREAS, the permitted use will be a continuation of the existing and related uses and is therefore covered under the General Rule Exclusion pursuant to the California Environmental Quality Act; now, therefore be it

RESOLVED, that the Port Commission approves, subject to Board of Supervisors' approval, the Lease and authorizes the Executive Director or her designee to forward the Lease to the Board of Supervisors (the "Board") for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease, and any such amendments thereto.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2013.***

_____
Secretary

**MEMORANDUM**

July 3, 2013

**TO:** MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

**FROM:** Monique Moyer
Executive Director

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The Port solicited proposals from qualified restaurant operators ("Respondents") for the design and renovation of the existing building and operation of a new restaurant at the site located near Pier 48.

The Port's objective is to select the most qualified Respondent that has the demonstrated ability to finance, design, construct, and operate a restaurant on the site, with the goal of negotiating a lease and related documents for the development and lease of the site.

Negotiations with the most qualified Respondent failed and at the direction of the Port Commission, staff began negotiations with the second most qualified Respondent, ESSF.

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The project includes a general renovation and upgrade of the entire premises. Specifically, installation of new electrical service, plumbing upgrades, installation of new mechanical systems, seismic bracing upgrades, life safety upgrades such as a fire suppression sprinkler system, and accessibility improvements required by the Americans with Disabilities Act ("ADA") improvements will also include installation of an elevator lift, accessible bathrooms on the first and second floors, accessible paths of travel, accessible counter and bar heights, and construction of ground level and second floor outdoor dining areas.

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Under the proposed Lease, the monthly rent is the greater amount of either the minimum base rent of $10,011.81 or 7% of all gross sales. ESSF estimates its first year sales to be approximately $2.4 million. The total rent paid to the Port in the first year of operation is anticipated to be $168,000 annualized which is $14,000 per month or $49.57 per square foot annualized. The average range for similarly-sized Port restaurants is from $21 to $38 per square foot per year.

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## LEASE TERMS - SUMMARY

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| ***Tenant Improvements:*** | No less than $2 million of core and shell and tenant improvements |
| ***Rent Abatement Period:*** | 270 days (9 months) |
| ***Rent Credit:*** | Tenant shall receive a maximum rent credit in the amount of $380,000 that may be deducted from the monthly rent at a rate of 75% starting in the later of month 9 or the date Port issues a certificate of completion for the Improvements until expiration of the term. Rent credit is only for base building core and shell improvements and contingent on the completion of the improvements. |
| ***Maintenance and Repairs:*** | Tenant's sole responsibility |
| ***Security Deposit:*** | Tenant shall provide a Security Deposit equal to two (2) month's Base Rent due in the last year of Lease. |
| ***As Is:*** | The Premises shall be accepted in its "As Is" condition. |
| ***Insurance:*** | Tenant shall provide standard insurance coverage acceptable to Port and City Risk Manager. |

| | |
|---|---|
| ***City Requirements:*** | The lease includes provisions requiring Tenant to comply with all applicable City laws, including but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws. |

**STAFF RECOMMENDATION**

Port staff recommends that the Port Commission approve the attached Resolution authorizing approval of Lease No. L-15255 with East Street San Francisco, LLC for the development and operation of the restaurant site located at 295 Terry François Boulevard on such terms and conditions as are described in this staff report, subject to the Board of Supervisors' approval.

Prepared by: Jeffrey A. Bauer, Senior Commercial Leasing Manager

For: Susan Reynolds, Deputy Director, Real Estate

Attachment A: Site Map

**PORT COMMISSION**
**CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 13-27**

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, pursuant to Port Commission Resolution No. 93-52 as amended by Resolution No. 11-15 in March 2011 (the Retail Leasing Policy), it is the policy of the Port Commission to competitively bid retail leasing opportunities; and

WHEREAS, on August 15, 2012, the Port issued a Request for Proposals ("RFP") (Port Commission Resolution No. 12-63), for a restaurant site located at 295 Terry François Boulevard for the development and operation of a restaurant at the site; and

WHEREAS, on the basis of certain selection criteria to evaluate each proposal including, as a result of the review, scoring, and interview of the Respondents and their proposals, the Port Commission authorized negotiations with East Street, San Francisco, LLC ("ESSF") by Port Commission Resolution No. 12-95; and

WHEREAS, Port staff and ESSF have mutually agreed on terms and conditions described in the staff report for a fifteen year retail lease with one-five year extension option for the development and the operation of the restaurant site located at 295 Terry François Boulevard, subject to the Board of Supervisors' approval; and

WHEREAS, the Lease requires ESSF to make a capital investment for base building core and shell and tenant improvements in the amount of $2 million; the Lease further provides for a 270 day (9 months) rent abatement period for the purpose of constructing such improvements and a maximum rent credit in the amount $380,000; and

WHEREAS, the permitted use will be a continuation of the existing and related uses and is therefore covered under the General Rule Exclusion pursuant to the California Environmental Quality Act; now, therefore be it

RESOLVED, that the Port Commission approves, subject to Board of Supervisors' approval, the Lease and authorizes the Executive Director or her designee to forward the Lease to the Board of Supervisors (the "Board") for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease, and any such amendments thereto.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2013.***

_____

Secretary

**MEMORANDUM**

August 9, 2012

**TO:** MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz

**FROM:** Monique Moyer
Executive Director

**SUBJECT:** Request authorization to Issue Request for Proposal for a Restaurant Opportunity Site located at 295 Terry Francois Boulevard, near Pier 48

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution

## BACKGROUND

The restaurant site located at 295 Terry Francois Boulevard, formerly known as "Jelly's-a Dance Café", is a free standing two story building consisting of approximately 3,387 square feet of interior space and approximately 8,525 of exterior space [see Exhibit A (the "Restaurant")]. The building was most recently operated as a restaurant by Corzac, Inc. doing business as Jelly's-a Dance Cafe under Port Lease No. L-11792. The lease was terminated on November 7, 2011.

Under the Port Commission Retail Leasing Policy, vacant retail leasing opportunities must be offered through the competitive public solicitation process unless impractical or impossible. Additionally, pursuant to the San Francisco Charter Section 9.118, any lease with a term of ten or more years, or any lease having anticipated revenue to the Port of one million dollars or more requires approval by the Board of Supervisors.

In compliance with these policies, Port staff proposes to issue a Request for Proposals (the "RFP") from qualified restaurant operators for the design and renovation of the existing building and operation of a new restaurant at 295 Terry Francois Boulevard. Selection of a restaurant operator and approval of the required lease will be subject to future Port Commission action, as well as Board of Supervisors' approval if necessary.

**THIS PRINT COVERS CALENDAR ITEM NO. 12B**

## PROJECT OBJECTIVES

The re-development of the Restaurant should address the following objectives:

1. Provide a high quality casual dining restaurant with on-premises dining to serve the southern waterfront community and the larger San Francisco and Bay Area community.

2. Encourage participation by Local Business Enterprises ("LBEs") in the RFP process.

3. Provide for a physical renovation of a currently vacant facility.

4. Maximize Port revenue from the site.

5. Provide a project consistent with the policies, standards and design criteria in the Waterfront Plan.

## PROPOSED RENT AND KEY LEASE TERMS

The actual terms of the lease will be negotiated by Port Staff and will be subject to final approval by the Port Commission and, possibly, the San Francisco Board of Supervisors.

**Base Rent**
A minimum base monthly rental rate will not be set in the RFP. Instead, the Port will require Respondents to propose a monthly base rate that is comparable to or exceeds market rates for similarly situated restaurants on the San Francisco waterfront of comparable class, size and use. Periodic adjustments of base rent must also be proposed comparable to market rates for similarly situated restaurants on the San Francisco waterfront of comparable class, size and use.

**Percentage Rent**
Proposals must also include a Percentage Rent payable to the Port on gross receipts for food, beverages and merchandise. The percentage rent rate should be comparable or exceed market rates for similarly situated restaurants on the San Francisco waterfront of comparable class, size and use, with a minimum rate of 7% of gross receipts for on-premises sites of food, beverages and merchandise.

The higher of the Base Rent or the Percentage Rent would be payable to the Port on a monthly basis. In any month in which the Percentage Rent does not exceed the Base Rent, only the Base Rent would be payable to the Port.

**Permitted Use**
Full service moderately priced casual dining restaurant.

**Prohibited Uses**
Night Club or entertainment venue use or any activity that requires an After Hours Permit from the San Francisco Police Department.

**Term**
The initial term of the lease should not exceed 15 years. Respondents may propose a term extension option(s).

**Deposit**
Respondents will be required to submit an earnest money deposit of Twenty Thousand Dollars ($20,000) along with responses to the RFP. The deposit of the successful Respondent, if any, will become non-refundable upon entering into exclusive negotiations.

**Sale/Transfer/Refinancing**
The Port expects to participate in the proceeds that the tenant receives from the subsequent sale, transfer or refinancing of the leasehold.

**Performance and Construction Guarantees**
The proposed lease will include standard tenant performance and construction completion guarantees.

**Restaurants Rules and Regulations**
Lease will include standard Port language that sets forth parameters within which the Tenant operates including for example, noise, and hours of operation.

**Maintenance/Repairs**
During the term of the lease, the tenant shall be responsible for all improvements, maintenance, repairs and operating expenses associated with the Restaurant, including any non-exclusive areas.

## SELECTION

Port staff would issue an RFP package consistent with standards set by prior Port RFPs. The package would include a site map, a narrative description of the opportunity, environs, site, Port development objectives, design review and other required regulatory approvals, lease parameters, selection criteria, process and schedule and submittal requirements.

Proposals submitted to the Port would be analyzed to select the most qualified respondent. Selection criteria would include: the experience and reputation of the respondent, the quality of the development concept, the financial viability of the proposal, economic return to the Port and the respondent's demonstrated ability to finance, design, construct and operate a restaurant at the proposed site.

Port staff would then return to the Port Commission to present the selection results and seek approval of the selected respondent. Following Port Commission approval, Port staff would then enter into a 60-day direct negotiation period (subject to extension by Port) with the goal of completing a lease with the selected respondent utilizing the Port's standard lease format. Port staff would next return to the Port Commission and seek approval of the completed lease, subject to Board of Supervisors' approval if necessary.

The earnest money deposits will be returned to the respondents not selected.

## LOCAL BUSINESS ENTERPRISE PARTICIPATION

The Port of San Francisco encourages the participation of Local Business Enterprises ("LBEs") in the RFP process. Port staff will conduct outreach to LBEs through the Port's Website, City's Human Rights Commission, print advertisement, and targeted mailings.

## PROJECTED RFP SCHEDULE

| | |
|---|---|
| Port Commission Authorization to Issue RFP: | August 14, 2012 |
| Issue RFP: | August 15, 2012 |
| Site Tour for prospective Bidders: | August 30, 2012 |
| Submittal Deadline: | September 26, 2012 |
| Selection of respondents: | October, 2012 |
| Port Commission Approval of respondent (est.): | October/November, 2012 |
| Port Commission Approval of lease (est.): | November/December, 2012 |
| Board of Supervisors Approval of Lease (est.): | January 2013 |

## PORT COMMISSION AND BOARD OF SUPERVISORS APPROVAL

The final lease will be presented to the Port Commission for approval and depending on the term or projected revenue it may also be presented to the Board of Supervisors of the City and County of San Francisco for approval.

## RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing staff to prepare and offer, through the RFP process, a lease for the renovation and operation of a restaurant located at 295 Terry Francois Boulevard.

Prepared by: Jeffrey A. Bauer, Senior Leasing Manager
Elsa Lamb, Commercial Property Manager

For: Susan Reynolds, Director of Real Estate

**PORT COMMISSION**
**CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 12-63**

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control lands within Port jurisdiction; and

WHEREAS, the Port owns an approximately 3,387 square foot restaurant building located at 295 Terry Francois Boulevard formerly known as "Jelly's- a Dance Café" (the "Restaurant"); and

WHEREAS, the Restaurant is currently vacant and in need of renovation; and

WHEREAS, there is demand for a waterfront restaurant in the vicinity of the Restaurant to serve the central waterfront community and the larger San Francisco and Bay Area community; and

WHEREAS, Port Commission policy requires competitive bidding for retail opportunities unless impractical or impossible; and

WHEREAS, the Port Commission now wishes to proceed with the renovation and lease of the Restaurant; therefore, be it

RESOLVED, that the Port Commission authorizes staff to offer the opportunity for the renovation, lease and operation of the restaurant facility located at 295 Terry Francois Boulevard formerly known as Jelly's- a Dance Cafe; through a request for proposals (the "RFP") process consistent with Port and industry standards including the terms set forth in the Memorandum to the Port Commission dated August 9, 2012 a copy of which is on file with the Port Commission Secretary.

***I hereby certify that the Port Commission at its meeting of August 14, 2012 adopted the foregoing Resolution.***

_____
Secretary

# SAN FRANCISCO
# PLANNING DEPARTMENT

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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**415.558.6378**

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August 6, 2013

The Honorable Mayor Edwin M. Lee
City and County of San Francisco
City Hall, Room 200
Ms. Angela Calvillo, Clerk
Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re:** **Transmittal of Planning Department Case Number 2013.0859T**
**Frequency of the Controller's Development Impact Fee Report**
**Board File No. 130549**
**Planning Commission Recommendation:** ***Approval***

Dear Mayor Lee and Ms. Calvillo,

On August 1, 2013, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meeting to consider the proposed Ordinance, introduced by Mayor Lee that would amend the Planning Code to modify when the City Controller is required to issue the Development Impact Fee Report. At the hearing, the Planning Commission recommended approval.

The proposed amendment to the Planning Code was found to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

AnMarie Rodgers
Manager of Legislative Affairs

cc:
Jason Elliott, Director of Legislative and Government Affairs, Mayor's Office
Thomas J. Owen, Deputy City Attorney, City Attorney's Office
Alisa Miller, Assistant Clerk, Office of the Clerk of the Board

Attachments
Planning Commission Resolution No. 18935
Planning Department Executive Summary

PORT OF SAN FRANCISCO

# MEMORANDUM

July 3, 2013

**TO:** MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

**FROM:** Monique Moyer
Executive Director

**SUBJECT:** Request approval of Retail Lease No. L-15255 between the Port of San Francisco and East Street San Francisco, a Limited Liability Company for a term of fifteen (15) years, with one (1) five-year renewal option for the development and the operation of the restaurant site located at 295 Terry François Boulevard, subject to the Board of Supervisors' approval

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution

## Executive Summary

Port staff is requesting approval of a lease with East Street San Francisco, LLC ("ESSF") for the restaurant site located at 295 Terry François Boulevard, subject to the Board of Supervisors' approval.

## Background

On August 14, 2012, Port staff requested and received authorization from the Port Commission (Resolution No. 12-63) to issue a Request for Proposal ("RFP") for a restaurant operator for the development and operation of the restaurant site located at 295 Terry François Boulevard, formerly known as Jelly's, a Dance Café.

The Port solicited proposals from qualified restaurant operators ("Respondents") for the design and renovation of the existing building and operation of a new restaurant at the site located near Pier 48.

The Port's objective is to select the most qualified Respondent that has the demonstrated ability to finance, design, construct, and operate a restaurant on the site, with the goal of negotiating a lease and related documents for the development and lease of the site.

**THIS PRINT COVERS CALENDAR ITEM NO. 12A**

Negotiations with the most qualified Respondent failed and at the direction of the Port Commission, staff began negotiations with the second most qualified Respondent, ESSF.

The principles of ESSF are the developers of Hidive Restaurant located at Pier 28½. Hidive has been a top tier performing revenue generating Port restaurant. It currently pays the second highest total rent per square foot of $67.81 and the highest amongst Port property restaurants. Hidive has been a tenant since 2002 and is a tenant in good standing.

**LEASE PROPOSAL**

Port staff and ESSF have mutually agreed on acceptable terms and conditions for Lease L-15255. The Lease provides for a term of fifteen years with one five-year extension option at the tenant's option (providing they are a tenant in good standing). The premise comprises 3,389 square feet of interior space, and 6,824 square feet of exterior space. The Lease includes an initial minimum base rent of $10,011.81 per month (or $2.33 per square foot per month) for the interior space and $0.31 per square foot per month for the exterior space (increased annually by 3%) or 7% of all gross sales, whichever amount is greater. At the exercise of the renewal option, the minimum base rent will be adjusted by the greater amount of either 3% or the average of the three prior years' gross revenues, multiplied by the percentage rent of 7% then multiplied by 85% and divided by 12 months. This is a standard industry methodology for determining base rent for retail leases.

ESSF is making a significant capital investment into Port property. The total required project cost is $2 million and includes base building core and shell and tenant improvements. The Lease provides for a nine (9) month construction period in which no rent is paid plus a maximum rent credit amount of $380,000 for base building core and shell upgrades only.

In general, core and shell improvements consist of the base building envelope and building level systems. Tenant improvements in general are alterations made to rental premises in order to customize it for the specific needs of a tenant such as painting, installing partitions, changing the flooring, putting in customized light fixtures and so on. Typically, these improvements increase the value and the marketability of rental space.

The project includes a general renovation and upgrade of the entire premises. Specifically, installation of new electrical service, plumbing upgrades, installation of new mechanical systems, seismic bracing upgrades, life safety upgrades such as a fire suppression sprinkler system, and accessibility improvements required by the Americans with Disabilities Act ("ADA") improvements will also include installation of an elevator lift, accessible bathrooms on the first and second floors, accessible paths of travel, accessible counter and bar heights, and construction of ground level and second floor outdoor dining areas.

The Lease includes Rules and Regulations for Restaurants, which includes among other guidelines the management of fats, oils and grease that could enter the City's sewer system ("FOG Program"). The FOG Program is a City-based program aimed at

the elimination of fats, oil, and grease being introduced into the City's combined sewer system.

The FOG Program requires ESSF to adopt Best Management Practices to control the introduction of fats, oils, and grease into the City's Sewer System. By controlling the introduction of these substances into the sewer system, the Port can realize savings by minimizing maintenance expenditures to address down-stream sewer issues that are the responsibility of the Port.

## ANALYSIS

The Lease requires ESSF to invest a minimum of $2 million in base building core and shell, all of which benefit the Port and will remain with the facility. ESSF's gross investment is $590 per square foot. The rent abatement period and tenant improvement credits represent a maximum credit of $138 per square foot. The net capital investment into Port property is $452 per square foot or $1.53 million in direct capital investment into Port property.

Under the proposed Lease, the monthly rent is the greater amount of either the minimum base rent of $10,011.81 or 7% of all gross sales. ESSF estimates its first year sales to be approximately $2.4 million. The total rent paid to the Port in the first year of operation is anticipated to be $168,000 annualized which is $14,000 per month or $49.57 per square foot annualized. The average range for similarly-sized Port restaurants is from $21 to $38 per square foot per year.

Over the term of the Lease, Port staff anticipates a direct and corresponding increase in ESSF sales as a result of its investment in the premises which is described in detail below. First, by integrating the first and second floors, ESSF will create a more unified restaurant operation and better utilization of space. Secondly, by creating a more inviting restaurant atmosphere, ESSF will provide an enhanced dining and entertainment experience for its customers. The Port believes that all improvements will enhance sales and therefore revenue to the Port.

### Restaurant Concept

San Francisco Architectural firms The Design Partnership and IS Architects designed a conceptual restaurant project which won the America Institute of Architects green award in 2013. This project is the model that the design of the 295 Terry Francois restaurant is based on. This restaurant will be the first stand-alone LEED-CI restaurant on Port property. The focus will be on creating meaningfully sustainable space that engages the public and supports ESSF's focus on Green building. The restaurant space will be sustainably focused and will further enhance the building, the neighborhood and the experience of diners. With a menu focused on causal sustainably and seasonally harvested food and beverages, within a space designed to highlight this philosophy, the restaurant both broadens and intensifies the customers' understanding of sustainable strategies.

## LEASE TERMS - SUMMARY

| | |
|---|---|
| ***Tenant:*** | East Street San Francisco, LLC |
| ***Lease Number:*** | L-15255 |
| ***Premises:*** | Approximately 3,389 square feet of interior space and approximately 6,824 square feet of exterior space. |
| ***Term:*** | 15 years |
| ***Term Extension Option:*** | One 60 month term extension option |
| ***Lease Commencement Date:*** | Anticipated by October 1, 2013. |
| ***Rent Commencement Date:*** | Anticipated June 1, 2014. |
| ***Lease Expiration Date:*** | Anticipated September 30, 2028 unless extended by option |
| ***Initial Monthly Rent:*** | $10,011.81 |
| ***Percentage Rent*** | 7% of all gross revenue |
| ***Rent Adjustment*** | 3% increase on each anniversary of the Rent Commencement Date. |
| ***Use:*** | Development and operation of casual dining restaurant to include alcohol service and entertainment. |
| ***Tenant Improvements:*** | No less than $2 million of core and shell and tenant improvements |
| ***Rent Abatement Period:*** | 270 days (9 months) |
| ***Rent Credit:*** | Tenant shall receive a maximum rent credit in the amount of $380,000 that may be deducted from the monthly rent at a rate of 75% starting in the later of month 9 or the date Port issues a certificate of completion for the Improvements until expiration of the term. Rent credit is only for base building core and shell improvements and contingent on the completion of the improvements. |
| ***Maintenance and Repairs:*** | Tenant's sole responsibility |
| ***Security Deposit:*** | Tenant shall provide a Security Deposit equal to two (2) month's Base Rent due in the last year of Lease. |
| ***As Is:*** | The Premises shall be accepted in its "As Is" condition. |
| ***Insurance:*** | Tenant shall provide standard insurance coverage acceptable to Port and City Risk Manager. |

| | |
|---|---|
| ***City Requirements:*** | The lease includes provisions requiring Tenant to comply with all applicable City laws, including but not limited to, Non-Discrimination, First Source Hiring, Health Benefits Coverage, Limitation on Contributions, Prevailing Wages and other applicable laws. |

**STAFF RECOMMENDATION**

Port staff recommends that the Port Commission approve the attached Resolution authorizing approval of Lease No. L-15255 with East Street San Francisco, LLC for the development and operation of the restaurant site located at 295 Terry François Boulevard on such terms and conditions as are described in this staff report, subject to the Board of Supervisors' approval.

Prepared by: Jeffrey A. Bauer, Senior Commercial Leasing Manager

For: Susan Reynolds, Deputy Director, Real Estate

Attachment A: Site Map

**PORT COMMISSION**
**CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 13-27**

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, pursuant to Port Commission Resolution No. 93-52 as amended by Resolution No. 11-15 in March 2011 (the Retail Leasing Policy), it is the policy of the Port Commission to competitively bid retail leasing opportunities; and

WHEREAS, on August 15, 2012, the Port issued a Request for Proposals ("RFP") (Port Commission Resolution No. 12-63), for a restaurant site located at 295 Terry François Boulevard for the development and operation of a restaurant at the site; and

WHEREAS, on the basis of certain selection criteria to evaluate each proposal including, as a result of the review, scoring, and interview of the Respondents and their proposals, the Port Commission authorized negotiations with East Street, San Francisco, LLC ("ESSF") by Port Commission Resolution No. 12-95; and

WHEREAS, Port staff and ESSF have mutually agreed on terms and conditions described in the staff report for a fifteen year retail lease with one-five year extension option for the development and the operation of the restaurant site located at 295 Terry François Boulevard, subject to the Board of Supervisors' approval; and

WHEREAS, the Lease requires ESSF to make a capital investment for base building core and shell and tenant improvements in the amount of $2 million; the Lease further provides for a 270 day (9 months) rent abatement period for the purpose of constructing such improvements and a maximum rent credit in the amount $380,000; and

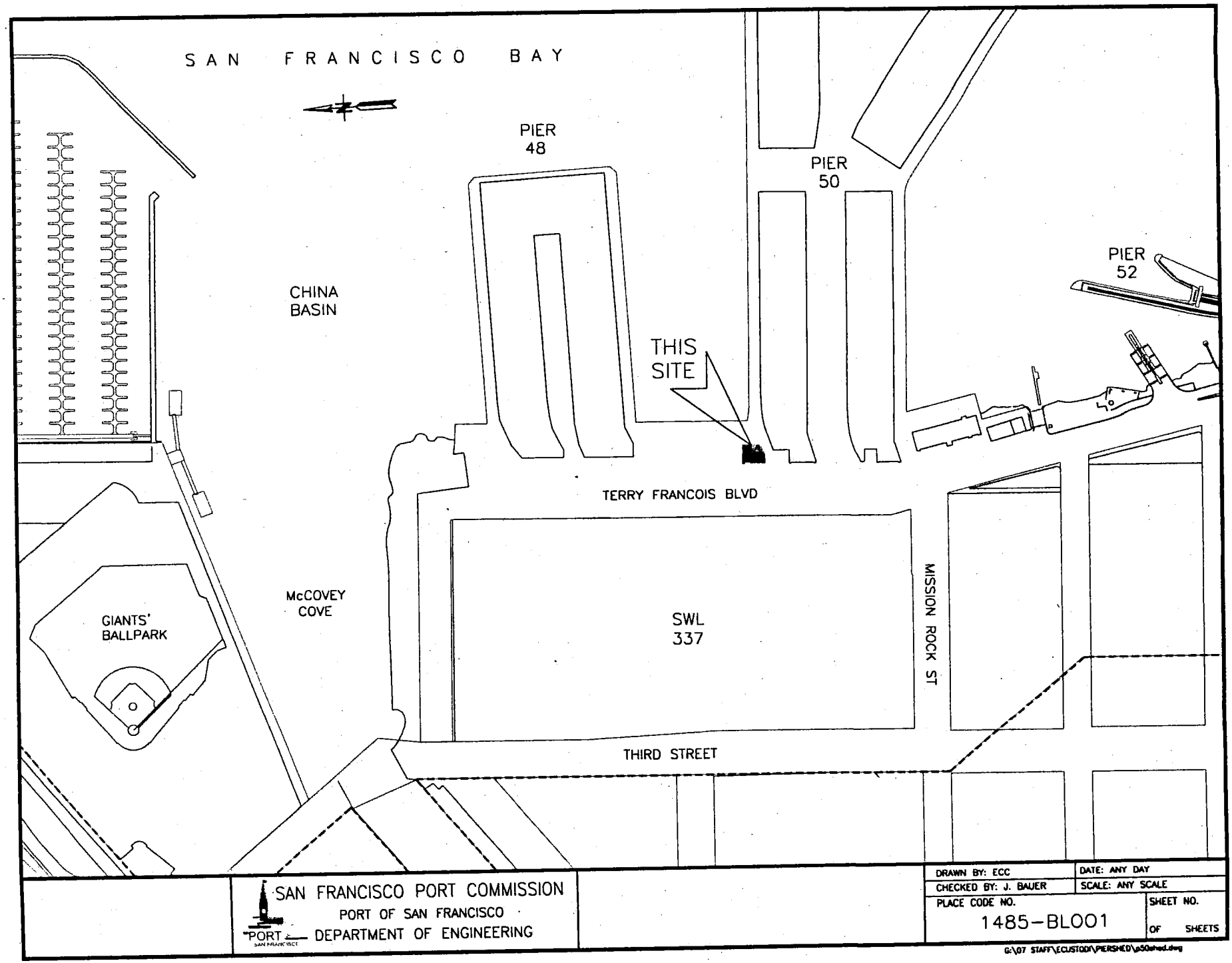
WHEREAS, the permitted use will be a continuation of the existing and related uses and is therefore covered under the General Rule Exclusion pursuant to the California Environmental Quality Act; now, therefore be it

RESOLVED, that the Port Commission approves, subject to Board of Supervisors' approval, the Lease and authorizes the Executive Director or her designee to forward the Lease to the Board of Supervisors (the "Board") for approval, pursuant to the Board's authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and, be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the Lease, and any such amendments thereto.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2013.***

Secretary




SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
PORT — DEPARTMENT OF ENGINEERING

| | |
|---|---|
| DRAWN BY: ECC | DATE: ANY DAY |
| CHECKED BY: J. BAUER | SCALE: ANY SCALE |
| PLACE CODE NO. 1485-BL001 | SHEET NO. OF SHEETS |

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ORIGINAL

PORT OF SAN FRANCISCO

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

---

# LEASE NO. L-15255

BY AND BETWEEN

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

AND

EAST STREET VENTURES, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY

295 TERRY FRANCOIS BOULEVARD

MONIQUE MOYER
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
LESLIE KATZ, COMMISSIONER
MEL MURPHY, COMMISSIONER

TABLE OF CONTENTS


Page

1. DEMISE....1
2. DEFINITIONS....1
3. PREMISES; AS-IS CONDITION....10
   - 3.1. Premises....10
   - 3.2. Accessibility Inspection Disclosure....11
   - 3.3. No Right to Encroach....11
   - 3.4. Proximity of Development Project....12
   - 3.5. America's Cup....12
   - 3.6. No Light, Air or View Easement....12
   - 3.7. Unique Nature of Premises....12
   - 3.8. As-Is Condition....13
   - 3.9. Port's Rights Regarding Premises....13
4. TERM OF LEASE; TERMINATION BY PORT....13
   - 4.1. Term....13
   - 4.2. Termination Rights....13
   - 4.3. Waiver of Relocation Benefits....14
5. RENT....14
   - 5.1. Base Rent....14
   - 5.2. Percentage Rent....15
   - 5.3. Books and Records....16
   - 5.4. No Joint Venture....16
   - 5.5. Audit....16
   - 5.6. Rent Credit for ~~Electric Upgrade~~ Core and Shell Improvements....17
   - 5.7. Manner of Payment....18
   - 5.8. Default Interest....18
   - 5.9. Late Charges/Habitual Late Payer....18
   - 5.10. Returned Checks....19
   - 5.11. Net Lease....19
   - 5.12. Additional Charges....19

6. TAXES AND ASSESSMENTS ..... 20
6.1. Payment of Taxes ..... 20
6.2. Possessory Interest Tax ..... 20
7. SECURITY DEPOSIT ..... 20
8. USE OF THE PREMISES ..... 21
8.1. Permitted Use ..... 21
8.2. Prohibited Use ..... 21
8.3. Notice of Prohibited Use Charge ..... 22
9. COMPLIANCE WITH LAWS AND REGULATIONS ..... 22
10. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS ..... 23
10.1. Port Acting as Owner of Property ..... 23
10.2. Regulatory Approvals ..... 23
10.3. Compliance with City's Risk Manager's Requirements ..... 24
11. MAINTENANCE AND REPAIRS ..... 24
11.1. Tenant Maintenance and Repair Obligations ..... 24
11.2. Substructure ..... 24
11.3. Port's Right to Inspect ..... 25
11.4. Port's Right to Repair ..... 25
11.5. Acts of Nature ..... 26
12. UTILITIES AND SERVICES ..... 26
12.1. Utilities ..... 26
12.2. Services ..... 27
12.3. On-Site Renewable Energy ..... 27
13. IMPROVEMENTS AND ALTERATIONS ..... 27
13.1. Port Consent Required ..... 27
13.2. Tenant's Obligation to Construct the Initial Tenant Improvements ..... 28
13.3. Construction Requirements ..... 28
13.4. Construction Requirements ..... 29
13.5. Improvements Part of Realty ..... 30
13.6. Removal of Improvements ..... 30
13.7. Removal of Non-Permitted Improvements ..... 30
13.8. Signs ..... 31

13.9. Port's Alterations ..... 31
14. LIENS ..... 31
15. HAZARDOUS MATERIALS ..... 31
15.1. Requirements for Handling ..... 31
15.2. Tenant Responsibility ..... 32
15.3. Tenant's Environmental Condition Notification Requirements ..... 32
15.4. Requirement to Remediate ..... 33
15.5. Port's Right to Audit ..... 34
15.6. Notification of Asbestos ..... 34
15.7. Notification of Lead ..... 34
15.8. Failure to Comply ..... 35
15.9. Survival ..... 35
15.10. Storm Water Pollution Prevention ..... 35
15.11. Presence of Hazardous Materials ..... 35
16. INSURANCE ..... 36
16.1. Required Insurance Coverage ..... 36
16.2. Claims-Made Policies ..... 38
16.3. Annual Aggregate Limits ..... 38
16.4. Payment of Premiums ..... 38
16.5. Waiver of Subrogation Rights ..... 38
16.6. General Insurance Matters ..... 38
17. DAMAGE AND DESTRUCTION ..... 39
17.1. Damage and Destruction ..... 39
17.2. Waiver ..... 40
18. EMINENT DOMAIN ..... 40
18.1. General ..... 40
18.2. Partial Takings ..... 40
18.3. Taking of the Facility ..... 41
18.4. Temporary Takings ..... 41
18.5. Award; Waiver; Termination of Lease; Rent and Award ..... 41
19. INDEMNITY AND EXCULPATION ..... 41
19.1. General Indemnity ..... 41
19.2. Hazardous Materials Indemnity ..... 41

19.3. Scope of Indemnities....42
19.4. Exculpation....42
19.5. Effect of Waivers....43
20. ASSIGNMENT AND SUBLETTING....43
20.1. Transfer to Affiliate....43
20.2. Transfer to Non-Affiliate....43
20.3. Sublease....44
20.4. Transfer Agreement Requirements....46
20.5. Transfer Audit....46
20.6. Acknowledgement....46
20.7. Transfer Definitions....47
21. DEFAULT BY TENANT....47
22. PORT'S REMEDIES....48
22.1. Tenant's Right to Possession Not Terminated....49
22.2. Termination of Tenant's Right to Possession....49
22.3. Appointment of Receiver....50
22.4. Port's Right to Cure Tenant's Default....50
22.5. Port's Options for Hazardous Materials Default....50
22.6. No Accord and Satisfaction....50
22.7. Waiver of Redemption....50
22.8. Habitual Late Payer....51
22.9. Remedies Not Exclusive....51
23. LITIGATION EXPENSES; ATTORNEYS' FEES....51
23.1. Litigation Expenses....51
23.2. Appeals....51
23.3. City Attorney....51
24. PORT'S ENTRY ON PREMISES....51
24.1. Entry for Inspection....51
24.2. General Entry....51
24.3. Emergency Entry....52
24.4. No Liability....52
24.5. Nondisturbance....52
25. SURRENDER AND QUITCLAIM....52

25.1. Surrender ..... 52
25.2. Quitclaim ..... 53
25.3. Abandoned Property ..... 53
25.4. Survival ..... 53
26. HOLDING OVER ..... 53
26.1. Terms of Holdover Tenancy ..... 53
26.2. With Consent ..... 53
26.3. Without Consent ..... 53
27. MINERAL RESERVATION ..... 54
28. CITY AND PORT REQUIREMENTS ..... 54
28.1. Nondiscrimination ..... 54
28.2. Requiring Health Benefits for Covered Employees ..... 55
28.3. First Source Hiring ..... 56
28.4. Local Business Enterprises ..... 56
28.5. Resource-Efficient Facilities and Green Building Requirements ..... 56
28.6. Prohibition of Tobacco Sales and Advertising ..... 56
28.7. Graffiti Removal ..... 57
28.8. Pesticide Prohibition ..... 57
28.9. MacBride Principles Northern Ireland ..... 57
28.10. Tropical Hardwood and Virgin Redwood Ban ..... 57
28.11. Preservative-Treated Wood Containing Arsenic ..... 58
28.12. Notification of Limitations on Contributions ..... 58
28.13. Sunshine Ordinance ..... 58
28.14. Conflicts of Interest ..... 58
28.15. Drug-Free Workplace ..... 59
28.16. Wages and Working Conditions ..... 59
28.17. Public Transit Information ..... 59
28.18. Food Service Waste Reduction Ordinance ..... 59
28.19. Employee Signature Authorization Ordinance ..... 59
28.20. Prevailing Wages for Theatrical Workers ..... 59
29. NOTICES ..... 60
30. MISCELLANEOUS PROVISIONS ..... 60
30.1. California Law ..... 60

30.2. Entire Agreement ..... 60
30.3. Amendments ..... 60
30.4. Severability ..... 60
30.5. Interpretation of Lease ..... 61
30.6. Successors ..... 62
30.7. Real Estate Broker's Fees ..... 62
30.8. Counterparts ..... 62
30.9. Authority ..... 62
30.10. No Implied Waiver ..... 62
30.11. Time is of Essence ..... 62
30.12. Cumulative Remedies ..... 62
30.13. Survival of Indemnities ..... 62
30.14. Relationship of the Parties ..... 62
30.15. No Recording ..... 62
30.16. Additional Written Agreement Required ..... 62
31. LIMITATION ON DAMAGES ..... 63
31.1. No Recourse Beyond Value of Facility ..... 63
31.2. Non-Liability of City Officials, Employees and Agents ..... 63
31.3. Limitation on Port's Liability Upon Transfer ..... 63
32. Representations and Warranties of Tenant ..... 63
33. Tenant's Management Covenants ..... 64
33.1. Covenants ..... 64
33.2. Continuous Operations ..... 64
34. Extension Option ..... 64
34.1. Option to Extend Term ..... 64
34.2. Base Rent and Other Terms ..... 65
35. TENANT ESTOPPEL CERTIFICATES ..... 65
36. APPROVAL OF BOARD OF SUPERVISORS ..... 65

**EXHIBITS AND SCHEDULES**

**EXHIBIT A** **DESCRIPTION OF PREMISES**
**EXHIBIT B** **COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM**
**EXHIBIT C** **ESTOPPEL CERTIFICATE**
**EXHIBIT D** **RULES AND REGULATIONS**
**EXHIBIT E** **WORK LETTER**

**SCHEDULE 1 ASBESTOS NOTIFICATION AND INFORMATION**
**SCHEDULE 2 SUBSTRUCTURE REPORT(S)**
**SCHEDULE 3 FEMA DISCLOSURE NOTICE**
**SCHEDULE 4 HAZARDOUS MATERIALS DISCLOSURE**

**LEASE AGREEMENT**
**BASIC LEASE INFORMATION**

| | |
|---|---|
| *Lease Date:* | June 26, 2013 |
| *Lease Number:* | **L-15255** |
| *Landlord or Port:* | **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION** |
| *Landlord's Address:* | Port of San Francisco<br>Pier 1<br>San Francisco, California 94111<br>Attention: Director of Real Estate<br>Telephone: (415) 274-0400<br>Facsimile: (415) 274-0494 |
| *Tenant:* | East Street Ventures, LLC, a California limited liability company |
| *Tenant's Contact Person:* | John Caine |
| *Tenant's Address:* | 295 Terry Francois Blvd.<br>San Francisco, CA 94107 |
| *Tenant's Billing Address:* | Pier 28 ½<br>San Francisco, CA 94107 |
| *Contact Information for Tenant's Agent for Service of Process (if Tenant is a corporation):* | Roberta Economidis<br>Georgeopoulos & Economidis<br>235 Montgomery Street, Suite 600<br>San Francisco, CA 94104 |
| *Premises:* | 295 Terry Francois Blvd. |
| *Facility:* | 295 Terry Francois Blvd.<br>San Francisco, California |
| *Premises Rentable Square Footage:* | Parcel A: A free-standing building of approximately 3,389 square feet of restaurant space, including the roof; and<br>Parcel B: Approx. 3,254 of exterior space located at 295 Terry Francois Blvd. |
| *License for Parcel C:* | At some time during the Term or Extension Term, Terry Francois Boulevard may be realigned eastward and closer |

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| | to the building located at 295 Terry Francois Boulevard (designated as Parcel A in this Lease). The realignment will include new improvements, rights-of-way and sidewalks. Port and Tenant agree that Tenant should be able to use this area in the interim in connection with this Lease. Accordingly, in order to achieve these goals, Port hereby grants to Tenant a revocable non-possessory privilege to enter and use on a temporary basis, the approximately 3,570 square foot area shown as Parcel C on ***Exhibit A*** for the same activities permitted in Parcel B (the "**License**").<br><br>Except as specifically provided herein, the rights by license described above are for the same purposes and are subject to all of the terms and conditions of this Lease as if Parcel C is part of the Premises, but Tenant agrees and acknowledges that, this License is non-possessory and revocable and that Port may, in its sole and absolute discretion, upon prior written notice to Tenant, revoke or terminate the License at any time prior to the Expiration Date, without cause and without obligation to pay any consideration to Tenant (including for any Improvements Tenant has installed in the License Area). On or before the termination date of the License, Tenant at its sole cost shall remove from the License Area, and repair any damage caused by removal of, any signage and Alterations and Improvements. The parties agree that provisions regarding the nature of the License are material and that the Port would not have entered into this Lease or granted this License absent such provisions. Tenant agrees to fully cooperate with Port to vacate Parcel C upon notice of revocation or termination by Port and to amend this Lease to reflect any necessary changes.<br><br>Once the realignment is completed, and provided that Tenant has fully cooperated with Port with respect to the realignment and that there are no outstanding Lease defaults, Port agrees to cooperate in good faith to negotiate with Tenant to grant a new license on the standard Port license form at the then–approved Port Commission rental rates (along with the same percentage rent provision as under this Lease) to allow Tenant to use portions of the new right-of-way in a manner consistent with the right-of-way and with all required Regulatory Approvals, which may include outdoor dining. |
| *Length of Term:* | Fifteen Years (15) |
| *Extension Options:* | As described in Section 34, Tenant shall have one (1) option to extend the term for a period of five (5) years ("**Extension Option**" for the "**Extension Term**") with at least six months prior written notice to Port. Monthly Base Rent for the Extension Term shall be equal to the higher of (i) |

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| | 85% of the average of 7% of the Gross Revenues for the previous three year period divided by twelve (12); or (ii) Monthly Base Rent in Year 15 as applicable plus 3%. Monthly Base Rent shall increase by 3% in each year of the Extension Term on the anniversary of the first date of the Extension Term. | | | |
| *Commencement Date:* | The first day following approval of this Lease by the Board of Supervisors and full execution by Tenant and Port. Promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date, Rent Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as ***Exhibit B***, confirming the actual dates, but either party's failure to do so shall not affect the commencement or expiration of the Term. | | | |
| *Rent Commencement Date:* | The date that is Two Hundred and Seventy One (271) days after the Commencement Date. | | | |
| *Expiration Date:* | Fifteen (15) years from the Commencement Date | | | |
| *Monthly Base Rent:* | Months | Sq. Ft. | Monthly Base Rate | Total Monthly Base Rent |
| Parcel A:<br>Parcel B:<br>Parcel C: | 0-9 | 3,389<br>3,254<br>3,570 | $00.00<br>$00.00<br>$00.00 | $00.00<br>$00.00<br>$00.00 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 10-12 | 3,389<br>3,254<br>3,570 | $2.33<br>$0.31<br>$0.31 | $7,896.37<br>$1,008.74<br>$1,106.70<br>$10,011.81 |
| Parcel A:<br>Parcel B<br>Parcel C: | 13-24 | 3,389<br>3,254<br>3,570 | $2.39<br>$0.32<br>$0.32 | $8,099.71<br>$1,041.28<br>$1,142.40<br>Total: $10,283.39 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 25-36 | 3,389<br>3,254<br>3,570 | $2.46<br>$0.33<br>$0.33 | $8,336.94<br>$1,073.82<br>$1,178.10<br>Total: $10,588.86 |

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| Parcel A:<br>Parcel B:<br>Parcel C: | 37-48 | 3,389<br>3,254<br>3,570 | $2.53<br>$0.34<br>$0.34 | $8,574.17<br>$1,106.36<br>$1213.80<br>Total: $10,894.33 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 49-60 | 3,389<br>3,254<br>3,570 | $2.60<br>$0.35<br>$0.35 | $8,811.40<br>$1,138.90<br>$1,249.50<br>Total: $11,199.80 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 61-72 | 3,389<br>3,254<br>3,570 | $2.67<br>$0.36<br>$0.36 | $9,048.63<br>$1,171.44<br>$1,285.20<br>Total: $11,505.27 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 73-84 | 3,389<br>3,254<br>3,570 | $2.75<br>$0.37<br>$0.37 | $9,319.75<br>$1,203.98<br>$1,320.90<br>Total: $11,844.63 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 85-96 | 3,389<br>3,254<br>3,570 | $2.83<br>$0.38<br>$0.38 | $9,590.87<br>$1,236.52<br>$1356.60<br>Total: $12,183.99 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 97-108 | 3,389<br>3,254<br>3,570 | $2.91<br>$0.39<br>$0.39 | $9,861.99<br>$1,269.06<br>$1,392.30<br>Total: $12,523.35 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 109-120 | 3,389<br>3,254<br>3,570 | $2.99<br>$0.40<br>$0.40 | $10,133.11<br>$1,301.60<br>$1,428.00<br>Total: $12,862.71 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 121-132 | 3,389<br>3,254<br>3,570 | $3.07<br>$0.41<br>$0.41 | $10,404.23<br>$1,334.14<br>$1,463.70<br>Total: $13,202.07 |

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| Parcel A:<br>Parcel B:<br>Parcel C: | 133-144 | 3,389<br>3,254<br>3,570 | $3.16<br>$0.42<br>$0.42 | $10,709.24<br>$1,366.68<br>$1,499.40<br>Total: $13,575.32 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 145-156 | 3,389<br>3,254<br>3,570 | $3.25<br>$0.43<br>$0.43 | $11,014.25<br>$1,399.22<br>$1,535.10<br>Total: $13,948.57 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 157-168 | 3,389<br>3,254<br>3,570 | $3.34<br>$0.44<br>$0.44 | $11,319.26<br>$1,431.76<br>$1,570.80<br>Total: $14,321.82 |
| Parcel A:<br>Parcel B:<br>Parcel C: | 169-180 | 3,389<br>3,254<br>3,570 | $3.44<br>$0.45<br>$0.45 | $11,658.16<br>$1,464.30<br>$1,606.50<br>Total: $14,748.96 |
| *Percentage Rent:* | Percentage Rent shall be 7% of Gross Revenues. In addition to the monthly Base Rent specified above, Tenant shall pay a monthly Percentage Rent in an amount equal to the difference between (i) the Percentage Rent for such calendar month; and (ii) the Base Rent for such calendar month in any month in which the Percentage Rent exceeds the Base Rent. | | | |
| *Security Deposit:* | Twenty Nine Thousand Four Hundred Ninety Seven Dollars and Ninety-two Cents ($29,497.92) | | | |
| *Permitted Use:* | Parcel A shall be used solely for a casual, take-out, and catering indoor/outdoor restaurant and entertainment venue and for no other purpose;<br>Parcels B and C shall be used for an outdoor patio, cooking (subject to Regulatory Approvals), dining, customer parking, and loading and unloading and for no other purpose. Tenant shall comply with the City's Fats, Oil and Grease Control Ordinance and the Mandatory Recycling and Composting Ordinance. Tenant shall provide a sufficient covered area for compost, recycling and trash in Parcel B or in another mutually acceptable location under a separate agreement on a form approved by Port and at the rental rate approved by the Port Commission. Tenant may have a smoker and/or barbeque in Parcel B in a location approved by Port and with all Regulatory Approvals. | | | |

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| | Tenant must comply with all Laws regulating the use of such equipment, including without limitation all rules and regulations of the Bay Area Air Quality Management District. |
| *Additional Prohibited Uses:* | In addition to, and without limiting, the Prohibited Uses specified in Section 8.2 below, Tenant shall be prohibited from using the Premises for any of the following activities:<br>(a) Unless approved in advance in writing by Port in its sole discretion: (i) use of the Premises for raves, D. J. parties, or dances/events that use live or amplified music; (ii) activities that are managed by an outside promoter; (iii) charging a cover charge or requiring a donation to gain entry to the Premises or operation of a private club; (iv) operation of a formula restaurant as defined in Section 2;<br>(b) Off site sale of alcoholic beverages;<br>(c) Use of garbage disposal or garbage grinder;<br>(d) Disposal of fats, oils and grease or any food waste containing fats, oil or grease directly into drains leading to sewer laterals;<br>(e) Discharge of any wash water to the Bay;<br>(f) Sale of parking rights or spaces. Parking shall be for customers of the restaurant only; in no event may Tenant sell parking rights or spaces. Tenant agrees that a breach of this prohibition is a material breach of this Lease.<br>Port shall have all remedies set forth in this Lease, and at law or equity in the event Tenant performs any of the Prohibited Uses. |
| *Initial Tenant Improvements* | Tenant must complete the following Initial Tenant Improvements, including the ("**Core and Shell Work**"): exterior building repairs including roofing and waterproofing, exterior wall repairs, new ADA bathrooms, accessibility improvements throughout the Premises, repairs to the existing structure, new utilities related to installation of kitchen equipment and interior restaurant improvements Tenant estimates the cost of the Initial Tenant Improvements to be Two Million Dollars ($2,000,000). The Core and Shell Work is a component of the Initial Tenant Improvements and shall be identified as core and/or shell work in the Scope of Development which is Attachment 1 to the Work Letter attached as ***Exhibit E*** ("**Scope of Development**").<br>Tenant must provide Port with written notice of the date it will begin construction of the Initial Tenant Improvements, which can be no later than ninety (90) days from the Commencement Date ("Initial Tenant Improvements Start Date"). Such notice shall be provided no less than ten (10) business days prior to the Initial Tenant Improvements |

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| | Start Date. Tenant shall have until the date that is Two Hundred Seventy (270) days from the Initial Tenant Improvements Start Date to Complete the Initial Tenant Improvements ("**Outside Completion Date**"). No Rent is due during this 270-day period provided that there is no other existing Tenant default. Tenant shall resume Rent payments on the Two Hundred Seventy First (271st) day after the Initial Tenant Improvements Start Date, regardless of whether the Initial Tenant Improvements have been Completed. By way of example only, if the Commencement Date is June 1, 2013 and the Initial Tenant Improvements Start Date is November 1, 2013, Tenant is relieved from paying Rent from November 1, 2013 through July 31, 2014 and must resume paying Rent on August 1, 2014.<br><br>Subject to the conditions of Section 5.6, Tenant shall be entitled to a rent credit not to exceed Three Hundred Eighty Thousand Dollars ($380,000) to be taken at a rate of Seventy-five percent (75%) against Monthly Base Rent for the Core and Shell Work portions of the Initial Tenant Improvements.<br><br>Other than explicitly provided herein, all the Initial Tenant Improvements shall be constructed at Tenant's sole cost and expense and in accordance with Section 13 below and the Work Letter attached as *Exhibit E*. Unless new unforeseen existing conditions are discovered and any amendment to this Lease is approved by the Port Commission and/or Board of Supervisors as required, each in its sole and absolute discretion, Tenant understands and agrees that it will not receive or seek rent credits or other compensation or consideration for any improvements including without limitation the Initial Tenant Improvements discussed above and agrees that it will not seek additional term for the purpose of amortizing the improvements. |
| *Substructure:* | See Schedule 2 attached hereto.<br><br>As provided in Section 11.2, neither Port nor Tenant shall have the obligation to repair or maintain the Pier Substructure. |
| *Maintenance and Repair:* | Tenant's sole responsibility, as further described in Section 11 below |
| *Utilities:* | Tenant's sole responsibility, as further described in this section and Section 12 below. Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises whether within or outside the Premises and regardless of who installed such utilities as further described in this section. As to water and sewer, Tenant is responsible for maintaining and repairing the plumbing and other water |

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| | and sewage systems within the Premises and from the Premises to the lateral connection to the force main (which is outside of the Premises). As to natural gas, Tenant is responsible for maintaining and repairing natural gas systems within the Premises and from the Premises to the gas meter. As to electrical, Tenant is responsible for maintaining and repairing the electrical system and components within the Premises and outside of the Premises to the point of connection to the service provider. Port shall have no responsibility for maintaining the portions of utilities described above as Tenant's responsibility. Tenant acknowledges that the Premises does not have sufficient electrical service and Tenant is required to arrange adequate service.<br><br>Notwithstanding any other provision of this Lease, Tenant is responsible for utilities in the Pier Substructure. |
| *Location of Asbestos in Facility:* | See ***Schedule 1*** attached hereto. |
| *Development Project:* | SWL 337 Project; Mission Bay Project including improvement and realignment of Terry Francois Boulevard; Blue Greenway Project. Tenant acknowledges and agrees that the western boundary of the Premises may need to be adjusted to accommodate these projects and agrees to cooperate fully with Port to amend the Lease to make any necessary adjustments to the Premises. Monthly Base Rent will be adjusted accordingly. |
| *Lease Prepared By:* | Jeffrey A. Bauer, Senior Leasing Manager |

# LEASE AGREEMENT

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 basic lease information (the "**Basic Lease Information**"), the exhibits, schedule and the Lease Agreement are and shall be construed as a single instrument and are referred herein as this "**Lease**". In event of any conflict or inconsistency between the Basic Lease Information and the Lease Agreement, the Basic Lease Information will control.

## 1. DEMISE.

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

## 2. DEFINITIONS.

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

"**ACMs**" is defined in Section 15.6 below.

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

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

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

"**Affiliate Transfer**" means a Transfer from Tenant to an Affiliate meeting the requirements of Section 20.1.

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

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

"**Anniversary Date**" means the first and each subsequent anniversary of the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the Commencement Date.

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

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

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

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

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

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

"**Cal-OSHA**" is defined in Section 15.6 below.

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

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

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

"**Changes**" is defined in Section 10.2 below.

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

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

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

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

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

"**Conduct Code**" is defined in Section 28.12 below.

"**Concession**" is defined in Section 30.8 below.

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

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

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

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

"**Core and Shell Work**" means those Initial Tenant Improvements identified as core and/or shell work in the Scope of Development.

"**Core Benefits**" is defined in Section 28.1(c) below.

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

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

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

"**disturbed or removed**" is defined in Section 13.4(f) below.

"**Encroachment Area**" is defined in Section 3.2 below.

"**Encroachment Area Charge**" is defined in Section 3.2 below.

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

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

"**Environmental Regulatory Agency**" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office,

including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

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

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

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

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

"**Event of Default**" is defined in 21 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**HEPA**" is defined in Section13.4(f) below.

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

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

"**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 property in place considered as part of the realty should be compared with its value if it were removed and sold.

"**Indemnified Parties**" is defined in Section 19.1 below.

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

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

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

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

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

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

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

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

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

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

"**Notice of Removal**" is defined in Section 13.6 below.

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

"**Notice to Vacate**" is defined in Section 3.2 below.

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

"**OSHA**" is defined in Section 15.6 below.

"**PACMs** " is defined in Section 15.6 below.

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

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

"**Pesticide Ordinance**" is defined in Section 28.8 below.

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

"**Port program or project**" shall mean (a) any development or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to the Event as described in Section 3.3 and any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating).

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

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

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

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

"**preservative-treated wood containing arsenic**" is defined in Section 28.11 below.

"**prevailing party**" is defined in Section 23.1 below.

"**Prohibited Use(s)**" is defined in Section 8.2 below.

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

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

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

"**Remediate**" or "**Remediation**" when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise

control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "**Remediation**" also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

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

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

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

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

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

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

"**saltwater immersion**" is defined in Section 28.11 below.

"Scope of Development" means the Scope of Development attached to the Work Letter (***Exhibit E***) as Attachment 1.

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

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

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

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

"**SWPPP**" is defined in Section 15.10(a) below.

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

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

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

"**Term**" is defined in Section 4.1 below.

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

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

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

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

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

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

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

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

"**Waiving Party**" is defined in Section 16.5 below.

"**Work**" when used in reference to construction is defined in Section 13.4(c) below.

"**worth at the time of the reward**" is defined in Section 22.2 below.

## 3. PREMISES; AS-IS CONDITION.

### 3.1. *Premises*.

**(a)** Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on ***Exhibit A*** attached hereto and incorporated herein by reference (the "**Premises**"). Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises. Port and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

**(b)** Tenant shall have the non-exclusive right to use, together with other tenants, the Common Areas. All of the Common Areas shall at all times be subject to the exclusive control, regulation, and management of Port. Port shall have the right to construct, maintain, and operate lighting facilities on all Common Areas; to patrol all Common Areas; to temporarily close any Common Areas for maintenance, repairs or alterations; from time to time

to change the area, level, location and arrangement of Common Area facilities; to use the Common Areas and restrict access and use of the same during the maintenance, repair, construction or reconstruction of buildings, additions or improvements; to erect buildings, additions and improvements on the Common Areas from time to time; and to restrict parking by tenants, their Agents and Invitees. Port may operate and maintain the Common Areas and perform such other acts and make such other changes at any time and from time to time in the size, shape, location, number and extent of the Common Areas or any of them as Port in its sole discretion shall determine, provided, however, that no exercise by Port of its rights hereunder shall unreasonably restrict access to the Premises.

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

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

**3.1.** ***No Right to Encroach.***

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

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

**(c)** In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective

tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

**(d)** All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.3 and the reasonableness of the amount of the charges described in this Section 3.3.

Initials: _____ Port _____ Tenant

**3.2.** ***Proximity of Development Project.*** Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, constructed on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

**3.3.** ***America's Cup.*** Tenant acknowledges that the Golden Gate Yacht Club has selected San Francisco as the host city for the 34th America's Cup. The selection could result in activities and impacts, all of which are subject to review under the California Environmental Quality Act. The potential activities and impacts include events related to the America's Cup, which will include the 34th America's Cup match, anticipated to occur in 2013, pre-match races, possible future successive defense(s) of the America's Cup, related events and potential long-term development uses, to be determined after the racing events in 2013 (collectively the "**Event**"). The Event, if held, will be, or may be, on property, including land and water, in the immediate vicinity of the Premises. Tenant is aware that the Event as proposed will include construction projects, racing in the Bay, and public and private events. The activities associated with the Event, if held, are expected to create certain impacts, some of which may result in some inconvenience to or disturbance of Tenant.

Impacts of the Event may include, but are not limited to, increased pedestrian, vessel, vehicle and truck traffic, traffic delays and re-routing of street traffic, loss of street and public parking, temporary re-routing or interruption of land and water transit, dust, dirt, land- and water-based construction, dredging, and other noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of impacts, inconvenience or disturbance as a result of the Event.

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

**3.5.** ***Unique Nature of Premises.*** Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to

the unique nature of the Premises; and (c) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of the Lease.

**3.6.** ***As-Is Condition.*** Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as ***Schedule 3*** and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in ***Schedule 2*** attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**3.7.** ***Port's Rights Regarding Premises.*** Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. Tenant acknowledges receipt of a copy of the Rules and Regulations (***Exhibit D***) currently in force for the Facility and agrees to abide by them. Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility that are uniformly applied to similar or related type of Port tenants. 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.

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

**4.1.** ***Term.*** The term of this Lease (the "**Term**") shall be for the period of months specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date. If the Commencement Date and Expiration Date occur on a date other than the Commencement Date and the Expiration Date set forth in the Basic Lease Information, then promptly following the actual Commencement Date, Port and Tenant shall execute a Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as ***Exhibit B***, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

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

**4.2.** ***Termination Rights.***

**(a)** Port has the right to terminate the Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's structures, substructure or utilities has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as

specifically set forth in this Subsection. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Subsection.

**(i)** For a period ending thirty (30) calendar days after receipt of Port's notice of termination, Tenant may request Port's consent, in Port's sole and absolute discretion, to allow Tenant to make the repairs required by Port in accordance with this Lease and any additional conditions reasonably imposed by Port, in consideration of Concessions from Port. If Port consents, Port's notice of termination will be deemed rescinded and of no further effect.

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

**4.3.** ***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 this Lease.

Initials: _____ _____
Port Tenant

## 5. RENT.

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

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

**5.2.** ***Percentage Rent.***

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

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

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

**(d)** If Tenant fails to (i) pay the Percentage Rent on the date due as provided above; (ii) submit the Monthly Percentage Rent Statement therewith (even if the statement indicates that Percentage Rent is not due); or (iii) fails to submit the Annual Statement, such failure in each instance shall be subject to a Late Charge. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of such failure. Additionally, if Tenant fails to deliver any Monthly Percentage Rent Statement or Annual Statement within the time period set forth in this Section 5.2 (irrespective of whether any Percentage Rent is actually paid or due to Port) and such failure continues for three (3) days after the date Tenant receives (or refuses receipt of) written notice of such failure from Port, Port shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Tenant's Books and Records (and the Books and Records of any other occupant of the Premises) as may be necessary to certify the amount of Tenant's Gross Revenues for the period in question and the certification so made shall be binding upon Tenant and Tenant shall promptly pay to Port the total reasonable cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge. Tenant acknowledges that late submittal of the Monthly Percentage Rent and Annual Statements and late payment of Percentage Rent will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of Tenant's lateness.

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

**5.3.** ***Books and Records.*** Tenant agrees that the business of Tenant upon the Premises shall be operated with a non-resettable register and so that a duplicate dated sales slip or such other recording method reasonably acceptable to Port shall be issued with each sale, whether for cash, credit or exchange. Furthermore, Tenant shall keep (and shall cause its Subtenants and assignees to keep) at the Premises at all times during the Term complete and accurate Books and Records that contain all information required to permit Port to verify Gross Revenues and deductions and exclusions therefrom that are in accordance with this Lease and with generally accepted accounting practices consistently applied from period to period with respect to all operations of the business to be conducted in or from the Premises and shall retain such Books and Records for a period of the later of (i) four (4) years after the end of each Lease Year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the Percentage Rent payable hereunder, until such audit or controversy is terminated (the "**Audit Period**").

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

**5.5.** ***Audit.***

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

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

Port Tenant

**5.6.** ***Rent Credit for ~~Electric Upgrades~~.*** Core and Shell Improvements

**(a)** As described in this Section, Tenant shall be entitled to a Rent Credit for the Core and Shell Improvements that are so designated in the Work Letter Attachment 1 not to exceed $380,000 to be taken monthly against Monthly Base Rent otherwise due for Initial Tenant Improvements at a maximum rate of 75% of the Monthly Base Rent. The following example demonstrates how the rent credit shall be applied.

Revenues Subject to Percentage Rent: $200,000.00 x 7% = $14,000.00
Base Rent $10,000.00
Percentage rent due: $4,000.00
Maximum Rent Credit applied: $7,500.00

Total Rent due: $10,000 – $7,500 =$2,500 in Base Rent plus $4,000 in Percentage Rent = $6,500

**(b)** After final Completion of the Core and Shell Work, as defined in the Work Letter, Tenant shall deliver to Port an itemized statement of the actual costs expended by Tenant on the Core and Shell Work, accompanied by documentation reasonably satisfactory to Port evidencing all said expenditures. Such appropriate proofs of expenditure shall include, without limitation, (i) copies of canceled checks, (ii) copies of executed contracts, (iii) invoices for labor services and/or materials marked "Paid"; or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts and receipts for goods, materials and/or services marked "Paid", (iv) and such other proofs of expenditure as may be reasonably approved by Port, and (v) unconditional lien waivers from all the general contractors and all subcontractors and suppliers for the particular items of the Initial Tenant Improvements covered by the rent credit request. All such proofs of expenditure must be attributable directly to work or materials performed, constructed or installed in connection with the Core and Shell Work. Costs expended for the Core and Shell Work that are eligible for rent credits shall not include any items other than Core and Shell Work identified in the Work Letter Attachment 1 and shall not include items related to Tenant's trade fixtures, office equipment and supplies, furniture, communications facilities (whether voice or data) or any other items of personalty not intended to be affixed to or become a part of the Facility or Facility Systems, nor any fees, exactions, impositions, or similar charges imposed as a condition to permit approval. To the extent Tenant (through its employees, contractors, or any party in which Tenant has a direct financial interest) performs any of the ~~electrical upgrade,~~ the costs for such labor shall be no more than the commercially reasonable, market-rate labor charges typically charged for such work by parties in an arms-length transaction. In no event shall the cost of any construction management fees, general administrative costs or other forms of mark-up be eligible for rent credits unless clearly identified in the Scope of Work as Core and Shell Work. Furthermore, in no event shall maintenance, repair and/or replacement costs be eligible for rent credits. Upon receipt of and based upon said statement and accompanying documentation which substantiate the actual costs expended, Port in its reasonable discretion shall determine in writing the costs eligible for rent credits and Tenant may apply such rent credits in accordance with this Section. Port shall use the Scope of Work as the basis for this determination.

core and shell improvements

**(c)** Any unapplied or unused portion of the rent credit shall remain the property of Port, and Tenant shall have no interest in said funds. Other than as set forth in this Section, Port shall have no obligation to provide, and Tenant shall not be entitled to, a rent credit, tenant improvement allowance or any other form of reimbursement or credit in connection with the Initial Tenant Improvements. Rent credits cannot be applied retroactively.

**(d)** Notwithstanding anything to the contrary contained herein, in no event shall Tenant receive any rent credit in the event Tenant is in default, or an event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default. Upon

the occurrence of a Tenant Event of Default during period Tenant is eligible for rent credits, Tenant's right to apply any rent credit shall cease and shall not be reinstated until the Tenant Event of Default is cured. If a Tenant Event of Default occurs on a day other than the first day of the calendar month or a Tenant Event of Default is cured on a day other than the last day of the calendar month, Base Rent due to Port shall be apportioned based on a thirty (30) day month. In no event shall the cessation in the application of the rent credit against any Base Rent extend the rent credit period.

**(e)** From and after all the terms and conditions of Section 5.6 (b) have been met, the Rent Credit shall be applied against the immediately following monthly installment of Base Rent in the amount of 75% of the monthly Base Rent due; provided however that, in the event all or any portion of the Rent Credit available to Tenant exceeds such monthly installment of Base Rent due, the remaining portion of the Rent Credit shall be carried forward to the next installment of monthly Base Rent until the earlier to occur of (i) the Rent Credit being fully applied, (ii) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), or (iii) an uncured default by Tenant of any term or condition of this Lease. Tenant agrees and acknowledges that any right or claim Tenant may have to any form of Rent Credit that has not yet been actually applied against Base Rent ("**unused rent credit**") shall, upon the earlier to occur of (a) an uncured default by Tenant of any term or condition of this Lease, (b) Tenant's failure to submit to Port within thirty (30) days following completion of the Initial Tenant Improvements, evidence of expenditures related to the Initial Tenant Improvements, as described in Section 5.6 (b); or (c) the expiration or earlier termination of this Lease excluding any holdover period (with or without Port consent), be immediately terminated, without notice, and Port shall have no liability or obligation to pay or credit Tenant all or any portion of the unused rent credit.

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

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

**5.9.** ***Late Charges/Habitual Late Payer.*** Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Tenant fails to pay Rent on the date due, such failure shall be subject to a Late Charge at Port's discretion. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of Tenant's failure to timely pay Rent. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars ($50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a

fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Tenant.

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

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

**5.12.** ***Additional Charges.*** Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections 12.1, 15.4(a), 15.8, 15.10, 28.1(d), and 31 below, or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars ($100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars ($150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.12 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.12 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 5.12 and the reasonableness of the amount of the charges described in this Section 5.12.

Initials: _____ JC
Port Tenant

## 6. TAXES AND ASSESSMENTS.

**6.1.** ***Payment of Taxes***. During the Term, Tenant agrees to pay, when due, to the proper authority any and all real property and personal taxes, general and special assessments, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any such taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall indemnify and hold Port, City, and their Agents harmless from and against all losses, damages, costs, or expenses, including attorneys' fees, resulting therefrom.

**6.2.** ***Possessory Interest Tax***. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the Port to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

Initials: _____

Tenant

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

Rent increase. Any increase in the Security Deposit shall be delivered to Port on the same date that such increase in Base Rent is first due.

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

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

## 8. USE OF THE PREMISES.

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

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

**(a)** any activity, or the maintaining of any object, which is not within the Permitted Use;

**(b)** any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

**(c)** any activity or object which will overload or cause damage to the Premises;

**(d)** any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

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

**(f)** use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;

**(g)** any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

**(h)** the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;

**(i)** Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;

**(j)** any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;

**(k)** the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;

**(l)** the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;

**(m)** the washing of any vehicles or equipment;

**(n)** the placement of any object, machinery or equipment on any portion of the Premises that exceeds the load restrictions, if any, described in the Basic Lease Information; or

**(o)** any other Prohibited Uses identified in the Basic Lease Information, if any.

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

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

Initials: _____ Port _____ Tenant

## 9. COMPLIANCE WITH LAWS AND REGULATIONS.

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

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

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

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

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

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

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to indemnify and hold City, Port and their

Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

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

Initials: _____
Tenant

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

## 11. MAINTENANCE AND REPAIRS.

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

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

**11.2.** ***Pier Substructure.***

**(a)** Notwithstanding the foregoing, except in the event that Tenant, its Agents or Invitees cause any damage to the Pier Substructure (in which event Section 11.1 (a) shall apply), neither Port nor Tenant shall have the obligation to repair or maintain the Pier Substructure. "**Pier Substructure**" means that portion of the pier that includes all the load bearing

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

**(b)** In the event that repair or maintenance to the Pier Substructure is necessary, either Port or Tenant may elect to repair the Pier Substructure. If Tenant elects to repair the Pier Substructure, such repair shall be at its sole cost and Tenant will not be entitled to rent abatement or rent credits in any amount or any other consideration from Port.

**(c)** If neither Port nor Tenant elects to repair the Pier Substructure, then either Port or Tenant may terminate this Lease as to that portion of the Premises that is unusable for the Permitted Uses due to the condition of the Pier Substructure by giving written notice to the other party of the intention to do so within thirty (30) days after the date of the parties became aware that such portion of the Premises is no longer usable for the applicable Permitted Use due to the condition of the Pier Substructure. The effective date of termination shall be specified in the notice of termination, which date shall not be less than thirty (30) days from the date of the notice.

**11.3.** ***Port's Right to Inspect.*** In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence. Without limiting Section 24 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

**11.4.** ***Port's Right to Repair.*** In the event Tenant fails to maintain the Premises in accordance with Sections 11.1, 11.3 above or 12.1, or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefore. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars ($2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees.

With respect to any work where the total hard costs of such work are less than Two Thousand Dollars ($2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars ($200) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars ($300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this

Lease, at law or in equity. The amounts set forth in this Section 11.4 shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

Initials: _____
Tenant

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

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

## 12. UTILITIES AND SERVICES.

**12.1.** ***Utilities.*** Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant. Tenant will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission is unable to meet Tenant's requirements for load, or its prices and rates are materially higher than rates available to Tenant from Pacific Gas and Electric Co. or on the open market, Tenant may seek another provider.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements. If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

Tenant will not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises, including without limitation, electronic data processing machines and machines using current in excess of 110 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises. If Tenant shall require electric current in excess of that usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the City and County of San Francisco or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property.

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

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

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

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

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

Initials: JC
Tenant

## 13. IMPROVEMENTS AND ALTERATIONS.

### 13.1. *Port Consent Required.*

**(a)** Other than approvals for the Initial Tenant Improvements as described in 13.2 below, which are required as a condition of this Lease, Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written

consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

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

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

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

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

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

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

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

**(c)** Tenant, while performing any Subsequent Alteration or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonably measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban

areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

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

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

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

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

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

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

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

**(f)** Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3423, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("**HEPA**") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3423 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.4(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.

**13.5.** ***Improvements Part of Realty***. Except as set forth in Section 13.6 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender).

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

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

comply with the provisions of Section 13 shall survive the expiration or earlier termination of this Lease.

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

**13.9.** ***Port's Alterations***. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

## 14. LIENS.

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

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

## 15. HAZARDOUS MATERIALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**15.4.** ***Requirement to Remediate.***

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

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

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

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

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

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

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

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

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

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 15.6 hereof and the notice or report attached as ***Schedule 1*** hereto and understands, after having consulted its legal counsel, that it must make its 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 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises.

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

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

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

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

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

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

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

**15.10.** ***Storm Water Pollution Prevention***.

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

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

**15.11.** ***Presence of Hazardous Materials***. California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the following known Hazardous Materials are present on the property: asbestos in building, if any, as described in ***Schedule 1*** attached hereto, and the Hazardous Materials described in the documents listed in ***Schedule 4*** attached hereto, copies of which have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.11 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own

obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

## 16. INSURANCE

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

**(a)** General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars ($1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, liquor liability, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars ($250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

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

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

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

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

**(i)** Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars ($500,000) per incident, One Million Dollars ($1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "**any auto**",

and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) workers' compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars ($100,000) per accident, Five Hundred Thousand Dollars ($500,000) aggregate disease coverage and One Hundred Thousand Dollars ($100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

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

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

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

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

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

**(i)** Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 16.1(d), 16.1(e) and 16.1(f) above, with a limit of not less than the annual Rent applicable immediately prior to the hazard causing the loss.

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

**(k)** Garage Liability and Garage Keepers Legal Liability Insurance. Garage Liability and Garage Keepers Legal Liability Insurance with limits not less than One Million Dollars ($1,000,000.00) per occurrence if Tenant conducts valet parking operations.

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

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

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

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

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

**16.6.** ***General Insurance Matters.***

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

**(b)** As to earthquake insurance:

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

**(ii)** from and after Completion of the Initial Tenant Improvements, such insurance shall be in an amount at least equal to One Hundred percent (100%) of the maximum probable loss that would be sustained by the Premises as a result of an earthquake measuring 8.0 on the Richter Scale, as determined not less frequently than every 5 years by the

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

**(c)** As to flood insurance only:

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

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

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

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

**(f)** Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the 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 shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

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

## 17. DAMAGE AND DESTRUCTION.

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

Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

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

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

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

Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

**17.2.** ***Waiver.*** Port and Tenant intend that the provisions of Section 17 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.

## 18. EMINENT DOMAIN.

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

**18.2.** ***Partial Takings.*** If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately

before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination which shall be not less than thirty (30) or more than sixty (60) days after the date of notice.

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

**18.4.** ***Temporary Takings.*** Notwithstanding anything to the contrary contained in Section 18, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

**18.5.** ***Award; Waiver; Termination of Lease; Rent and Award.*** Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

## 19. INDEMNITY AND EXCULPATION.

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

**19.2.** ***Hazardous Materials Indemnity.***

**(a)** In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material

Condition, except where caused by the Indemnified Parties' sole gross negligence or willful misconduct or under the circumstances described in Section 15.4(b) of this Lease; and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

**(b)** Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vi) 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 ten (10) business days after Port's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

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

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

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

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

The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii)

theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, and (vi) any other acts, omissions or causes. Nothing in this Section 19.4 shall relieve the Indemnified Parties from liability caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

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

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

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

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

Initials: _____
Tenant

## 20. ASSIGNMENT AND SUBLETTING.

**20.1.** ***Transfer to Affiliate.***

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

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

**20.2.** ***Transfer to Non-Affiliate.***

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

**(i)** Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become

insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured.

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

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

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

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

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

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

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

**(a)** Until the occurrence of an Event of Default, Tenant will have the right to receive and collect rents from the Sublease. The Sublease must require the Transferee to pay the rent and other sums due under the Sublease directly to Port upon receiving Port's written notice that Tenant is in default under this Lease, a copy of which Port will deliver to Tenant. Tenant agrees that it will hold in trust for Port's benefit any Sublease rent or other sums that Tenant collects from the Transferee after Port's notice to the Transferee, and Tenant will be obligated to

forward the same to Port immediately upon receipt. Port's collection of rents and other sums under this Section will not constitute Port's acceptance of attornment by the Transferee.

**(b)** Tenant agrees to pay to Port immediately upon receipt all Excess Rent, less Subletting Expenses, as Additional Rent. In calculating Excess Rent, Subletting Expenses will be amortized on a straight-line basis over the term of the Sublease, without interest. For example, if: (i) the term of the Sublease is 5 years; (ii) Sublease rent is $5,000 per month; (iii) Tenant's concurrent Rent payable for the Sublease premises is $3,000 per month; (iv) Tenant's Subletting Expenses are $15,000 in brokerage commissions and $15,000 for new tenant improvements for the Sublease premises, then the amount of Excess Rent Tenant must pay to Port in connection with the Sublease is $1,500 per month, as shown in the calculation below.

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

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

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

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

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

**(i)** Within 90 days after Completion of the Initial Tenant Improvements, Tenant must deliver to Port a Construction Costs Report in form and content acceptable to Port in its reasonable discretion, accompanied by a CPA's agreed-upon procedures report prepared in accordance with AICPA standards for compliance attestation and specifying Port as an intended user. Port will notify Tenant in writing whether Port agrees or disagrees with Tenant's Construction Costs Report within 90 days after receiving it. Port will have the right to inspect Tenant's Books and Records for the Construction Costs Report. Tenant must keep accurate Books and Records of all Construction until the later of 2 years after Tenant's submission of its Construction Costs Report or 6 months after any dispute regarding the

Construction Costs has been resolved. Tenant's failure to submit a Construction Costs Report as and when required under this Section will be deemed a waiver of its right to make a reduction to Net Sale Proceeds.

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

Gross Sale Proceeds: $10,000,000

Costs of Sale: $200,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 21. DEFAULT BY TENANT.

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

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

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

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

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

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

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

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

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

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

**(j)** failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 16 above, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease and Tenant's or Tenant's broker as applicable failure to deliver evidence

of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

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

**(l)** without limiting the provisions of Sections 21(f) or 21(k) above, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port; or

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

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

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

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

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

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

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

## 22. PORT'S REMEDIES.

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

**22.1.** ***Tenant's Right to Possession Not Terminated.*** Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as City deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Port, as soon as ascertained, any costs and expenses incurred by Port in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

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

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

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

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

**(d)** Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the

Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although Port shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of the Lease do not waive Port's rights to recover damages upon termination.

The "**worth at the time of award**" of the amounts referred to in Sections 22.2(a) and 22.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "worth at the time of award" of the amount referred to in Section 22.2(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

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

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

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

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

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

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

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

**22.7.** ***Waiver of Redemption.*** Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil

Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any default of Tenant hereunder.

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

**22.9.** ***Remedies Not Exclusive.*** The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law. Tenant's obligations hereunder shall survive any termination of this Lease.

## 23. LITIGATION EXPENSES; ATTORNEYS' FEES.

**23.1.** ***Litigation Expenses.*** The prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing party**" within the meaning of this Section 23 shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

**23.2.** ***Appeals.*** Attorneys' fees under this Section 23 shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

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

## 24. PORT'S ENTRY ON PREMISES.

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

**24.2.** ***General Entry.*** In addition to its rights pursuant to Section 24.1 above, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

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

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

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

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

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

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

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

**24.4.** ***No Liability***. Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

**24.5.** ***Nondisturbance***. Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in Section 24 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

## 25. SURRENDER AND QUITCLAIM.

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

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.6, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.3 below until the Premises are surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the

expiration of the Term. Only a written notice from Port to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

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

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

**25.4.** ***Survival.*** Tenant's obligation under this Section 25 shall survive the expiration or earlier termination of this Lease.

## 26. HOLDING OVER.

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

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

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

## 27. MINERAL RESERVATION.

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of these Statutes, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract subsurface minerals, including oil and gas deposits, from such area.

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

## 28. CITY AND PORT REQUIREMENTS.

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

### 28.1. *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 this Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

**(b)** Subleases and Other Contracts. Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section (a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply 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)** HRC Form. On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

**(e)** 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.

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

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

**(b)** Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

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

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

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

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

**28.9.** ***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.

**28.10.** ***Tropical Hardwood and Virgin Redwood Ban.*** Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which

are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

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

**28.12.** ***Notification of Limitations on Contributions.***

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, 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, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of each person, entity or committee described above.

**28.13.** ***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.

**28.14.** ***Conflicts of Interest.*** Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of

any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

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

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

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

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

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

**28.20.** ***Prevailing Wages for Theatrical Workers.***

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

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

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

## 29. NOTICES.

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

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

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

## 30. MISCELLANEOUS PROVISIONS.

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

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

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

**30.4.** ***Severability.*** If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of

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

**30.5.** ***Interpretation of Lease.***

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

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

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

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

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

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

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

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

**(i)** References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this 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.

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

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

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

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

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

**30.11.** ***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.

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

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

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

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

**30.16.** ***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 either the Executive Director of Port or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

## 31. LIMITATION ON DAMAGES.

**31.1.** ***No Recourse Beyond Value of Facility***. Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Facility (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

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

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

## 32. REPRESENTATIONS AND WARRANTIES OF TENANT

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

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

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

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

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

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

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

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

## 33. TENANT'S MANAGEMENT COVENANTS.

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

**33.2.** ***Continuous Operations***. Tenant shall use commercially reasonable efforts to ensure that all of the Premises are used continuously during the Term for the Permitted Use and shall not allow any portion of the Premises to remain unoccupied or unused without the prior written consent of Port, which consent may be withheld in Port's sole and absolute discretion. Notwithstanding the foregoing, the Port shall not unreasonably withhold its consent to any cessation of operations for any reasonably necessary time period due to the following causes or in the following circumstances: (a) if the Premises become untenantable due to Force Majeure, (b) as may be necessary in connection with performing repairs to the Premises, or (c) while conducting periodic inventory of Tenant's goods and merchandise.

## 34. EXTENSION OPTION.

**34.1.** ***Option to Extend Term***. Provided all the terms and conditions of this Section 34 are satisfied by Tenant, Port grants to Tenant one (1) option for an additional five (5) year term ("an **Extension Option**") as to the entire Premises only ("**Extension Term**") commencing upon the first day after the Expiration Date. Tenant may exercise the Extension Option no earlier than Four Hundred and Fifty (450) days prior to the Expiration Date and no later than six (6) months prior to the Expiration Date by providing Port with written notice of its intent to exercise the Extension Option. Any such notice by Tenant shall be irrevocable by Tenant. If any Event of Default by Tenant has occurred or is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would

constitute such a default), then Port may elect by written notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void and the Term shall expire on the day the Term would have expired had Tenant never exercised the Extension Option.

**34.2.** ***Base Rent and Other Terms.*** If Tenant elects to exercise the Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that the Expiration Date shall mean the last day of the Extension Term and the Base Rent hereunder shall be determined as set forth in the Basic Lease Information. No later than ninety (90) days prior to commencement of the Extension Term, Port shall notify Tenant in writing of Port's determination of the Monthly Base Rent for the Extension Term.

## 35. TENANT ESTOPPEL CERTIFICATES.

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

## 36. APPROVAL OF BOARD OF SUPERVISORS.

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

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

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

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

**TENANT:** **EAST STREET VENTURES, LLC**
**A CALIFORNIA LIMITED LIABILITY COMPANY**

Two Corporate Officers MUST SIGN

By: John Caine
Name: JOHN CAINE
Title: Chief Executive Officer

Date Signed: 7-8-2013

By: Paul Osmundson
Name: Paul Osmundson
Title: Secretary

Date Signed: 7-8-2013

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

By: _____
Name: Rona H. Sandler
Deputy City Attorney

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

Port Commission Resolution No. 13-27
Board of Supervisors Resolution No. _____

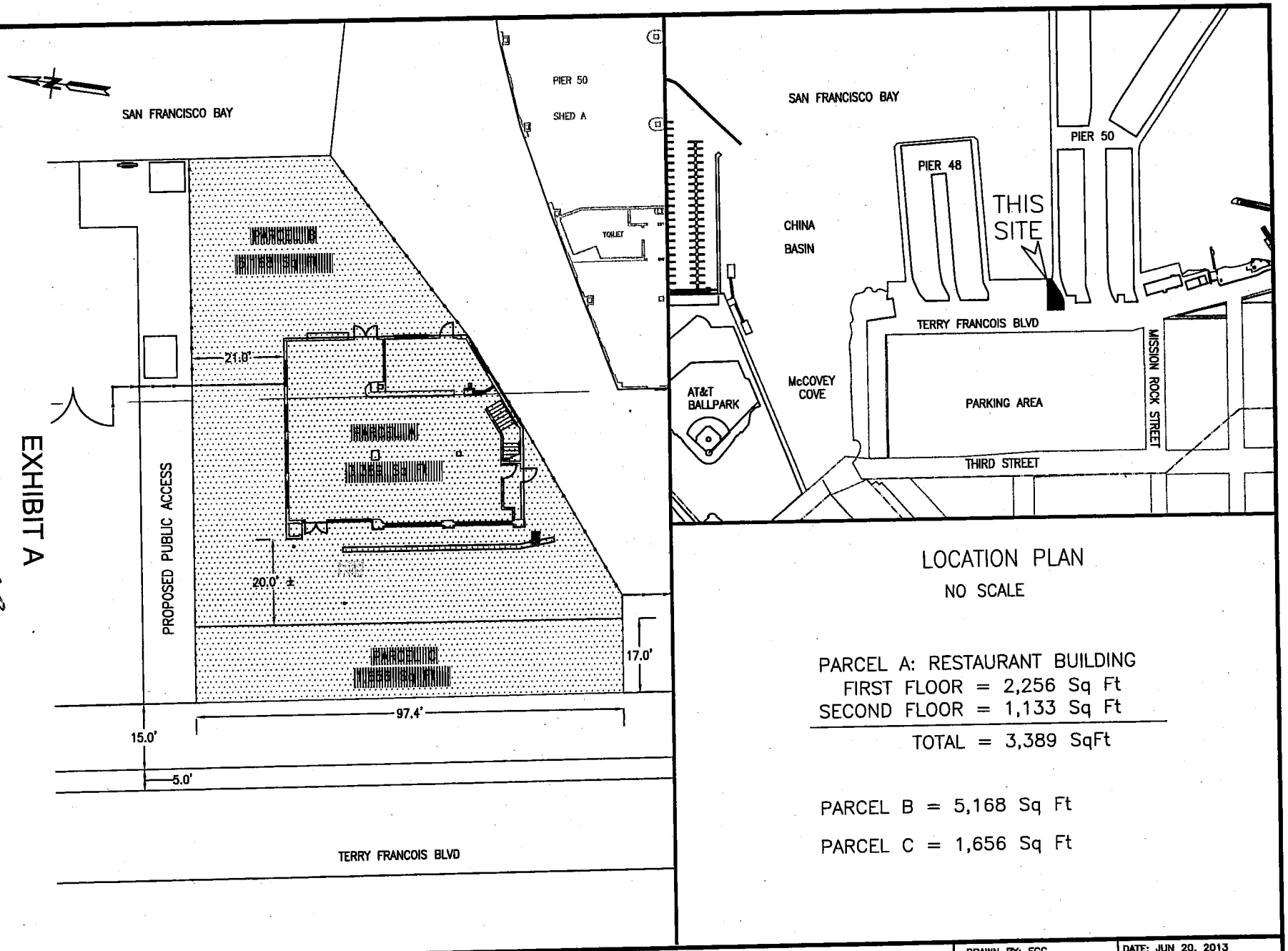
## EXHIBIT A

## DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT A




## LOCATION PLAN

NO SCALE

PARCEL A: RESTAURANT BUILDING
FIRST FLOOR = 2,256 Sq Ft
SECOND FLOOR = 1,133 Sq Ft
TOTAL = 3,389 SqFt

PARCEL B = 5,168 Sq Ft

PARCEL C = 1,656 Sq Ft

LEASE NO.

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

TENANT

| | |
|---|---|
| DRAWN BY: ECC | DATE: JUN 20, 2013 |
| CHECKED BY: J. BAUER | SCALE: 1" = 30' |
| PLACE CODE NO. 1485–LAND1 | SHEET NO. OF SHEETS |

G:\08 PROPERTY FILES\Lease Maps\EXHIBITS–PIERS\Pier50\ShedA\P50–JellyProp.dwg

## EXHIBIT B

## COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

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

Tenant:

Lease Number:

Lease Date:

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

The Commencement Date of the Lease is hereby established as _____, 20___, the Rent Commencement Date of the Lease 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: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: John Caine
Name: JOHN CAINE
Title: CHIEF EXECUTIVE OFFICER
Date Signed: 7-8-2013

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## EXHIBIT C

## TENANT ESTOPPEL CERTIFICATE

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

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "**Premises**").

2. That the Lease has not been modified, assigned, supplemented or amended except by:

3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

4. That the commencement date under the Lease was _____, 20__, the expiration date of the Lease is _____, 20___.

5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is $_____.

6. The security deposit held by Port under the terms of the Lease is $_____ and Port holds no other deposit from Tenant for security or otherwise.

7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.

8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.

9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.

11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

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

Dated: _____, 20___.

[Name of Tenant]

By:

Name:

Title:

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## EXHIBIT D

## RULES AND REGULATIONS

[To Be Attached for Applicable Facilities]

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# RESTAURANTS
# RULES AND REGULATIONS
(Revised December 2009)

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

1. Noise. Sound levels emanating from indoor and/or outdoor activities on the Premises between 10:00 P.M. and 6:00 A.M. daily may not exceed the acceptable noise levels established by the San Francisco Noise Ordinance Police Code, Article 29, except as may be specifically authorized under any special event permit issued by the San Francisco Police Department. Tenant shall post signs inside the restaurant at appropriate places requesting that patrons leaving the Premises after 10:00 P.M. depart in a quiet, peaceful and orderly fashion and not litter or block driveways in the neighborhood. The Tenant shall alert the San Francisco Police Department if exiting patrons cause any disturbance.

2. Garbage/Recycling/Composting. All garbage dumpsters and main recycling containers shall be enclosed within an appropriate closet so that such dumpsters and containers are not visible from outside of the buildings, unless directed otherwise by the Port. Garbage dumpsters and recycling containers shall not be moved outside the building in advance of actual collection by a refuse or recycling company. Garbage and recycling pickup shall be arranged such that garbage dumpsters and recycling containers are removed directly from the enclosure, emptied, and replaced at the same time. No garbage and recycling pickup may occur after 8:00 A.M. or before 10:00 P.M.

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

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

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

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

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

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

3. Litter. Tenant shall be responsible for undertaking the following measures within the exterior portions of the Premises: (i) keep all hardscape areas and sidewalks between the Premises and Jefferson Street and between the Premises and all adjacent properties reasonably clean of debris and litter; (ii) once each day between thirty minutes after closing and 8:00 A.M. the following morning, collect and dispose of any discarded trash and litter; (iii) remove trash and litter from any landscaped areas within the Premises; and (iv) with the permission of adjacent Port tenants enter upon adjacent properties to remove litter thereon originating on the Premises.

4. Landscaped Areas. Take reasonable precautions to minimize any damage to landscaping from restaurant vendors, service people and patrons.

5. Traffic. Coordinate all vehicular deliveries and pickups to occur at times and in a manner that will not unreasonably impede the flow of traffic on Jefferson Street or interfere with the safe operation of the "F" Line railway.

6. Advertising/Signage. Tenant shall place no temporary or promotional advertising, banners or signs on the interior of the windows on the Premises intended to be seen from the adjacent streets or properties except as may be previously approved in writing by the Executive Director or his representative.

7. Compliance with Rules. Tenant and its Subtenants shall take commercially reasonable efforts to cause all vendors, service persons and patrons to comply with the foregoing rules.

8. Changes. These Operational Parameters may be changed from time to time to reflect changing circumstances upon mutual consent of the Tenant and the Executive Director of the Port.

9. Plumbing System and FOG. It is the Tenant's responsibility to maintain plumbing system.

Tenant shall be prohibited from :

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

Tenant shall be required to:

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

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

**EXHIBIT E**

**WORK LETTER**

This Work Letter sets forth Tenant's obligation to construct the Initial Tenant Improvements and shall be deemed part of the Lease. The "Initial Tenant Improvements" are described in _____ and associated Port Building Permits and any amendments thereto and include without limitation, those improvements listed in the Basic Lease Information.

## 1. GENERAL TERMS

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

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

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

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

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

## 2. CONSTRUCTION OF THE INITIAL TENANT IMPROVEMENTS

**2.1.** ***Tenant's Construction Obligations.***

**(a)** Project Requirements. Tenant hereby agrees for itself, successors, and assignees, to complete for the benefit of the Port the construction of the Initial Tenant Improvements within Two Hundred Seventy (270) days of the Initial Tenant Improvements Start Date. Tenant shall Complete said construction free of claims, demands, actions and liens for labor, materials or equipment furnished for the construction, and shall be performed in accordance with applicable requirements of (i) all Laws; (ii) this Work Letter, including the Scope of Development and Schematic Drawings; (iii) the Port Building Code as applicable; (iv) required Regulatory Approvals; (v) the Waterfront Land Use Plan; (vi) the design approved by the Port and, if required, the Planning Commission, pursuant to Section 240 of the Planning

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

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

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

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

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

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

accident, Five Hundred Thousand Dollars ($500,000) aggregate disease coverage and One Hundred Thousand Dollars ($100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice. In addition, Tenant shall carry "**Builder's All Risk**" insurance covering the construction of the Initial Tenant Improvements as set forth in the Lease. The liability insurance shall be written on an "**occurrence**" basis and shall name Port as additional insureds (by endorsement reasonably acceptable to Port). All of the insurance required to be carried by Tenant or Tenant's Agents hereunder shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Port, shall provide that Port shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage, and shall be placed with companies which are rated A-VIII or better by Best's Insurance Guide and licensed to business in the State of California. All deductibles and self-insured retentions under Tenant's policies are subject to Port's reasonable approval, and all insurance, except workers' compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Tenant's compliance with the provisions of this Section 2.4 shall in no way limit Tenant's liability under any of the other provisions of this Work Letter or the Lease.

**2.5.** ***Performance Bond.*** At least five (5) business days prior the Initial Tenant Improvements Start Date, Tenant shall provide Port, at Tenant's sole cost and expense, (i) a corporate surety payment bond and a performance bond substantially in the form attached hereto as ***Attachment 2*** obtained by each of Tenant's contractors performing work on the Initial Tenant Improvements or, (ii) a financial guarantee, in a form approved by Port in its sole discretion, from a third party with liquid assets in an amount of no less than One Hundred Twenty-five percent (125%) of the cost of the Initial Tenant Improvements. Each bond shall be in an amount equal to one hundred percent (100%) of the estimated costs of such work on the Initial Tenant Improvements. Each performance bond shall guarantee the contractor's faithful performance of its contract(s) with Tenant. Each payment bond shall guarantee the Contractor's payment of labor, materials, supplies and equipment used in the performance of its contract(s) with Tenant. The bonds are intended to help protect the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than A-, VIII. Each corporate surety bond shall obligate the surety to Tenant and the City and County of San Francisco as co-obligees.

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

**2.7.** ***Port and Other Governmental Permits.*** Tenant has the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for the Initial Tenant Improvements and shall make application for such permits directly to the applicable Regulatory Agency; provided, however, that where Port is required to act as a co-permittee for any permit Tenant shall apply for such permit in accordance with Section 10.2 of the Lease.

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

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

**3. PREPARATION AND APPROVAL OF PLANS**

**3.1.** The Construction Documents.

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

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

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

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

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

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

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

**(1)** Premises plan(s) at appropriate scale showing the buildings, streets, boat docks, walkways, and other open spaces. All land uses shall be designated. All Premises development details and bounding streets, points of vehicular and pedestrian access shall be shown.

**(2)** All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

(5) Preliminary interior improvement plans.

(6) Plans for proposed public access areas showing details including but not limited to, walls, fences, railings, benches, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, and trash containers.

(7) Outline specifications for materials, finishes and methods of construction.

(8) Interior and Exterior Signage Plans.

(9) Exterior lighting plans.

(10) Material and color samples.

(11) Roof plans showing all mechanical and other equipment.

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

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

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

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

**3.3.** ***Construction Document Review Procedures.***

**(a)** Method of Port Action/Prior Approvals. Port shall approve, disapprove or approve conditionally the Construction Documents, in writing, in accordance with the Schedule of Performance, but, in any event, within ninety (90) days after submittal, so long as the applicable Construction Documents are properly submitted in accordance with the Schedule of Performance. If Port fails to either approve or disapprove within five (5) business days after

Tenant's second written request made to Port after such ninety (90) day period, the applicable Construction Documents shall be deemed disapproved.

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

**3.4.** ***Changes in Construction Documents.***

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

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

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

**4. NO FORCE MAJEURE**

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

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

**4.3.** ***Port's Remedy for Tenant's Failure to Timely Complete Construction***. In the event Tenant fails to complete the Initial Tenant Improvements in a manner sufficient to cause Port to issue a Certificate of Completion for the Initial Tenant Improvements by the Outside Completion Date, Tenant shall pay to Port an amount equaling Three Hundred Dollars ($300.00) per day commencing on the Outside Completion Date and shall continue at such rate until Port has issued a Certificate of Completion for the Initial Tenant Improvements in addition to the Rent that would otherwise be payable for such period. Under no circumstances shall these deadlines be extended due to Force Majeure, Port delays or other reasons.

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

TENANT _____ PORT _____

## 5. CERTIFICATE OF COMPLETION

### 5.1. *Certificate of Completion.*

**(a)** Issuance Process.

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

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

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

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

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

## 6. TERMINATION OF LEASE

**6.1.** ***Plans and Data.*** If the Lease terminates as a result of an Event of Default by Tenant before Completion of the Initial Tenant Improvements, Tenant shall assign and deliver to

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

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

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

**ATTACHMENTS**

| | |
|---|---|
| **ATTACHMENT 1** | **SCOPE OF DEVELOPMENT** |
| **ATTACHMENT 2** | **FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND** |

# ATTACHMENT 1

## SCOPE OF DEVELOPMENT

## [TO BE ATTACHED]

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295 Terry Francois Blvd

| | |
|---|---|
| CONSTRUCTION AREA | 3,389 sf |
| TOTAL GROSS AREA | 3,389 sf |

| DESCRIPTION | | TOTAL Budget | PSF | % | CORE AND SHELL Budget |
|---|---|---|---|---|---|
| Restrooms (4) | | 200,000 | $ 59.01 | 100% | $200,000 |
| Roof | | 50,000 | $ 14.75 | 100% | $50,000 |
| Demolition | | 25,000 | $ 7.38 | 100% | $25,000 |
| Concrete floors and foundations | | 52,500 | $ 15.49 | 100% | $52,500 |
| Structural upgrades and framing | | 52,500 | $ 15.49 | 75% | $39,375 |
| Misc Steel | | 25,000 | $ 7.38 | 0% | $0 |
| Interior Stairs and Handrails | | 38,462 | $ 11.35 | 100% | $38,462 |
| Exterior stairs and Handrails | | 50,000 | $ 14.75 | 100% | $50,000 |
| D/W , Interior Finishes/Doors | | 140,000 | $ 41.31 | 25% | $35,000 |
| Bar and Interior Cabinetry | | 75,000 | $ 22.13 | 0% | $0 |
| Plaster Construction | | 40,000 | $ 11.80 | 100% | $40,000 |
| Special Construction and Accessories | | 20,000 | $ 5.90 | 0% | $0 |
| Unforeseen Conditions | | 50,000 | $ 25.00 | 50% | $25,000 |
| Electrical | | 100,000 | $ 25.00 | 50% | $50,000 |
| Plumbing | | 100,000 | $ 10.00 | 50% | $50,000 |
| Fire Protection | | 21,000 | $ 10.00 | 50% | $10,500 |
| Fire Alarms | | 25,000 | $ 2.50 | 100% | $25,000 |
| New Utility Connections | | 75,000 | $ 22.13 | 100% | $75,000 |
| Miscellaneous | | 50,000 | $ 14.75 | 20% | $10,000 |
| New Canopies and Tents | | 50,000 | $ 14.75 | 0% | $0 |
| Landscaping and Site Work | | 50,000 | $ 14.75 | 0% | $0 |
| Paint Exterior | | 25,000 | $ 7.38 | 0% | $0 |
| Exterior Lighting | | 25,000 | $ 7.38 | 20% | $5,000 |
| Exterior Signage and Canopies | | 50,000 | $ 14.75 | 20% | $10,000 |
| Temporary Construction | | 68,700 | $ 20.27 | 20% | $13,740 |
| General Conditions | | 144,000 | $ 42.49 | | |
| **SUBTOTAL** | | **$ 1,602,162** | **$ 472.75** | | **$804,577** |
| OTHER PROJECT COSTS | | | | | |
| Builders risk | 0% | | | | |
| Permits and Plan Check | 3.0% | 48,065 | $ 14.18 | 20% | $9,613 |
| Design Contingency | 7.5% | 120,162 | $ 35.46 | 20% | $24,032 |
| Construction Contingency | 5.0% | 80,108 | $ 23.64 | 20% | $16,022 |
| Mockups | | 10,000 | $ 2.95 | 20% | $2,000 |
| TOTAL | | $ 1,860,497 | $ 548.98 | | |
| Fee | 4.5% | 83,722 | $ 24.70 | 20% | $16,744 |
| Gross Receipts Tax | 0.38% | 7,388 | $ 2.18 | 20% | $1,478 |
| Contractors Insurance | 1.0% | 19,516 | $ 5.76 | 20% | $3,903 |
| **PROJECTED CONSTRUCTION COSTS** | | **$ 1,971,123** | **$ 581.62** | | **$878,369** |
| **TOTAL** | | **$ 1,971,123** | | | |

## ATTACHMENT 2

## FORM OF PERFORMANCE BOND & PAYMENT (LABOR AND MATERIAL) BOND

KNOW ALL MEN BY THESE PRESENTS, THAT WHEREAS, _____ has awarded to:

_____

hereinafter designated as the "**Principal**", a Contract, dated _____ for _____.

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

**NOW, THEREFORE,** we the Principal and

_____

as Surety, are firmly bound unto _____and the City and County of San Francisco acting by and through the San Francisco Port Commission as co-obligees in the penal sum of

**(PERFORMANCE BOND)** **(PAYMENT BOND)**

_____ And _____

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

### (PERFORMANCE BOND)

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

### (PAYMENT BOND)

**THE CONDITION OF THIS OBLIGATION IS SUCH,** that if said principal, its heirs, executors, administrators, successors or assigns, of its subcontractor or subcontractors, shall fail to pay for any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, or for amounts due the Unemployment Insurance Act with respect to such work or labor, then the surety of this Bond will pay for same, in an amount not exceeding the sum specified in this Bond, and in case suit is brought upon this Bond will also pay a reasonable attorney's fee, to be fixed by the Court. This Bond shall inure to the benefit of _____ and any and all persons, companies, corporations, political subdivisions and state agencies, entitled to file claims under the provisions of California Civil Code section 3247 et seqitur

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

**IN WITNESS WHEREOF,** the above-bounden parties have executed this instrument under their seal this ____day of _____, 2013, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:
Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Principal:

By: _____
Name: _____
Title: _____

Surety:

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

## ASBESTOS IN BUILDINGS

## FOR PERIOD THROUGH: March 2013

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

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

### WHAT IS ASBESTOS?

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

### WHY IS ASBESTOS HAZARDOUS?

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

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

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

### ASBESTOS SAMPLING RESULTS

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

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

The Environmental Protection Agency (EPA) has recommended a "clearance level" for asbestos of 0.01 f/cc, as measured by phase contrast microscopy (PCM). If measured by the transmission electron microscopy (TEM) method described in 40 CFR Part 763, the Asbestos Hazard Emergency Response Act (AHERA), the clearance level is either 0.02 structure/cc or 70 structures per square millimeter of filter (s/mm$^2$). This means that once an operation involving asbestos (such as removal) is complete, the area is "safe" for re-occupancy as long as the asbestos air concentrations are less than or equal to the "clearance level". These same levels have also been adopted in the California Education Code (Section 494200.7) as the school abatement clearance level.

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

## GENERAL PROCEDURES AND HANDLING RESTRICTIONS

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

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

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

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

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

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

## SITE SPECIFIC INFORMATION

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

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

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

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

## SCHEDULE 2

## SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

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# SUBSTRUCTURE RAPID STRUCTURAL ASSESSMENT FORM (rev 07-2009)

**Facility Name:** Jelly's
**FIN:** 1485-SUBST-ALL
**Inspection Number:** 1485-SUBST-ALL-2011 **Report Posting Date:** 01/11/2012
**Inspector's Name:** Sherban A. Duncan, P.E. **Affiliation:** Port of San Francisco
**Inspection Date**: 01/03/2012 Start Time: 12:30 P.M. End Time: 2:00 P.M.
**Purpose of Inspection-(periodic insp., maritime request, real estate request, tenant move-in, tenant move-out, etc.):** Periodic Inspection

---

**Rating Criteria:**
Green – Unrestricted use. May require some minor repair, or minimal barricading.
Yellow – Restricted use. May require further review, may require load limits, limiting access and barricading until repairs completed.
Red – Unsafe notice. Shall be barricaded to prevent public access and use.

**Overall Rating:** Green **XX** Yellow Red

---

**Immediate Actions:** N.A.

**Required Repairs:** N.A.

---

**Condition Assessment Summary:**

| Condition | Yes | No | More Review Needed |
|---|---|---|---|
| 1) Severe seawall failure | | X | |
| 2) Many missing piles | | X | |
| 3) Many significantly damaged piles | | X | |
| 4) Significant beam deterioration | | X | |
| 5) Significant slab deterioration | | X | |
| 6) Other hazard present | | X | |

**Comments:**
- Visible wall finish cracks
- Broken Storm Drain

**Attachments:**
**Appendix A-** Facility Data
**Appendix B-** Photographs
**Appendix C-**Structural Rating Map

# SUBSTRUCTURE RAPID STRUCTURAL ASSESSMENT FORM (rev 07-2009)

## Appendix A – Facility Data

**Name of Facility:** Jelly's
**Facility Code:** 1485
**Address:** Pier 48.5
**Lease Number(s):**

**Building Data**

Building Structure FIN: 1485-SUBST-ALL
No. of stories: 2
Support over water: Yes
Support over land: Yes
Construction type (Wood, concrete, steel, masonry or combination): Wood
Occupancy Type (Commercial, office, industrial, assembly, residential, emergency service etc.): Commercial

**Detailed Building Description (If available):**

- Wood framed structure
- Vacant Restaurant/Dance venue

**Substructure/Foundation Data:**

Substructure FIN: 1485-SUBST-ALL-2011
Piling type: Wood and Concrete piling
Substructure Deck Type: Concrete deck
Apron Type: N.A.

**Detailed Substructure Description (if available):**

## SUBSTRUCTURE RAPID STRUCTURAL ASSESSMENT FORM (rev 07-2009)

**Appendix B** – Photographs

FIN: 1485-SUBST-ALL

Inspection Date: 01/03/2012

Facility Name: Jelly's

Inspection Number: 1485-SUBST-ALL-2012



**Photo 1.** North view



**Photo 2.** West view

**SUBSTRUCTURE RAPID STRUCTURAL ASSESSMENT FORM** (rev 07-2009)

**Appendix B** – Photographs

FIN: 1485-SUBST-ALL

Inspection Date: 01/03/2012

Facility Name: Jelly's

Inspection Number: 1485-SUBST-ALL-2012



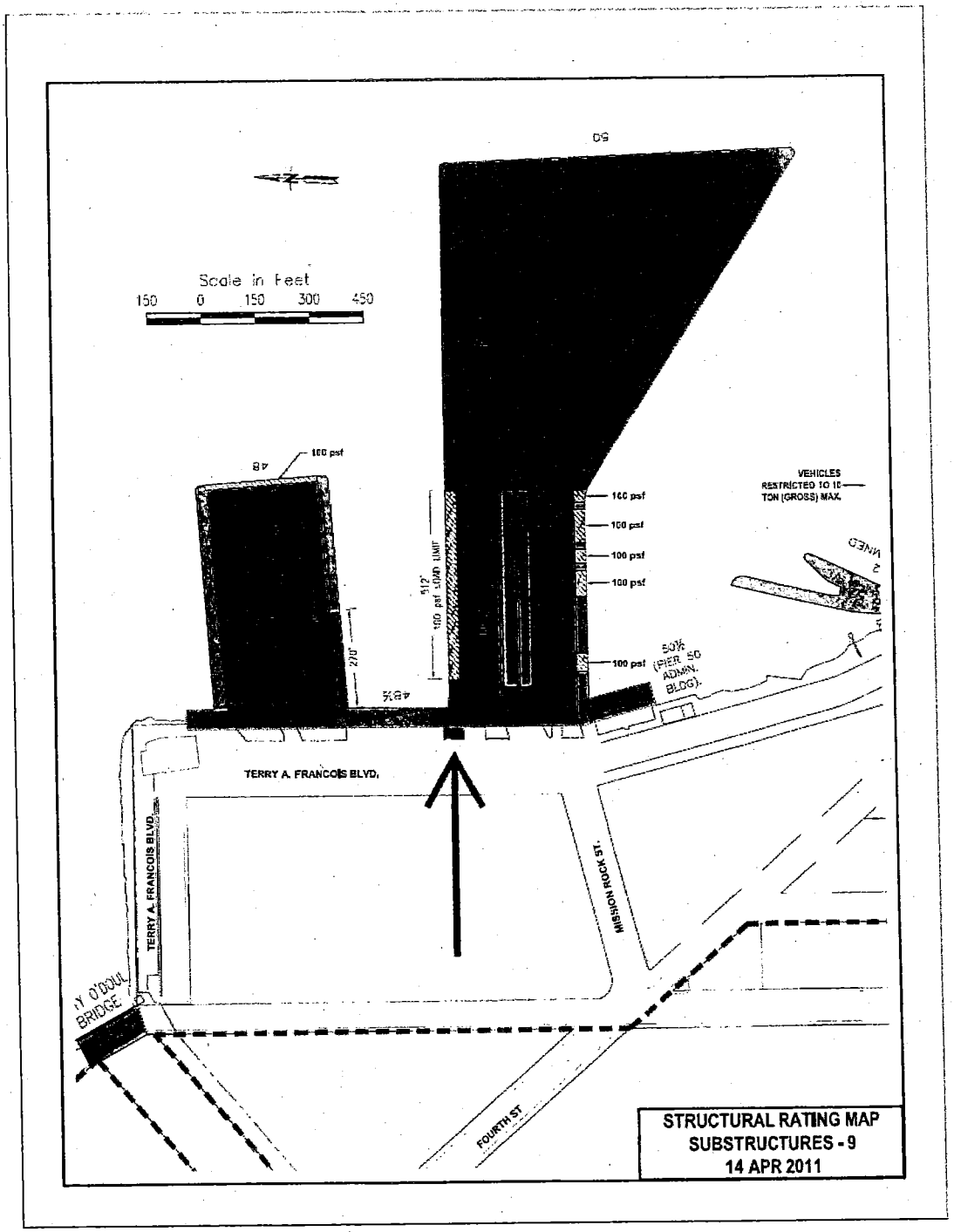
**Photo 3.** Minor spalling at concrete deck



**Photo 4.** Excavation at broken storm drain pipe

# SUBSTRUCTURE RAPID STRUCTURAL ASSESSMENT FORM (rev 07-2009)

## Appendix C – Structural Rating Map



## SCHEDULE 3

### FEMA Disclosure Notice

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

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

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

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

In August 2008, the San Francisco Board of Supervisors adopted Ordinance No. 188-08, a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP. In accordance with the ordinance, the City Administrator's Office has issued maps of flood prone areas. Specifically, the ordinance requires that any new construction or substantial improvement of structures in city-designated flood zones be constructed in accordance with specified requirements intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

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

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

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

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

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

Additional information about the San Francisco legislation can be found on the city's website (http://www.sfgov.org), File Nos. 080823 (floodplain management ordinance) and 080824 (NFIP participation resolution).

## SCHEDULE 4

## HAZARDOUS MATERIALS DISCLOSURE

4034

ACUMEN
INDUSTRIAL HYGIENE INC
1032 IRVING STREET #922 SAN FRANCISCO CA 94122
TEL 415 242 6060 FAX 415 242 6006
WWW.ACUMEN-IH.COM

4034
"Jelly's"
- All abated but
suspect roofing.

# ASBESTOS AND LEAD INVESTIGATION FOR REMODELING

Former Jelly's Restaurant at Pier 50
San Francisco, CA

January 2012

Acumen Project No. CSF 1108

*Prepared for:*

Mr. Tim Felton, Industrial Hygienist
Port of San Francisco
San Francisco, CA 94111

*Prepared by:*

Mr. Paul M. Spillane, CIH, CAC (January 16, 2012)
Acumen Industrial Hygiene, Inc.

THE AMERICAN BOARD OF INDUSTRIAL HYGIENE INCORPORATED
CERTIFICATION NUMBER 8599 CP
EXPIRES 6-1-2014
PENNSYLVANIA 1980
PAUL SPILLANE, CIH

## Table of Contents

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San Francisco, CA

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**1.0 INTRODUCTION** ..... 1

**2.0 SUMMARY OF INVESTIGATION** ..... 1

2.1 ASBESTOS SURVEY METHODS ..... 1
2.2 LEAD CONTAINING PAINT SURVEY METHODS ..... 1

**3.0 FINDINGS AND DISCUSSION** ..... 2

**4.0 SUMMARY OF SURVEY FINDINGS** ..... 2

4.1 REGULATED ACM ..... 2
4.2 NON-RACM ..... 2
4.3 CATEGORY I AND CATEGORY II (NON-FRIABLE ACM) ..... 3
4.4 SUMMARY OF LEAD SURVEY FINDINGS ..... 3
4.5 UNIVERSAL HAZARDOUS WASTES ..... 3

**5.0 RECOMMENDATIONS** ..... 3

**6.0 CONCLUSIONS** ..... 4

**TABLE 1: SUMMARY OF ASBESTOS CONTAINING MATERIALS**

**TABLE 2: SUMMARY OF NON-ASBESTOS CONTAINING MATERIALS**

**TABLE 3: SUMMARY OF LEAD PAINT SAMPLE RESULTS**

**APPENDIX A: LABORATORY REPORTS**

**APPENDIX B: SAMPLE LOCATION FLOOR PLANS**

**APPENDIX C: PHOTOGRAPHS**

## 1.0 Introduction

The purpose of this report is to present and discuss the findings of an asbestos, lead and hazardous building materials investigation we conducted at the former Jelly's Restaurant located at Pier 50 in San Francisco, California. The building was vacant at the time of this inspection and it is our understanding that the suite will be remodeled. Mr. Paul M. Spillane, CIH, CAC, conducted this investigation with assistance from Kevin Wharton, on December 19, 2011.

The objectives of this investigation were as follows:

- To identify regulated asbestos containing materials (RACMs), as defined by Bay Area Air Quality Management District (BAAQMD). RACMs need to be removed if they are to be impacted by building renovation or demolition.
- To identify other asbestos containing materials (ACM) that would require compliance with Cal-OSHA asbestos regulations.
- To identify deteriorated lead containing paints that would need removal before demolition to comply with Cal-EPA hazardous waste disposal regulations. Disturbance of leaded paint also requires compliance with Cal-OSHA construction industry standards. The evaluation of deteriorated paints was not intended to be either a lead inspection or a lead hazard evaluation as defined by California Department of Health Services (17CCR35001 *et seq*).

## 2.0 Summary of Investigation

### *2.1 Asbestos Survey Methods*

The asbestos inspection consisted of a walkthrough of the building to identify and sample suspect ACM on December 19, 2011. Acumen noted significant factors of the suspect ACM, including friability. Friability describes the ability of a material to be crushed or crumbled, when dry, into a powder using hand pressure. Friable materials with an asbestos concentration above one percent are considered regulated ACM (RACM). Where suspect ACMs were noted, bulk samples were collected and submitted with our chain of custody forms to Micro Analytical Laboratories, Inc. (Emeryville, CA) for analysis. This laboratory is accredited by the National Institute of Standards and Technology (NIST), National Voluntary Laboratory Accreditation Program (NVLAP) for selected test methods for asbestos. This laboratory also holds certification from the American Industrial Hygiene Association (AIHA).

Acumen collected a total of twenty-three (23) samples of suspect asbestos during this survey. The suspect asbestos samples were analyzed by polarized light microscopy (PLM). The laboratory reports are shown in Appendix A. This method identifies the type(s) of asbestos present in the sample and its corresponding percent concentration(s). The reliable limit of quantification of this method is 1% asbestos.

### *2.2 Lead Containing Paint Survey Methods*

The lead inspection consisted of a walk-through of the building to identify deteriorated surface coatings. Paints that were in deteriorated condition (pealing, chipping, powdering etc.) were sampled, noting the location, color and substrate and extent of deterioration. We collected five (5) discrete samples of paints during this inspection. There were no bulk ceramic tiles present to collect for lead analysis. The paint samples were analyzed by flame atomic absorption (FLAA) spectrometry using Method 7420. The limit of quantification depends on the mass of the sample.

These samples were submitted to Micro Analytical Laboratories, Inc. (Emeryville, CA) for analysis. This laboratory is accredited by the AIHA under the Environmental Lead Laboratory Accreditation Program (ELLAP) for selected lead analysis methods. The lead laboratory results are shown in Appendix A.

## 3.0 Findings and Discussion

This inspection interior and exterior portions of the former Jelly's restaurant, which is a two-story structure of about 3,800 square feet (Photo 1). The lower floor consists of an open floor plan, bar/dance area and a kitchen. The upper floor-plan consists of a hallway, two restrooms, storage area, an office and a walk-in-refrigerator. The date of construction of the building was not provided to us, but we estimate it to be constructed pre-1940s, and was likely remodeled much later (perhaps1980s). The roof was reportedly recently replaced and Acumen was not requested to sample it (Photo 2).

Jelly's restaurant is constructed slab on-grade. The building's roof is wood-framed and the perimeter walls are wood framed, covered with an exterior stucco-finish that does not contain asbestos (Sample CSF1108-02A, CSF1108-11B and CSF1108-11C). The exterior concrete patio also does not contain asbestos (Sample CSF1108-01A). Painted exterior walls contain 110 parts per million (ppm) lead (Sample CSF1108-Pb01). The exteriors also have painted window mullions that contain up to 59,000 ppm lead (Sample CSF1108-Pb02). The window putties are access from the inside of the building and contain <1% asbestos (Sample CSF1108-06C, Photo 3). The other window putties sampled do not contain asbestos (Samples CSF1108-01A, CSF1108-01B, CSF1108-01C, CSF1108-02A and CSF1108-02B).

The interior has wood floors with a black vapor barrier under them that was sampled and does not contain asbestos (Samples CSF1108-9A and CSF1108-09B). Inside a closet located under the stairs there is a small amount of 9x9" vinyl floor tile and black mastic both contain asbestos (Sample CSF1108-04A, Photo 4). The light-weight thin concrete located behind the bar does not contain asbestos (Sample CSF1108-07A).

Walls are textured drywall with taping mud that were sampled in five locations and and asbestos was found in the taping mud in one of the five samples (Samples CSF1108-05A). Samples CSF1108-05B, CSF1108-05C, CSF1108-05D and CSF1108-06E). The lower floor ceilings are plaster and also do not contain asbestos (Sample CSF1108-03A, CSF1108-03B and CSF1108-03C). The 2x4' lay-in ceiling tiles do not contain asbestos (Samples CSF1108-08A).

There is flaking paint on walls in the kitchen (2,000 ppm, Photo 5) and flaking paint on upper joists (550 ppm, Photo 6). These paints should be properly contained and stabilized (Samples CSF1108-Pb03 and CSF1108-Pb05). Paint on walls sampled inside the building do not contain lead (Sample CSF1108-Pb04).

## 4.0 Summary of Survey Findings

There were no previous asbestos reports or other records available for review as part of this investigation. Table 1 summarizes materials sampled and found to not to contain asbestos. Table 2 summarizes the samples that do not contain asbestos and Table 3 presents the deteriorated paints that were tested for lead. Appendix B presents the sample location floor plans and Appendix C presents the photographs for this survey.

### *4.1 Regulated ACM*

Regulated asbestos containing material (RACM) was not discovered in building materials at the site.

### *4.2 Non-RACM*

- Window caulking on metal windows (<1% Chrysotile Asbestos): We estimate about 1,600 linear feet of this window putty (or approximately 136 square feet).
- Taping Mud (2 % Chrysotile Asbestos) with non-asbestos drywall (Composite <1% asbestos): We estimate approximately 2,300 square feet of are present, including walls and ceilings of the office section.

The Bay Area Air Quality Management District (BAAQMD) regulates air emissions from building renovation and demolition projects. This agency requires that materials with an asbestos content greater than 1.0% be

removed before building renovation and demolition if they are either friable or the work will damage or otherwise render them friable.

The drywall/taping mud, window putty, and the window putty are not likely RACM. The BAAQMD and the EPA allow for the composite analysis of wallboard drywall/sheetrock and joint compound. If the composite result is less than one percent, as determined by point-counting methods, than the materials are not regulated by either agency, but the taping mud is regulated as ACM by Cal-OSHA. The window putty is considered asbestos containing construction material (ACCM), and is subject to several Cal-OSHA regulations.

### *4.3 Category I and Category II (Non-friable ACM)*

- Brown 9x9" vinyl floor tiles (6 % Chrysotile Asbestos, Mastic is 10%): We estimate approximately 20 square feet of are present inside a closet on the ground floor.
- Roofing Materials (Upper and Lower Roofs): Tar, felt/mineral capsheet, and penetration mastic. We estimate approximately 2,400 square feet of are present inside a closet on the ground floor.

Whether the ACMs identified above are regulated by BAAQMD depends on whether they would be greater than 1% asbestos and how they are impacted. The black floor mastic would also not likely be classified as RACM, provided this material is not removed using mechanical methods (i.e. floor buffers). Non-friable roofing materials are not classified as RACM, but these do require a Cal-OSHA registered contractor for removal.

### *4.4 Summary of Lead Survey Findings*

Both the exterior and interior paints were in fair condition, except for several walls and upper joists. Deteriorated leaded paint requires stabilization before remodeling and re-use of the space. Deteriorated paints that contain greater than 1,000 ppm lead are classified as hazard waste and will require removal and hazardous waste disposal prior to demolition per California DTSC regulations. Paint chips with a concentration between 50 and 1,000 ppm can be retested using two waste extraction test procedures (STLC and TCLP) to comply with both state and federal requirements. The following require stabilization and proper handling:

- Interior Black Paint on Windows: 54,000 ppm (Intact Condition): We estimate approximately 1,600 linear feet of surfaces.
- Interior Red Paint on Walls: 2,000 ppm (Deteriorated Condition): We estimate approximately 80 square feet of surfaces (Photo 5).
- Interior Wood Joist: White Paint 110 ppm (Deteriorated Condition): We estimate approximately 1,800 square feet of surfaces (Photo 6).

### *4.5 Universal Hazardous Wastes*

Although not the focus of our investigation, universal hazardous wastes will also need to be removed and recycled, prior to building demolition. Universal hazardous wastes include mercury (in thermostats), Freon, lighting (mercury vapor lamps) and hydraulic oils. Based on the estimated age of the building, polychlorinated chlorinated biphenyls (PCBs) in fluorescent light ballasts could be present. Mercury containing thermostats were not observed.

## 5.0 Recommendations

The findings of this investigation warrant the following actions:

1. It is recommended to abate the asbestos floors and asbestos walls before construction begins. If it is to remain in place, this must be disclosed to contractors and future occupants, left undisturbed and managed under an operations and management program.

2. We recommend point counting materials that are less than 1% (i.e drywall with taping mud, so they are exempt from BAAQMDs regulations.
3. The stucco and window putty are also exempt under the BAAQMDs regulations provided these are point counted, and found to contain <1% asbestos. If left in place, they are regulated by Cal-OSHA (as ACCM) and under the Connolly rules (as greater then 0.1% asbestos). These materials and any other ACMs not removed will need to be disclosed in writing to tenants, contractors and maintenance personnel.
4. Leaded paints will need to be contained and stabilized using a contractor specializing and this type of work. The paint chip waste should be tested using STLC and TCLP to prove it is not hazardous waste.
5. The roof should be assumed to contain asbestos for the purposes of this survey.

## 6.0 Conclusions

This investigation discovered asbestos in flooring, in drywall taping mud, and window putty. We also assume asbestos roofing materials to be present. Concentrations of leaded paint will require stabilization on walls in the kitchen and on wood components above ceilings of the second floor. These paint chip wastes should be tested to determine proper waste classification.

Please feel free to contact us if you have any questions or comments regarding this report. Thank you for the opportunity to be of service.

Acumen Industrial Hygiene, Inc.

Paul M. Spillane, CIH, CAC
Certified Asbestos Consultant
CDPH-Lead Based Paint Accredited



**Table 1**

Asbestos Containing Materials
Jelly's at Pier 50
San Francisco, CA

December 19, 2011

| Location | Material | Results [1] | BAAQMD [2] | EQ [3] | Sample No. |
|---|---|---|---|---|---|
| Roofing Materials (Upper and Lower Roofs) | Tar, felt/mineral capsheet, and penetration mastic | Assumed | Cat I NF | 2,400 sf | N/A |
| 1st Floor Under Stairs | 9x9" Vinyl Floor Tile Brown with Mastic | Vinyl Floor Tile: 6% CH<br>Black-Brown Mastic: 10% CH | Cat I NF | 20 sf | CSF1108-04A |
| Original Walls | Drywall with Taping Mud | Composite Drywall and Taping Mud:<br><1% CH Drywall: ND<br>Taping Mud: 2% CH<br>Tape/Paints: ND | Non-RACM[4] | 2,300 sf | CSF1108-05A |
| Interior Windows | Window Putty | Putty: < 1% CH<br>Paint: ND | Non-RACM[4] | 1,600 lf (136 sf) | CSF1108-06C |

**Footnote**

1. Results report percent (%) asbestos as determined by polarized light microscopy (PLM). CH indicates Chrysotile asbestos and ND indicates that asbestos was not detected.
2. BAAQMD indicates classification into friable (Regulated Asbestos Containing Material, RACM) or non-friable ACM (Category I or Category II Non-Friable).
3. EQ means estimated quantity either in square feet (SF) or linear feet (LF).
4. Materials that are <1% are not "Regulated Asbestos Containing Material" by the BAAQMD, if confirmed by point count analysis.

**Table 2**

Non-Asbestos Containing Materials
Jelly's at Pier 50
San Francisco, CA

December 19, 2011

| Location | Material | Results [1] | Sample No. |
|---|---|---|---|
| Exterior North | Exterior Patio Floor Concrete | Concrete: ND<br>Paint: ND<br>Aphalt: ND | CSF1108-01A |
| Exterior North | Exterior Stucco Wall | Stucco: ND<br>Paints: ND | CSF1108-02A |
| East | Exterior Stucco Wall | Beige Stucco: ND<br>Gray Stucco: ND<br>Paints: ND | CSF1108-02B |
| West | Exterior Stucco Wall | Beige Stucco: ND<br>Gray Stucco: ND<br>Paints: ND | CSF1108-02C |
| 1st Floor Ceiling | Gray Plaster with Red Paint | Plaster: ND<br>Paint: ND | CSF1108-03A |
| 1st Floor Ceiling | Gray Plaster with Red Paint | Plaster: ND<br>Paint: ND | CSF1108-03B |
| 1st Floor Ceiling | Gray Plaster with Red Paint | Gray Plaster: ND<br>Off-White Plaster: ND<br>Paint: ND | CSF1108-03C |
| 2nd Floor Men's Room Wall | Gray Plaster with Red Paint | Light Gray Plaster: ND<br>Dark Gray Plaster: ND<br>Paint: ND | CSF1108-03D |
| 1st Floor | Drywall with Taping Mud | Drywall: ND<br>Taping Mud: ND<br>Tape/Paint: ND | CSF1108-05B |
| 1st Floor | Drywall with Taping Mud | Drywall: ND<br>Taping Mud: ND<br>Tape/Paint: ND | CSF1108-05C |

**Footnote**

1. Samples were analyzed by polarized light microscopy and reported as not containing detectable amounts of asbestos. ND indicates that asbestos was not detected.

**Table 2** (continued)

Non-Asbestos Containing Materials
Jelly's at Pier 50
San Francisco, CA

December 19, 2011

| Location | Material | Results [1] | Sample No. |
|---|---|---|---|
| 2nd Floor | Drywall with Taping Mud | Drywall: ND<br>Paint: ND<br>(No Tapping Mud In The Sample) | CSF1108-05D |
| 2nd Floor | Drywall with Taping Mud | Drywall: ND<br>Taping Mud: ND<br>Tape/Paints: ND | CSF1108-05E |
| 1st Floor | Window Putty | Putty/Paint: ND | CSF1108-06A |
| 1st Floor | Window Putty | Putty/Paint: ND | CSF1108-06B |
| 2nd Floor | Window Putty | Putty/Paint: ND | CSF1108-06D |
| 2nd Floor | Window Putty | Putty/Paint: ND | CSF1108-06E |
| 1st Floor behind Bar | Light Concrete with Red Paint | Concrete: ND<br>Paint/Coating: ND | CSF1108-07A |
| at Stairs | 2x4 Lay In Ceiling Tile | Sheetrock Ceiling Tile: ND<br>Coating: ND | CSF1108-08A |
| 1st Floor | Black Vapor Barrier | ND | CSF1108-09A |
| 1st Floor | Black Vapor Barrier | ND | CSF1108-09B |

**Footnote**

1. Samples were analyzed by polarized light microscopy and reported as not containing detectable amounts of asbestos. ND indicates that asbestos was not detected.

**Table 3**

Summary of Lead Paint Sample Results
Jelly's at Pier 50
San Francisco, CA

December 19, 2011

| Location | Material | Result [1] | Amount of Deterioration [1] | Sample No. |
|---|---|---|---|---|
| Exterior North | Exterior White Paint on Wall | 110 | N/A | CSF1108-PB-01 |
| Exterior North | Exterior Black Paint on Metal Window | 54,000 | N/A | CSF1108-PB-02 |
| 1st Floor Kitchen | Flaking Red Paint in Kitchen | 2,000 | 80 sf | CSF1108-PB-03 |
| 2nd Floor Men's Room | Red Paint on Wall | < 63 | N/A | CSF1108-PB-04 |
| 2nd Floor Hall | White Paint on Upper Joists | 550 | 1,000 sf | CSF1108-PB-05 |

**Footnote**

1. Samples were analyzed by Flame Atomic Absorption Spectrometry (AAS) Method 7420 and reported in milligram per kilogram (mg/kg) or parts per million (ppm).

**Appendix A**

Laboratory Reports

Jelly's at Pier 50
San Francisco, CA

December 19, 2011

Acumen Project No. CSF 1108

*Prepared For:*

Mr. Tim Felton, Industrial Hygienist
Port of San Francisco
San Francisco, CA 94111

# MICRO ANALYTICAL LABORATORIES, INC.

## BULK ASBESTOS ANALYSIS - PLM (EPA/600/R-93/116, 1993)

1092
Paul Spillane
Acumen Industrial Hygiene, Inc.
1032 Irving Street, #922
San Francisco, CA 94122-2216

PROJECT:
**JELLYS AT PIER 50**
**SAN FRANCISCO, CA**
**PROJECT NO. CSF-1108**

| | |
|---|---|
| Micro Log In | **163894** |
| Total Samples | 23 |
| Date Sampled | 12/19/2011 |
| Date Received | 12/20/2011 |
| Date Analyzed | 12/20/2011 |

**ASBESTOS INFORMATION**

| SAMPLE IDENTIFICATION | QUANTITY (AREA %) / TYPES / LAYERS / DISTINCT SAMPLES | DOMINANT OTHER MATERIALS |
|---|---|---|
| Client #: CSF1108-01A<br>Micro #: 163894-01 Analyst: DA<br>EXTERIOR PATIO<br>FLOOR CONCRETE<br>EXTERIOR NORTH | CONCRETE: NONE DETECTED<br>PAINT: NONE DETECTED<br>APHALT: NONE DETECTED | Matrix Type: ROCK FRAGMENTS, CARBONATE, BINDER |
| Client #: CSF1108-02A<br>Micro #: 163894-02 Analyst: DA<br>EXTERIOR STUCCO WALL<br>EXTERIOR NORTH | STUCCO: NONE DETECTED<br>PAINTS: NONE DETECTED | Matrix Type: ROCK FRAGMENTS, CARBONATE, BINDER |
| Client #: CSF1108-02B<br>Micro #: 163894-03 Analyst: DA<br>EXTERIOR STUCCO WALL<br>EAST | STUCCO (BEIGE): NONE DETECTED<br>STUCCO (GRAY): NONE DETECTED<br>PAINTS: NONE DETECTED | Matrix Type: ROCK FRAGMENTS, CARBONATE, BINDER |
| Client #: CSF1108-02C<br>Micro #: 163894-04 Analyst: DA<br>EXTERIOR STUCCO WALL<br>WEST | STUCCO (BEIGE): NONE DETECTED<br>STUCCO (GRAY): NONE DETECTED<br>PAINTS: NONE DETECTED | Matrix Type: ROCK FRAGMENTS, CARBONATE, BINDER |
| Client #: CSF1108-03A<br>Micro #: 163894-05 Analyst: DA<br>GRAY PLASTER<br>WITH RED PAINT<br>1ST FLOOR CEILING | PLASTER: NONE DETECTED<br>PAINT: NONE DETECTED | Matrix Type: BINDER, OTHER, MISCELLANEOUS. |

Technical Supervisor: _____ 12/21/2011
Gamini Ranatunga, Ph.D. Date Reported

Asbestos is quantified by calibrated visual estimation. Detection limit is material dependent. Detection of asbestos traces (much less than 1%) may not be reliable or reproducible by PLM. Weight % cannot be determined by PLM. Asbestos with diameter below ~1 µm may not be detected by PLM. Absence of asbestos in dust, debris, and some compact materials, including floor tiles, cannot be conclusively established by PLM, and should be confirmed by Transmission Electron Microscopy (TEM). Tremolite-asbestos or actinolite-asbestos may be indistinguishable by PLM from some similar, non-regulated amphiboles (e.g. the "Libby Amphiboles" richterite and winchite), and should be confirmed by TEM. The lower quantitation limit (reporting limit) of PLM estimation is 1%. The Cal-OSHA definition of asbestos-containing construction material is 0.1% asbestos; however, reliable determination of asbestos percent at this level cannot be done by PLM estimation; PLM Point Counting or TEM weight percent analysis are recommended. Only dominant non-asbestos materials are indicated. Interferences may prevent detection of small asbestos fibers, and hinder determination of some optical properties. Sample heterogeneity is indicated by listing more than one distinct layer or material on the report. Layers are analyzed separately when feasible; if asbestos is detected, percentages are reported for individual layers. Interlayer contamination is possible among any layers in a sample. Composite asbestos percentages are applicable only to wallboard / joint compound systems; compositing is based on customers' descriptions of material as "joint compound". Customers are solely responsible for identification and description of bulk materials listed on field forms. Laboratory descriptions may differ from those given by customers. Quality Control (QC): all results have been determined to be within acceptance limits prior to reporting. Samples that were reanalyzed are denoted by two sets of analyst initials. Accreditation: NVLAP Lab Code 101872-0. CA ELAP Certification #1037. EPA 1993 method is based on EPA Interim Method (1982), with improved analytical techniques. Unless otherwise stated herein, all samples were received in acceptable condition for analysis. This report must not be used to claim product endorsement by NIST or any U.S. Government agency. This report shall not be reproduced without the approval of Micro Analytical Laboratories, Inc., shall not be reproduced except in full, and pertains only to the samples analyzed. ND = NO ASBESTOS DETECTED.

# MICRO ANALYTICAL LABORATORIES, INC.

## BULK ASBESTOS ANALYSIS - PLM (EPA/600/R-93/116, 1993)

1092
Paul Spillane
Acumen Industrial Hygiene, Inc.
1032 Irving Street, #922
San Francisco, CA 94122-2216

PROJECT:
**JELLYS AT PIER 50**
**SAN FRANCISCO, CA**
**PROJECT NO. CSF-1108**

| | |
|---|---|
| Micro Log In | **163894** |
| Total Samples | 23 |
| Date Sampled | 12/19/2011 |
| Date Received | 12/20/2011 |
| Date Analyzed | 12/20/2011 |

| SAMPLE IDENTIFICATION | ASBESTOS INFORMATION<br>QUANTITY (AREA %) / TYPES / LAYERS / DISTINCT SAMPLES | DOMINANT OTHER MATERIALS |
|---|---|---|
| Client #: CSF1108-03B<br>Micro #: 163894-06 Analyst: DA<br>GRAY PLASTER<br>WITH RED PAINT<br>1ST FLOOR CEILING | PLASTER: NONE DETECTED<br>PAINT: NONE DETECTED | Matrix BINDER, OTHER.<br>Type MISCELLANEOUS. |
| Client #: CSF1108-03C<br>Micro #: 163894-07 Analyst: DA<br>GRAY PLASTER<br>WITH RED PAINT<br>1ST FLOOR CEILING | PLASTER (GRAY): NONE DETECTED<br>PLASTER (OFF-WHITE): NONE DETECTED<br>PAINT: NONE DETECTED | Matrix ROCK FRAGMENTS,<br>Type CARBONATE, BINDER |
| Client #: CSF1108-03D<br>Micro #: 163894-08 Analyst: DA GR<br>GRAY PLASTER WITH RED PAINT<br>2ND FLOOR MEN'S ROOM WALL | PLASTER (LIGHT GRAY): NONE DETECTED<br>PLASTER (DARK GRAY): NONE DETECTED<br>PAINT: NONE DETECTED | Matrix ROCK FRAGMENTS,<br>Type CARBONATE, BINDER |
| Client #: CSF1108-04A<br>Micro #: 163894-09 Analyst: DA<br>9 X 9 VFT BROWN WITH MASTIC<br>1ST FLOOR UNDER STAIRS | VFT: 6% CHRYSOTILE ASBESTOS<br>MASTIC (BLACK-BROWN): 10% CHRYSOTILE ASBESTOS | Matrix SYNTHETIC MATERIAL,<br>Type: CARBONATE, ADHESIVE. |
| Client #: CSF1108-05A<br>Micro #: 163894-10 Analyst: DA<br>DRYWALL WITH TAPING MUD<br>1ST FLOOR | COMPOSITE DW & TM: <1% CHRYSOTILE<br>DRYWALL: NONE DETECTED<br>TAPING MUD: 2% CHRYSOTILE ASBESTOS<br>TAPE / PAINTS: NONE DETECTED | 20 % CELLULOSE<br>Matrix 'GYPSUM' (CALCIUM SULFATE),<br>Type CARBONATE. |

Technical Supervisor: _____ 12/21/2011
Gamini Ranatunga, Ph.D. Date Reported

Asbestos is quantified by calibrated visual estimation. Detection limit is material dependent. Detection of asbestos traces (much less than 1%) may not be reliable or reproducible by PLM. Weight % cannot be determined by PLM. Asbestos with diameter below ~1 µm may not be detected by PLM. Absence of asbestos in dust, debris, and some compact materials, including floor tiles, cannot be conclusively established by PLM, and should be confirmed by Transmission Electron Microscopy (TEM). Tremolite-asbestos or actinolite-asbestos may be indistinguishable by PLM from some similar, non-regulated amphiboles (e.g. the "Libby Amphiboles" richterite and winchite), and should be confirmed by TEM. The lower quantitation limit (reporting limit) of PLM estimation is 1%. The Cal-OSHA definition of asbestos-containing construction material is 0.1% asbestos; however, reliable determination of asbestos percent at this level cannot be done by PLM estimation; PLM Point Counting or TEM weight percent analysis are recommended. Only dominant non-asbestos materials are indicated. Interferences may prevent detection of small asbestos fibers, and hinder determination of some optical properties. Sample heterogeneity is indicated by listing more than one distinct layer or material on the report. Layers are analyzed separately when feasible; if asbestos is detected, percentages are reported for individual layers. Interlayer contamination is possible among any layers in a sample. Composite asbestos percentages are applicable only to wallboard / joint compound systems; compositing is based on customers' descriptions of material as "joint compound". Customers are solely responsible for identification and description of bulk materials listed on field forms. Laboratory descriptions may differ from those given by customers. Quality Control (QC): all results have been determined to be within acceptance limits prior to reporting. Samples that were reanalyzed are denoted by two sets of analyst initials. Accreditation: NVLAP Lab Code 101872-0. CA ELAP Certification #1037. EPA 1993 method is based on EPA Interim Method (1982), with improved analytical techniques. Unless otherwise stated herein, all samples were received in acceptable condition for analysis. This report must not be used to claim product endorsement by NIST or any U.S. Government agency. This report shall not be reproduced without the approval of Micro Analytical Laboratories, Inc., shall not be reproduced except in full, and pertains only to the samples analyzed. ND = NO ASBESTOS DETECTED.

# MICRO ANALYTICAL LABORATORIES, INC.

## BULK ASBESTOS ANALYSIS - PLM (EPA/600/R-93/116, 1993)



1092
Paul Spillane
Acumen Industrial Hygiene, Inc.
1032 Irving Street, #922
San Francisco, CA 94122-2216

PROJECT:
**JELLYS AT PIER 50**
**SAN FRANCISCO, CA**
**PROJECT NO. CSF-1108**

Micro Log In **163894**
Total Samples 23
Date Sampled 12/19/2011
Date Received 12/20/2011
Date Analyzed 12/20/2011

| SAMPLE IDENTIFICATION | ASBESTOS INFORMATION<br>QUANTITY (AREA %) / TYPES / LAYERS / DISTINCT SAMPLES | DOMINANT OTHER MATERIALS |
|---|---|---|
| Client #: CSF1108-05B<br>Micro # 163894-11 Analyst: DA<br>DRYWALL WITH TAPING MUD<br>1ST FLOOR | DRYWALL: NONE DETECTED<br>TAPING MUD: NONE DETECTED<br>TAPE / PAINT: NONE DETECTED | 20 % CELLULOSE<br>Matrix 'GYPSUM' (CALCIUM SULFATE),<br>Type: CARBONATE. |
| Client #: CSF1108-05C<br>Micro #: 163894-12 Analyst: DA<br>DRYWALL WITH TAPING MUD<br>1ST FLOOR | DRYWALL: NONE DETECTED<br>TAPING MUD: NONE DETECTED<br>TAPE / PAINT: NONE DETECTED | 20 % CELLULOSE<br>Matrix 'GYPSUM' (CALCIUM SULFATE),<br>Type: CARBONATE. |
| Client #: CSF1108-05D<br>Micro #: 163894-13 Analyst: DA<br>DRYWALL WITH TAPING MUD<br>2ND FLOOR | DRYWALL: NONE DETECTED<br>PAINT: NONE DETECTED<br>(NO TAPPING MUD IN THE SAMPLE) | 15 % CELLULOSE<br>Matrix 'GYPSUM' (CALCIUM SULFATE),<br>Type. |
| Client #: CSF1108-05E<br>Micro # 163894-14 Analyst: DA<br>DRYWALL WITH TAPING MUD<br>2ND FLOOR | DRYWALL: NONE DETECTED<br>TAPING MUD: NONE DETECTED<br>TAPE / PAINTS: NONE DETECTED | 20 % CELLULOSE<br>Matrix 'GYPSUM' (CALCIUM SULFATE),<br>Type: CARBONATE. |
| Client #: CSF1108-06A<br>Micro #: 163894-15 Analyst: DA<br>WINDOW PUTTY<br>1ST FLOOR | PUTTY / PAINT: NONE DETECTED | Matrix SYNTHETIC MATERIAL,<br>Type: CARBONATE. |

Technical Supervisor: _____ 12/21/2011
Gamini Ranatunga, Ph.D. Date Reported

Asbestos is quantified by calibrated visual estimation. Detection limit is material dependent. Detection of asbestos traces (much less than 1%) may not be reliable or reproducible by PLM. Weight % cannot be determined by PLM. Asbestos with diameter below ~1 µm may not be detected by PLM. Absence of asbestos in dust, debris, and some compact materials, including floor tiles, cannot be conclusively established by PLM, and should be confirmed by Transmission Electron Microscopy (TEM). Tremolite-asbestos or actinolite-asbestos may be indistinguishable by PLM from some similar, non-regulated amphiboles (e.g. the "Libby Amphiboles" richterite and winchite), and should be confirmed by TEM. The lower quantitation limit (reporting limit) of PLM estimation is 1%. The Cal-OSHA definition of asbestos-containing construction material is 0.1% asbestos; however, reliable determination of asbestos percent at this level cannot be done by PLM estimation; PLM Point Counting or TEM weight percent analysis are recommended. Only dominant non-asbestos materials are indicated. Interferences may prevent detection of small asbestos fibers, and hinder determination of some optical properties. Sample heterogeneity is indicated by listing more than one distinct layer or material on the report. Layers are analyzed separately when feasible; if asbestos is detected, percentages are reported for individual layers. Interlayer contamination is possible among any layers in a sample. Composite asbestos percentages are applicable only to wallboard / joint compound systems; compositing is based on customers' descriptions of material as "joint compound". Customers are solely responsible for identification and description of bulk materials listed on field forms. Laboratory descriptions may differ from those given by customers. Quality Control (QC): all results have been determined to be within acceptance limits prior to reporting. Samples that were reanalyzed are denoted by two sets of analyst initials. Accreditation: NVLAP Lab Code 101872-0. CA ELAP Certification #1037. EPA 1993 method is based on EPA Interim Method (1982), with improved analytical techniques. Unless otherwise stated herein, all samples were received in acceptable condition for analysis. This report must not be used to claim product endorsement by NIST or any U.S. Government agency. This report shall not be reproduced without the approval of Micro Analytical Laboratories, Inc., shall not be reproduced except in full, and pertains only to the samples analyzed. ND = NO ASBESTOS DETECTED.

# MICRO ANALYTICAL LABORATORIES, INC.

## BULK ASBESTOS ANALYSIS - PLM (EPA/600/R-93/116, 1993)

1092
Paul Spillane
Acumen Industrial Hygiene, Inc.
1032 Irving Street, #922
San Francisco, CA 94122-2216

PROJECT:
**JELLYS AT PIER 50**
**SAN FRANCISCO, CA**
**PROJECT NO. CSF-1108**

| | |
|---|---|
| Micro Log In | **163894** |
| Total Samples | 23 |
| Date Sampled | 12/19/2011 |
| Date Received | 12/20/2011 |
| Date Analyzed | 12/21/2011 |

| SAMPLE IDENTIFICATION | ASBESTOS INFORMATION<br>QUANTITY (AREA %) / TYPES / LAYERS / DISTINCT SAMPLES | DOMINANT OTHER MATERIALS |
|---|---|---|
| Client #: CSF1108-06B<br>Micro #: 163894-16 Analyst: DA<br>WINDOW PUTTY<br>1ST FLOOR | PUTTY / PAINT: NONE DETECTED | Matrix: SYNTHETIC MATERIAL, Type: CARBONATE |
| Client #: CSF1108-06C<br>Micro #: 163894-17 Analyst: DA GR<br>WINDOW PUTTY<br>1ST FLOOR | PUTTY: < 1% CHRYSOTILE ASBESTOS<br>PAINT: NONE DETECTED | Matrix: SYNTHETIC MATERIAL, Type: CARBONATE |
| Client #: CSF1108-06D<br>Micro #: 163894-18 Analyst: DA<br>WINDOW PUTTY<br>2ND FLOOR | PUTTY / PAINT: NONE DETECTED | Matrix: SYNTHETIC MATERIAL, Type: CARBONATE |
| Client #: CSF1108-06E<br>Micro #: 163894-19 Analyst: DA<br>WINDOW PUTTY<br>2ND FLOOR | PUTTY / PAINT: NONE DETECTED | Matrix: SYNTHETIC MATERIAL, Type: CARBONATE |
| Client #: CSF1108-07A<br>Micro #: 163894-20 Analyst: DA<br>LIGHT CONCRETE WITH RED PAINT<br>1ST FLOOR BEHIND BAR | CONCRETE: NONE DETECTED<br>PAINT / COATING: NONE DETECTED | 2 % CELLULOSE<br>Matrix: ROCK FRAGMENTS, Type: CARBONATE, BINDER |

Technical Supervisor: _____ 12/21/2011
Gamini Ranatunga, Ph.D. Date Reported

Asbestos is quantified by calibrated visual estimation. Detection limit is material dependent. Detection of asbestos traces (much less than 1%) may not be reliable or reproducible by PLM. Weight % cannot be determined by PLM. Asbestos with diameter below ~1 µm may not be detected by PLM. Absence of asbestos in dust, debris, and some compact materials, including floor tiles, cannot be conclusively established by PLM, and should be confirmed by Transmission Electron Microscopy (TEM). Tremolite-asbestos or actinolite-asbestos may be indistinguishable by PLM from some similar, non-regulated amphiboles (e.g. the "Libby Amphiboles" richterite and winchite), and should be confirmed by TEM. The lower quantitation limit (reporting limit) of PLM estimation is 1%. The Cal-OSHA definition of asbestos-containing construction material is 0.1% asbestos; however, reliable determination of asbestos percent at this level cannot be done by PLM estimation; PLM Point Counting or TEM weight percent analysis are recommended. Only dominant non-asbestos materials are indicated. Interferences may prevent detection of small asbestos fibers, and hinder determination of some optical properties. Sample heterogeneity is indicated by listing more than one distinct layer or material on the report. Layers are analyzed separately when feasible; if asbestos is detected, percentages are reported for individual layers. Interlayer contamination is possible among any layers in a sample. Composite asbestos percentages are applicable only to wallboard / joint compound systems; compositing is based on customers' descriptions of material as "joint compound". Customers are solely responsible for identification and description of bulk materials listed on field forms. Laboratory descriptions may differ from those given by customers. Quality Control (QC): all results have been determined to be within acceptance limits prior to reporting. Samples that were reanalyzed are denoted by two sets of analyst initials. Accreditation: NVLAP Lab Code 101872-0. CA ELAP Certification #1037. EPA 1993 method is based on EPA Interim Method (1982), with improved analytical techniques. Unless otherwise stated herein, all samples were received in acceptable condition for analysis. This report must not be used to claim product endorsement by NIST or any U.S. Government agency. This report shall not be reproduced without the approval of Micro Analytical Laboratories, Inc., shall not be reproduced except in full, and pertains only to the samples analyzed. ND = NO ASBESTOS DETECTED.

# MICRO ANALYTICAL LABORATORIES, INC.

## BULK ASBESTOS ANALYSIS - PLM (EPA/600/R-93/116, 1993)

1092
Paul Spillane
Acumen Industrial Hygiene, Inc.
1032 Irving Street, #922
San Francisco, CA 94122-2216

PROJECT:
**JELLYS AT PIER 50**
**SAN FRANCISCO, CA**
**PROJECT NO. CSF-1108**

| | |
|---|---|
| Micro Log In | **163894** |
| Total Samples | 23 |
| Date Sampled | 12/19/2011 |
| Date Received | 12/20/2011 |
| Date Analyzed | 12/21/2011 |

**ASBESTOS INFORMATION**

| SAMPLE IDENTIFICATION | QUANTITY (AREA %) / TYPES / LAYERS / DISTINCT SAMPLES | DOMINANT OTHER MATERIALS |
|---|---|---|
| Client #: CSF1108-08A<br>Micro #: 163894-21 Analyst: DA<br>2 X 4 LAY IN CEILING TILE AT STAIRS | CEILING TILE (SHEETROCK): NONE DETECTED<br>COATING: NONE DETECTED | 5 % CELLULOSE<br>5 % FIBROUS GLASS<br>Matrix Type: "GYPSUM" (CALCIUM SULFATE). |
| Client #: CSF1108-09A<br>Micro #: 163894-22 Analyst: DA<br>BLACK VAPOR BARRIER 1ST FLOOR | NONE DETECTED | 60 % CELLULOSE<br>Matrix Type: TAR |
| Client #: CSF1108-09B<br>Micro #: 163894-23 Analyst: DA<br>BLACK VAPOR BARRIER 1ST FLOOR | NONE DETECTED | 60 % CELLULOSE<br>Matrix Type: TAR |

Technical Supervisor: _____ 12/21/2011
Samini Ranatunga, Ph.D. Date Reported

Asbestos is quantified by calibrated visual estimation. Detection limit is material dependent. Detection of asbestos traces (much less than 1%) may not be reliable or reproducible by PLM. Weight % cannot be determined by PLM. Asbestos with diameter below ~1 µm may not be detected by PLM. Absence of asbestos in dust, debris, and some compact materials, including floor tiles, cannot be conclusively established by PLM, and should be confirmed by Transmission Electron Microscopy (TEM). Tremolite-asbestos or actinolite-asbestos may be indistinguishable by PLM from some similar, non-regulated amphiboles (e.g. the "Libby Amphiboles" richterite and winchite), and should be confirmed by TEM. The lower quantitation limit (reporting limit) of PLM estimation is 1%. The Cal-OSHA definition of asbestos-containing construction material is 0.1% asbestos; however, reliable determination of asbestos percent at this level cannot be done by PLM estimation; PLM Point Counting or TEM weight percent analysis are recommended. Only dominant non-asbestos materials are indicated. Interferences may prevent detection of small asbestos fibers, and hinder determination of some optical properties. Sample heterogeneity is indicated by listing more than one distinct layer or material on the report. Layers are analyzed separately when feasible; if asbestos is detected, percentages are reported for individual layers. Interlayer contamination is possible among any layers in a sample. Composite asbestos percentages are applicable only to wallboard / joint compound systems; compositing is based on customers' descriptions of material as "joint compound". Customers are solely responsible for identification and description of bulk materials listed on field forms. Laboratory descriptions may differ from those given by customers. Quality Control (QC): all results have been determined to be within acceptance limits prior to reporting. Samples that were reanalyzed are denoted by two sets of analyst initials. Accreditation: NVLAP Lab Code 101872-0. CA ELAP Certification #1037. EPA 1993 method is based on EPA Interim Method (1982), with improved analytical techniques. Unless otherwise stated herein, all samples were received in acceptable condition for analysis. This report must not be used to claim product endorsement by NIST or any U.S. Government agency. This report shall not be reproduced without the approval of Micro Analytical Laboratories, Inc., shall not be reproduced except in full, and pertains only to the samples analyzed. ND = NO ASBESTOS DETECTED.

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INDUSTRIAL HYGIENE INC
1032 IRVING ST BOX 922 SAN FRANCISCO CA 94122
TEL 415 242 6060 FAX 415 242 6006
WWW ACUMEN-IH COM

# BULK CHAIN OF CUSTODY FORM

163894

Project No. CSF·1108

Job Site: JELLY'S @ PIER 50

Location: SAN FRANCISCO, CA

Laboratory: MAL

Turnaround Time: Normal / 24 Hour / Rush

Sample Date: 12/19/11

Sampler: Paul M. Spillane, CIH, CAC

| | Sample No. | Description/ Location | Analysis |
|---|---|---|---|
| C1 | CSF1108 01A | EXTERIOR PATIO FLOOR CONCRETE / EXT NORTH | PLM |
| C2 | 02A | EXTERIOR STUCCO WALL / EXT NORTH | |
| C3 | 02B | / / / / EAST | |
| C4 | 02C | / / / / WEST | |
| C5 | 03A | GRAY PLASTER W/ RED PAINT / 1ST FLR CEILING | |
| C6 | 03B | / / / / 1ST FLR CEILING | |
| C7 | 03C | / / / / 1ST FLR CEIL | |
| C8 | 03D | / / / / 2ND FLR MEN'S RM WALL | |
| C9 | 04A | 9x9 VFT BROWN W/ MASTIC / 1ST FLR UNDERSTAIRS | |
| C10 | 05A | DRYWALL W/ TAPING MUD / 1ST FLR | ↓ |

*Email to lab@acumen-ih.com*

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# BULK CHAIN OF CUSTODY FORM

1639094

Project No. CSF 1108

Job Site: JELLY'S @ PIER 50

Location: SAN FRANCISCO

Laboratory: MAL

Turnaround Time: Normal / 24 Hour / Rush

Sample Date: 12/19/11

Sampler: Paul M. Spillane, CIH, CAC

| | Sample No. | Description/ Location | | Analysis |
|---|---|---|---|---|
| 11 | CSF1108 05B | DRYWALL W/ TAPING MUD | 1ST | PLM |
| 12 | 05C | | 1ST | |
| 13 | 05D | | 2ND | |
| 14 | 05E | | 2ND | |
| 15 | 06A | WINDOW PUTTY | 1ST | |
| 16 | 06B | | 1ST FLR | |
| 17 | 06C | | 1ST FLR | |
| 18 | 06D | | 2ND FLR | |
| 19 | 06E | | 2ND FLR | |
| 20 | 07A | LIGHT CONCRETE W/ RED PAINT | 1ST FR BEHIND BAR | |

Email to lab@acumen-ih.com

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# BULK CHAIN OF CUSTODY FORM

1603894

Project No. CSF1108

Job Site: JELLY'S @ PIER 50

Location: SF CA

Laboratory: ~~12/19/11~~ MAC

Turnaround Time: Normal / 24 Hour / Rush

Sample Date: 12/19/11

Sampler: Paul M. Spillane, CIH, CAC

| Sample No. | Description/ Location | Analysis |
|---|---|---|
| (21) CSF1108 09A | 2X4 LAY-IN CEILING TILE / @ STAIRS | PLM |
| CSF1108 PB01 | EXTERIOR WHITE PAINT ON WALL / EXT NORTH | FLAA |
| PB02 | EXTERIOR BLACK PAINT ON METAL WINDOW / EXT NORTH | |
| PB 03 | FLAKING RED PAINT IN KITCHEN / 1ST FLR ISLAND | |
| PB 04 | RED PAINT ON WALL / 2ND FLR MENS ROOM | |
| PB 05 | WHITE PAINT ON UPPER JOISTS / 2ND FLR HALL | |
| (22) CSF1108 09A | BLACK VAPOR BARRIER / 1ST FLR | PLM ASBESTOS |
| (23) 09B | " " " / 1ST FLR | |

*Email to lab@acumen-ih.com*

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# MICRO ANALYTICAL LABORATORIES, INC.

## LEAD IN PAINT - FLAME AAS (SW846)

1092
Paul Spillane
Acumen Industrial Hygiene, Inc.
1032 Irving Street, #922
San Francisco, CA 94122-2216

PROJECT:
JELLYS AT PIER 50
SAN FRANCISCO, CA
PROJECT NO. CSF-1108

Micro Log In 163895
Total Samples 5
Date Sampled 12/19/2011
Date Received 12/20/2011
Date Analyzed 12/20/2011

| Sample ID | Lead Concentration Weight Percent | mg/kg (ppm) | RDL |
|---|---|---|---|
| Client: CSF1100-PB-01<br>Lab: 163895-01<br>EXTERIOR WHITE PAINT ON WALL<br>EXTERIOR NORTH | 0.010 % | 110 | 0.01 %<br>62 mg/kg |
| Client: CSF1108-PB-02<br>Lab: 163895-02<br>EXTERIOR BLACK PAINT ON METAL WINDOW<br>EXTERIOR NORTH | 5.4 % | 54000 | 0.38 %<br>3,759 mg/kg |
| Client: CSF1108-PB-03<br>Lab: 163895-03<br>FLAKING RED PAINT IN KITCHEN<br>1ST FLOOR KITCHEN | 0.20 % | 2000 | 0.01 %<br>130 mg/kg |
| Client: CSF1108-PB-04<br>Lab: 163895-04<br>RED PAINT ON WALL<br>2ND FLOOR MEN'S ROOM | < 0.010 % | < 63 | 0.01 %<br>63 mg/kg |
| Client: CSF1108-PB-05<br>Lab: 163895-05<br>WHITE PAINT ON UPPER JOISTS<br>2ND FLOOR HALL | 0.050 % | 550 | 0.01 %<br>65 mg/kg |

Technical Supervisor: _____ 12/20/2011
Tess Tagorda, Chemistry Supervisor — Date Reported

Analyst: AW

AIHA ELLAP Accredited Laboratory, ID #101768. SOP M4. Samples are analyzed by Flame Atomic Absorption Spectrometry (AAS). U.S. EPA SW-846 Method 7000B is used for the instrumental analysis. Nitric acid and hydrogen peroxide digestion procedures are based on ASTM E-1645. Unless otherwise indicated on this report, all required Quality Control samples have been determined to be in control prior to releasing these analytical results. Unless otherwise stated in this report, all samples were received in acceptable condition for analysis. This report must not be reproduced without the approval of Micro Analytical Laboratories, Inc., and pertains only to the samples analyzed. Unit explanations: mg = milligrams; kg = kilograms; ppm = parts per million. N/A = Not Applicable. RDL = Report Detection Limit.

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WWW.ACUMEN-IH.COM

# BULK CHAIN OF CUSTODY FORM

163995

Project No. CSF1108

Job Site: Jelly's @ Pier 50

Location: SF CA

Laboratory: ~~12/19/11~~ MAC

Turnaround Time: Normal / 24 Hour / Rush

Sample Date: 12/19/11

Sampler: Paul M. Spillane, CIH, CAC

| Sample No. | Description/ Location | Analysis |
|---|---|---|
| CSF1108 09A | 2X4 LAY IN CEILING TILE / STAIRS | PLM |
| (01) CSF1108 PB01 | EXTERIOR WHITE PAINT ON WALL / EXT NORTH | FLAA |
| (02) PB02 | EXTERIOR BLACK PAINT ON METAL WINDOW / EXT NORTH | |
| (03) PB03 | FLAKING RED PAINT IN KITCHEN / 1ST FLR KITCHEN | |
| (04) PB04 | RED PAINT ON WALL / 2ND FLR MENS ROOM | |
| (05) PB05 | WHITE PAINT ON UPPER JOISTS / 2ND FLR HALL | |
| CSF1108 09A | BLACK VAPOR BARRIER / 1ST FLR | PLM ASBESTOS |
| 09B | / 1ST FLR | |

*Email to lab@acumen-ih.com*

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**Appendix B**

Floor Plans

Jelly's at Pier 50
San Francisco, CA

December 19, 2011

Acumen Project No. CSF 1108

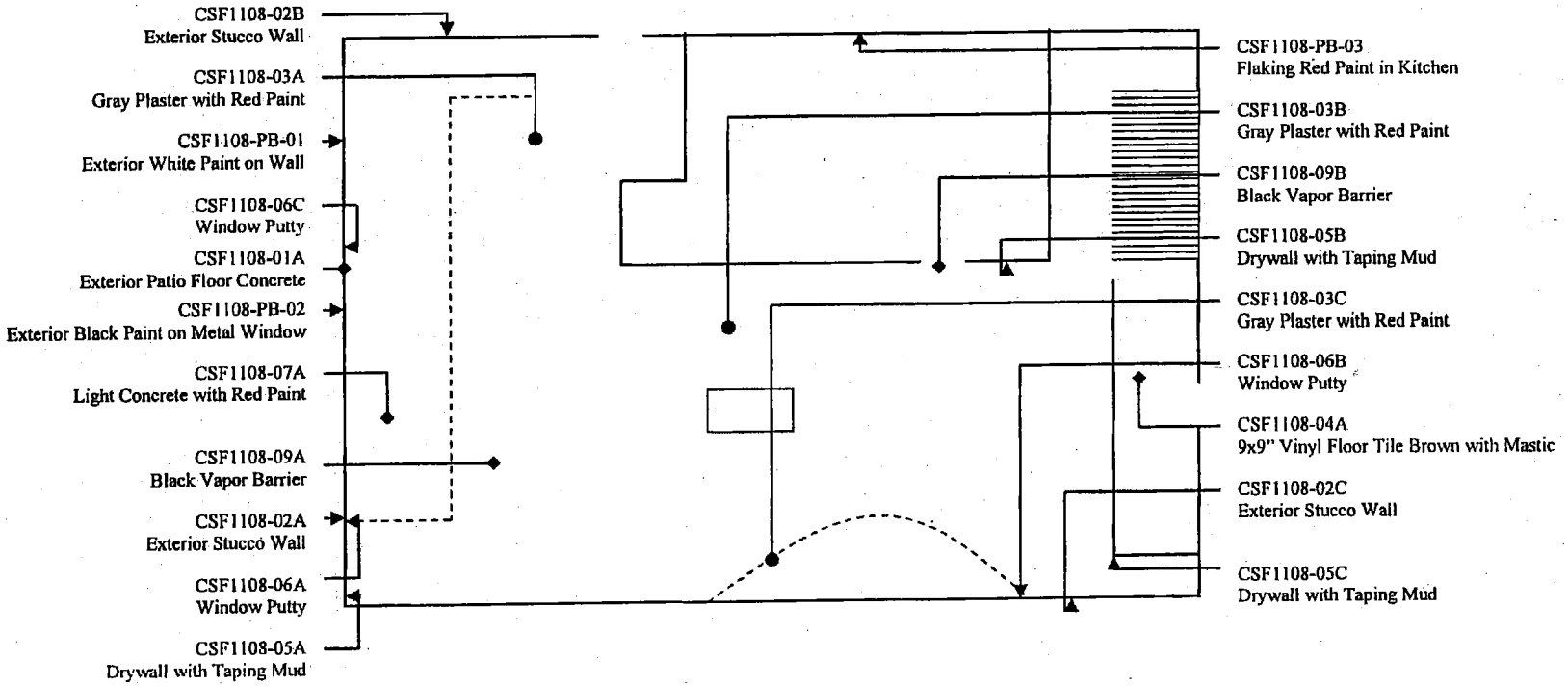
*Prepared For:*

Mr. Tim Felton, Industrial Hygienist
Port of San Francisco
San Francisco, CA 94111

**Figure 1**

Sampling Locations
Pier 50 – Lower Floor
San Francisco, CA

December 19, 2011

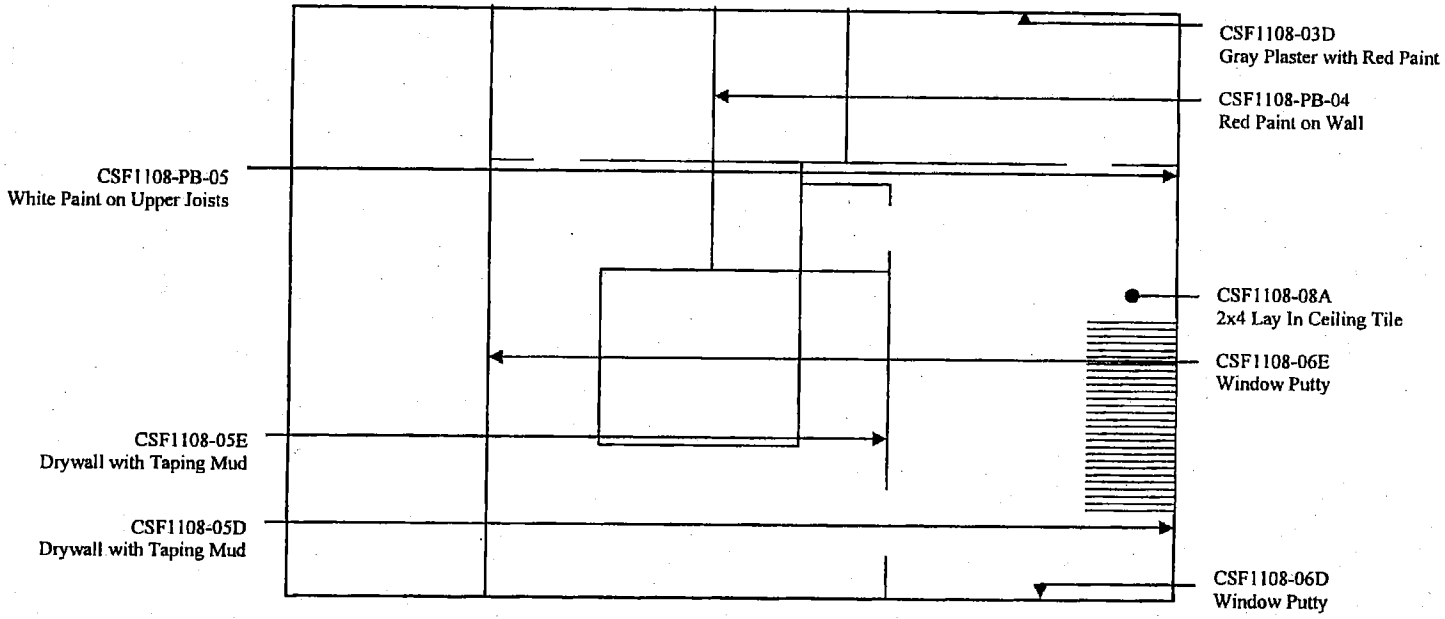



| | |
|---|---|
| ← | Wall Sample |
| ◆— | Floor Sample |
| ●— | Ceiling Sample |
| Red | Asbestos Containing |
| Blue | Lead Sample |

**Figure 2**

Sampling Locations
Pier 50 – Upper Floor
San Francisco, CA

December 19, 2011




Wall Sample
Floor Sample
Ceiling Sample
Red — Asbestos Containing
Blue — Lead Sample

**Appendix C**

Photographs

Pier 38
San Francisco, CA

December 19, 2011

Acumen Project No. CSF 1108

*Prepared For:*

Mr. Tim Felton, Industrial Hygienist
Port of San Francisco
San Francisco, CA 94111

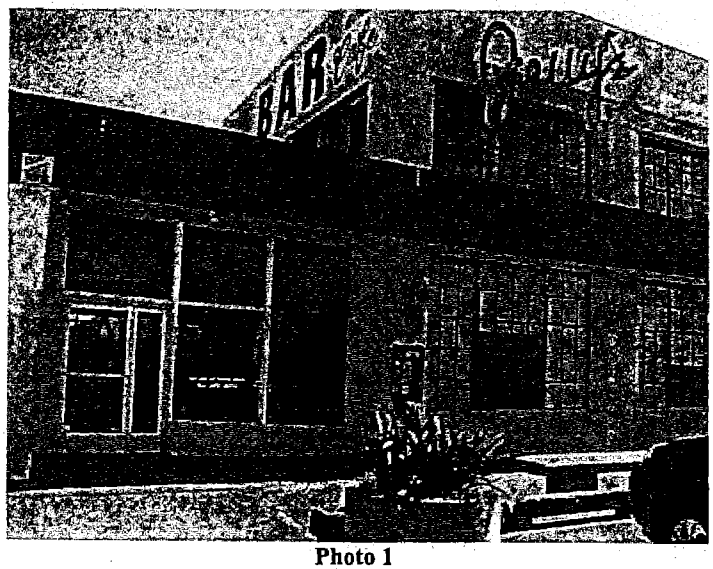


**Photo 1**

The former Jelly's restaurant building is a two-story structure of about 3,800 square feet. The lower floor consists of an open floor plan, bar/dance area and a kitchen. The upper floor-plan consists of a hallway, two restrooms, storage area, an office and a walk-in-refrigerator.

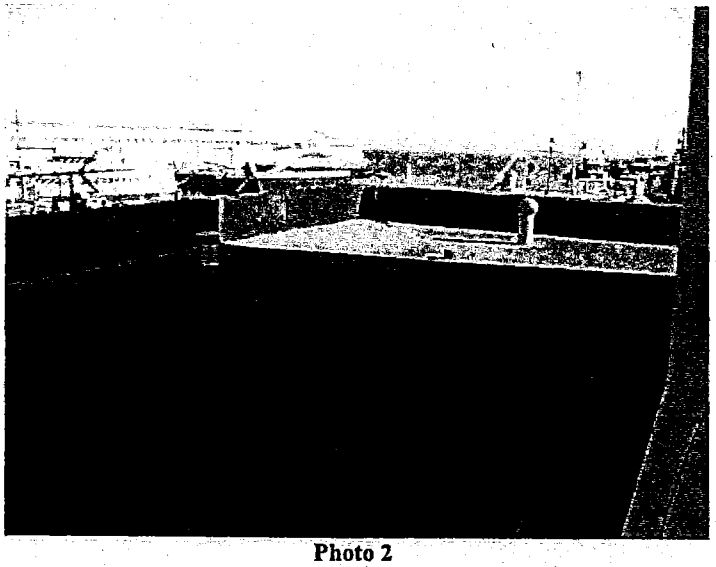


**Photo 2**

The roof was reportedly recently replaced and Acumen was not requested to sample it. We assume it contains asbestos materials (tar, mastics and capsheeting)

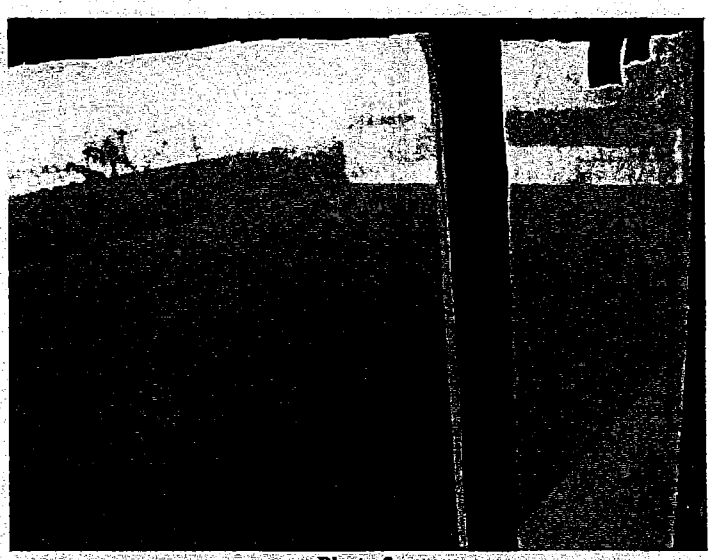


**Photo 3**

The window putties are accessible from the inside of the building and contain <1% asbestos (Sample CSF1108-06C). There are about 1,600 linear feet or about 136 square feet.

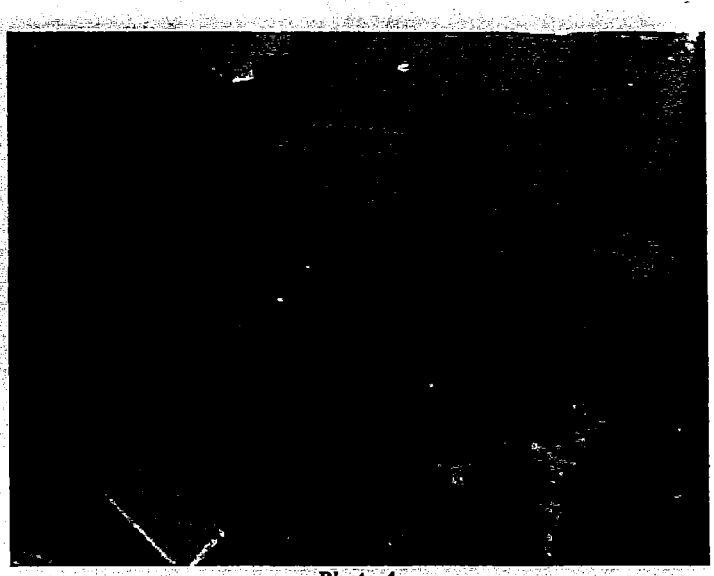


**Photo 4**

About 20 square feet of brown 9x9" vinyl floor tile (6 % asbestos) and associated mastic (10% asbestos) is located in a closet on the ground floor.

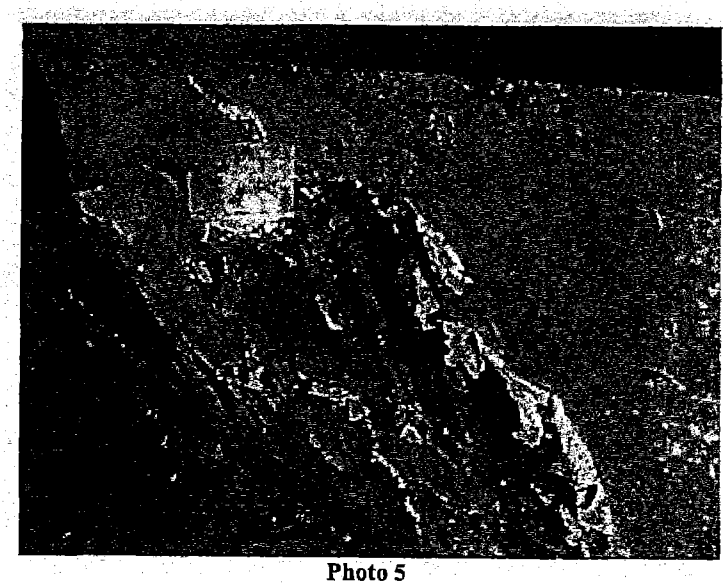


**Photo 5**

Paint on kitchen walls contains 2,000 ppm lead and is flaking (Sample CSF1108-Pb03).

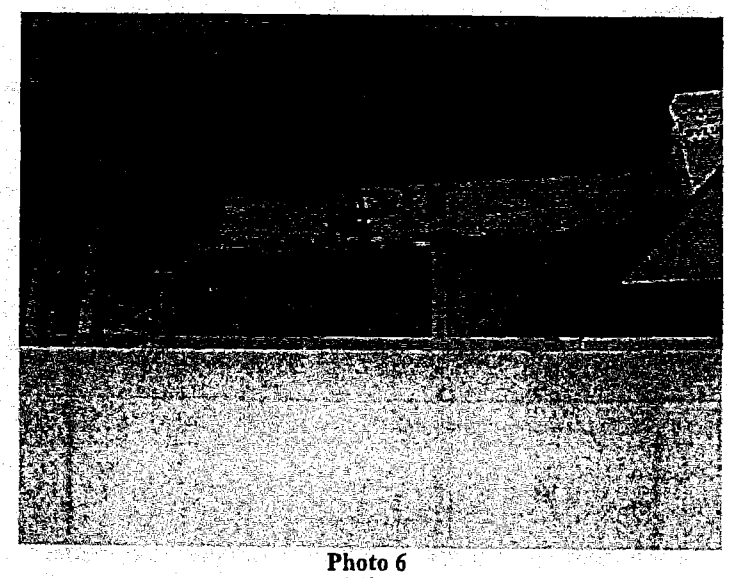


**Photo 6**

Paint on upper joists contains 550 ppm lead and is flaking (Sample CSF1108-Pb05).

**NORTH TOWER** *environmental, Inc.*

March 6, 2012

Mr. Roberto Aguirre
CCSF-DPW, SAR/BCM
1680 Mission Street, 1st Floor
San Francisco, California

RE: Asbestos Abatement Clearance Notification
Pier 50, Former Jelly's Restaurant
San Francisco, California

Dear Mr. Aguirre,

North Tower Environmental (NTE) was retained by the San Francisco Department of Public Works (SFDPW) to provide asbestos consulting services at the above referenced location. Synergy Environmental performed asbestos abatement, which included the removal of asbestos-containing floor tile with black mastic and drywall with joint compound.

On March 2, 2012, NTE performed a visual inspection upon completion of asbestos-abatement. North Tower determined after the visual inspection that the scope of work was complete and the work area was visibly clean of suspect asbestos dust and debris. Mr. Miguel Hermida, a Cal/OSHA Certified Site Surveillance Technician (#01-2957), performed the clearance activities for NTE.

On March 3, 2012, NTE collected two clearance samples from the Former Jelly's Restaurant, the regulated work area. The clearance air samples were submitted for analysis by Transmission Electron Microscopy (TEM). Analytical results for the TEM air clearance sample was below the limit of detection of <14.0 structures per millimeter squared (str/mm$^2$) and <16.3 str/mm$^2$. The TEM clearance samples were analyzed by Micro Analytical, Inc. of Emeryville, California. Appendix A contains the laboratory reports. Based on the results of the visual clearance and clearance sampling analysis, the regulated work area was cleared for re-occupancy without the use of respiratory protection

Should you have any questions please feel free to contact me at (415) 740-8969.

Sincerely,

Carolyn Henry
Cal/OSHA Certified Asbestos Consultant #92-0827

# TABLE 1
# ASBESTOS ABATEMENT CLEARANCE AIR SAMPLING DATA

Pier 50, Former Jelly's Restaurant
San Francisco, California

| Sample Number | Date Collected | Sample Location | Time On | Time Off | Total Time | Average LPM | Total Liters | Sample Result (TEM Analysis) |
|---|---|---|---|---|---|---|---|---|
| NT3599-030312-01 | 03/03/12 | First Floor, Regulated Work | 145 | 1720 | 150 | 10.0 | 1,500.0 | **< 14.0 Str. / mm$^2$ No Asbestos Detected** |
| NT3596-030312-01 | 03/03/12 | Second Floor, Regulated Work | 145 | 1720 | 150 | 10.0 | 1,500.0 | **< 16.3 Str. / mm$^2$ No Asbestos Detected** |

# Appendix A

# Laboratory Reports

# MICRO ANALYTICAL LABORATORIES, INC.

## TEM AIRBORNE ASBESTOS ANALYSIS

1160

North Tower Environmental
3900 Geary Boulevard, Suite 301
San Francisco, CA 94118

**PROJECT:**

**PIER 50 - JELLY'S**
**PROJECT NO. NT-3599**

Micro Log In **166326**
Total Samples 2
Date Sampled 03/03/2012
Date Received 03/04/2012
Date Analyzed 03/04/2012

### SAMPLE INFORMATION

CLIENT ID

NT3599-030312-01

MICRO ID 166326-01

| | |
|---|---|
| Time | 150 |
| LPM | 10.00 |
| Liters | 1500.0 |

**DESCRIPTION**
CLEARANCE
FIRST FLOOR

### ASBESTOS STRUCTURE COUNT

| ASBESTOS TYPE | |
|---|---|
| CHRYSOTILE | 0 |
| GRUNERITE (AMOSITE) | 0 |
| RIEBECKITE (CROCIDOLITE) | 0 |
| TREMOLITE | 0 |
| ACTINOLITE | 0 |
| ANTHOPHYLLITE | 0 |
| TOTAL ASBESTOS | 0 |

### CALCULATED ASBESTOS STRUCTURE CONCENTRATION

| Str. per mm² | Str. per cc |
|---|---|
| **< 14.0** | **< 0.0036** |

Asbestos Structures Subdivided By Length

| Length | No. | S/mm² | S/cc |
|---|---|---|---|
| 0.5 - 5 µm | 0 | < 14.0 | < 0.004 |
| ≥ 5 µm | 0 | < 14.0 | < 0.004 |

### COMMENTS

NO ASBESTOS DETECTED

**Operating Parameters**

| | | |
|---|---|---|
| Magnification | 15,000-20,000 | |
| Grid Squares | 7 | |
| Grid Square Area | 0.0102 | mm² |
| Area Analyzed | 0.0714 | mm² |

**Field Filter Data**

| | | |
|---|---|---|
| Type | MCE | |
| Diameter | 25 | mm |
| Collection Area | 385 | mm² |

**Analytical Sensitivity**

0.0036 Str. per cc

**SAED Photo No. / ID**

**Non-asbestos Structures**

| Fibrous Glass | Other |
|---|---|
| 0 | 0 |

Technical Supervisor: _____ 3/4/2012 Analyst: AF
Frank Raviola, M.S. Date Reported

Micro Analytical Laboratories, Inc. is accredited for airborne asbestos analysis under NVLAP Lab Code 101872-0. NVLAP accreditation is limited to laboratory analyses. Analyses follow the analytical procedures of the U.S. EPA's "Interim Transmission Electron Microscopy Method" (1987), 40 CFR Part 763, Appendix A to Subpart E. Sampling parameters may differ from the AHERA method. Concentrations and limits expressed in "Structures per mm²" are applicable only to samples with volumes of 1199 or more liters (AHERA Method, 1987). Variability due to different airborne fiber distributions, whether on different portions of the same filter or from different filters from the same sampled area, may be significant. Analytical sensitivity is the airborne concentration represented by each asbestos structure counted in the area analyzed; it is not the same as the detection limit. Non-asbestos counts are approximate; specific characterization of non-asbestos particles is not applicable to this analysis. This report must not be used to claim product endorsement by NIST or any other U.S. Government agency. Unless otherwise indicated on this report, all required Quality Control samples have been determined to be in control prior to releasing these analytical results. Duplicate QC samples have lower analytical sensitivities. Unless otherwise stated in this report, all samples were received in acceptable condition for analysis. Note: due to software limitations, the number of reported significant figures does not necessarily reflect the uncertainty of the analysis. This report shall not be reproduced without the approval of Micro Analytical Laboratories, Inc., shall not be reproduced except in full, and pertains only to the samples analyzed.

# MICRO ANALYTICAL LABORATORIES, INC.

## TEM AIRBORNE ASBESTOS ANALYSIS

1160
North Tower Environmental
3900 Geary Boulevard, Suite 301
San Francisco, CA 94118

**PROJECT:**
**PIER 50 - JELLY'S**
**PROJECT NO. NT-3599**

Micro Log In **166326**
Total Samples 2
Date Sampled 03/03/2012
Date Received 03/04/2012
Date Analyzed 03/04/2012

### SAMPLE INFORMATION

CLIENT ID

NT3599-030312-02

MICRO ID 166326-02

| | |
|---|---|
| Time | 150 |
| LPM | 10.00 |
| Liters | 1500.0 |

DESCRIPTION
CLEARANCE
SECOND FLOOR

### ASBESTOS STRUCTURE COUNT

| ASBESTOS TYPE | |
|---|---|
| CHRYSOTILE | 0 |
| GRUNERITE (AMOSITE) | 0 |
| RIEBECKITE (CROCIDOLITE) | 0 |
| TREMOLITE | 0 |
| ACTINOLITE | 0 |
| ANTHOPHYLLITE | 0 |
| TOTAL ASBESTOS | 0 |

### CALCULATED ASBESTOS STRUCTURE CONCENTRATION

| Str. per mm² | Str. per cc |
|---|---|
| < 16.3 | < 0.0042 |

Asbestos Structures Subdivided By Length

| Length | No. | S/mm² | S/cc |
|---|---|---|---|
| 0.5 - 5 µm | 0 | < 16.3 | < 0.004 |
| ≥ 5 µm | 0 | < 16.3 | < 0.004 |

### COMMENTS

NO ASBESTOS DETECTED

| Operating Parameters | | | Field Filter Data | | Analytical Sensitivity | SAED Photo No. / ID |
|---|---|---|---|---|---|---|
| Magnification | 15,000-20,000 | | Type | MCE | 0.0042 Str. per cc | Non-asbestos Structures |
| Grid Squares | 6 | | Diameter | 25 mm | | Fibrous Glass: 0 |
| Grid Square Area | 0.0102 | mm² | Collection Area | 385 mm² | | Other: 0 |
| Area Analyzed | 0.0612 | mm² | | | | |

Technical Supervisor: for Frank Raviola, M.S. 3/4/2012 Date Reported Analyst: AF

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166326

# NORTH TOWER ENVIRONMENTAL

3900 Geary Boulevard Suite 301, San Francisco, California 94118 (415) 933-8170

## Chain of Custody Record

Turn Around Time: RUSH 24 Hours 48 Hours 72 Hours

Sample Type: BL = Baseline PM = Perimeter CL = Clearance WA = Work Area PR = Personal

Analysis: PCM TEM AHERA AA Other



Project Number: NT - 3599

Project Name: Pier 50 - Jelly's

Project Manager: C. Henry

Comments: Please call MIGUEL with results 415-740-8970 ASAP

| Sample Number | Date | Time On | Time Off | Total Time | LPM | Total Liters | Sample Type | Sample Location |
|---|---|---|---|---|---|---|---|---|
| NT3599-030312- | | | | | | | | |
| 01 | 03/03/12 | 1450 | 1720 | | 10.0 | | CLR | First Floor |
| | | | | | | | | |
| | | | | | | | | |
| 02 | 03/03/12 | 1450 | 1720 | | 10.0 | | CLR | Second Floor |
| | | | | | | | | |
| | | | | | | | | Clearances for Additional Work |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

| Relinquished By: | Signature: | Date: | Received By: | Signature: | Date: |
|---|---|---|---|---|---|
| M. Hermida | | 03/03/12 | | | |
| | | | | | 3/4/12 7:58 |

PORT OF SAN FRANCISCO

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 JUL 15 AM 11:27

July 15, 2013

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: East Street Ventures, LLC Lease No.L-15255

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed resolution for Board of Supervisors approval, approving Port Commission Lease No. L-15255 with East Street Ventures, a California Limited Liability Company for a term of ten (15) years for certain real property located at 295 Terry Francois Boulevard in the City and County of San Francisco.

Attached you will also find the following supporting documents:

1. Five copies of the Port Commission Staff Report and companion Resolution 13-27(approving the proposed and recommending the lease to the Board of Supervisors);
2. Five copies of the proposed Port Commission Lease No.L-15255.

Thank you for your consideration. If you should have questions or require additional information I may be contacted at (415) 274-0514.

Sincerely,

Jeffrey A. Bauer, Senior Leasing Manager
Port of San Francisco

130737

File No. 130732

**FORM SFEC-126:**
**NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

| **City Elective Officer Information** *(Please print clearly.)* | |
|---|---|
| Name of City elective officer(s):<br>Members, Board of Supervisors | City elective office(s) held:<br>Members, Board of Supervisors |

| **Contractor Information** *(Please print clearly.)* | |
|---|---|
| Name of contractor: East Street Ventures, LLC | |
| *Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use* ***additional pages as necessary. John Caine, Sara Caine*** | |
| Contractor address: Pier 28 ½ | |
| Date that contract was approved:<br>*(By the SF Board of Supervisors)* | Amount of contracts: $ 1,000,000 |
| Describe the nature of the contract that was approved: Request for Proposal | |
| Comments: Approved by the Port Commission | |

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

| **Filer Information** *(Please print clearly.)* | |
|---|---|
| Name of filer:<br>Angela Calvillo, Clerk of the Board | Contact telephone number:<br>( 415 ) 554-5184 |
| Address:<br>City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102 | E-mail:<br>Board.of.Supervisors@sfgov.org |

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed